

SUBJECT: Delayed parole, no mandatory supervision for repeat intoxication offenses

COMMITTEE: Corrections — committee substitute recommended

VOTE: 6 ayes — Parker, White, Allen, Riddle, Rose, J.D. Sheffield

0 nays

1 absent — Toth

WITNESSES: For — Bill Lewis, Mothers Against Drunk Driving; Jennifer Tharp, Comal County Criminal District Attorney; Patrick Wilson, Ellis County and District Attorney Office; (*Registered, but did not testify*: Brian Eppes, Tarrant County District Attorney's Office; John Healey, Fort Bend County District Attorney; Steven Tays, Bexar County Criminal District Attorney's Office; Justin Wood, Harris County District Attorney's Office)

Against — (*Registered, but did not testify*: Chris Howe)

On — Bryan Collier, Texas Department of Criminal Justice; Rissie Owens Board of Pardons and Paroles; (*Registered, but did not testify*: Shannon Edmonds, Texas District and County Attorneys Association; Bettie Wells, Board of Pardons and Paroles)

BACKGROUND: **Consideration for parole.** Under Government Code, sec. 508.145(f), in general, inmates are considered for release on parole when their actual calendar time served plus good conduct time equals one-fourth of their sentences or 15 years, whichever is less.

Government Code, sec. 508.145(d)(1) creates an exception to this and makes inmates serving sentences for specified violent and serious crimes ineligible for release on parole until their time served, without consideration of good conduct time, equals one-half of their sentence or 30 years, whichever is less, with a minimum of two years.

Mandatory supervision. Government Code, sec. 508.147 requires parole panels to release inmates from prison under a program called mandatory supervision when their actual calendar time served plus good conduct time equals the term to which the inmates were sentenced.

However, Government Code sec. 508.149(b) establishes exceptions to this requirement and prohibits release on mandatory supervision if a parole panel finds that an inmate's good conduct time is not an accurate reflection of his or her potential for rehabilitation and that the inmate's release would endanger the public. Due to this provision, the program is sometimes called discretionary mandatory supervision.

Government Code, sec. 508.149(a) makes inmates ineligible for release on mandatory supervision if they are serving sentences or had been previously convicted of specific crimes listed in the section.

Inmates released on mandatory supervision are considered to be on parole and are under the supervision of the parole division of the Texas Department of Criminal Justice (TDCJ).

Intoxication and alcoholic beverage offenses. Penal Code, ch. 49 governs intoxication and alcoholic beverage offenses, including driving while intoxicated (DWI). Sec. 49.09 allows penalties for DWI and other offenses in chapter 49 to be enhanced to the felony level, including allowing third-time DWI offenses to be punished as third-degree felonies (two to 10 years in prison and an optional fine of up to \$10,000).

Under general provisions for repeat and habitual felony offenders in Penal Code, sec. 12.42, for a person who has two previous felony convictions — including DWI felony convictions — a subsequent offense can be punished by life in prison or a term of 25 years to 99 years.

DIGEST:

CSHB 517 would make persons serving sentences of 25 years or more for Penal Code, ch. 49 intoxication or alcoholic beverage offenses ineligible for parole until their actual time served, without consideration of good conduct time, equaled one-half of their sentence or 30 years, whichever was less, with a minimum of two years.

The bill also would add these offenses to the list of crimes for which release on mandatory supervision was prohibited.

The bill would take effect September 1, 2013, and would apply to only to offenses committed on or after that date.

SUPPORTERS

CSHB 517 would ensure that people who commit repeat, dangerous

SAY:

intoxication offenses serve an adequate amount of time in prison before being considered for, and possibly released on, parole, and that these offenders would not be released from prison under the state's mandatory supervision program. These changes would serve to deter and more appropriately punish these crimes and to protect the public.

The need for these changes was brought to light by egregious cases of offenders being eligible for parole or being released on parole inappropriately early. One such offender, after receiving a life sentence for DWI, became eligible for parole after eight years and was paroled after 11 years, after which he reoffended and received another life sentence. In another case, an offender received a life sentence after multiple DWIs and was eligible for parole after about seven years.

Under current law, DWI offenders generally fall under standards that make them eligible for parole when their actual calendar time served plus good conduct time equals the lesser of one-fourth of their sentence or 15 years. This can result in these offenders being eligible for parole after serving only 10 percent to 15 percent of their sentences, an inadequate punishment for these crimes.

CSHB 517 would address this issue by requiring these offenders to serve at least half of their sentences, without good conduct time, before being considered for parole. This would be an appropriate extension of the state's policy that requires other dangerous offenders who committed serious crimes to serve longer terms before being parole eligible.

The parole board still would have discretion to handle these cases individually and appropriately. The bill would delay only the date on which they were considered for parole. When the cases were considered, the board could continue as it does under current law to release the offender on parole and decide any conditions of release or to deny release.

In addition, these offenders currently are eligible for release under the state's mandatory supervision program. Although release under this program can be denied, it can appear to be a presumed release, which requires the parole board to make specific findings to halt the release. By prohibiting release on mandatory supervision, CSHB 517 would recognize that this type of release is inappropriate, given the seriousness of these crimes and the threat to public safety that repeat DWI offenders pose.

CSHB 517 would be narrowly focused on the truly dangerous, habitual DWI felon. Offenders would have to have at least four prior DWI convictions with at least two being felony offenses. These offenders, and those convicted of a limited number of other enhanced intoxication offenses in Penal Code, ch. 49, can be sentenced to life in prison or a term of 25 years to 99 years and would qualify under the bill.

The fiscal note reports no significant cost to the state within the first five years of the bill's implementation. If there were a fiscal impact after that, it would be a proper use of state resources to protect the public by keeping dangerous, repeat felons in prison.

OPPONENTS
SAY:

Current law provides an appropriate formula for determining the parole eligibility of offenders described by CSHB 517. Once offenders meet the criteria in current law, they are eligible only for parole consideration, not necessarily release. If the parole board deems it appropriate, it can deny parole and require an offender to remain in prison. It would be best to continue to let the parole board evaluate these offenders on a case-by-case basis when they are eligible for parole, rather than to mandate a delay of the parole eligibility of a group of offenders.

The offenders described by CSHB 517 should remain eligible for mandatory supervision. These are serious offenses, but each case should continue to be considered individually through the mandatory supervision process instead of falling under a blanket provision that works to keep all such offenders out of the program and in prison longer. Being considered for mandatory supervision does not mean that an offender will be released. Offenders can be denied release on mandatory supervision if release would endanger the public and if good conduct time does not reflect an inmate's potential for rehabilitation. These provisions work to keep appropriate offenders from release under the program.

The state should be cautious about mandates that could strain the resources of the criminal justice system in the long term as offenders remain in prison longer.

NOTES:

The committee substitute amended the original bill so that it would apply to those serving a sentence of 25 years or more for intoxication offenses, while the original bill would have applied to certain repeat offenders whose offense was enhanced to a third-degree felony.