

SUBJECT: Extending statute of limitations for certain sex crimes against children

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Place, Talton, Dunnam, Farrar, Keel, A. Reyna
1 nay — Galloway
2 absent — Hinojosa, Nixon

WITNESSES: For — Laura Lyons, Jamye Hayes, Dana R. Johnson, Donna S. Marta, Texas Association Against Sexual Assault; Hannah Riddering, Texas National Organization for Women; Carol Townsend, Jean Glowka; Linda Hunter; Amy Wong Mok; Kimberly Ladish Norris; Marcus D. Taylor;
Against — Keith S. Hampton and Betty Blackwell, Texas Criminal Defense Lawyers Association
On — Cecelia A. McKenzie, Office of the Attorney General

BACKGROUND : The statute of limitations for presenting indictments for sexual assault of a child, aggravated sexual assault of a child and indecency with a child is ten years from the date of the offense.

DIGEST: HB 921 would change the statute of limitations for indecency with a child involving contact, sexual assault of a child, and aggravated sexual assault of a child to be 10 years from the 18th birthday of the victim. The limitation for indecency with a child involving exposure would remain 10 years.
The changes would not apply to offenses that were barred under the statute of limitation in effect before the September 1, 1997, the bill's effective date.

SUPPORTERS SAY: HB 921 would extend the statute of limitations for serious sex crimes committed against children to recognize the fact that it is often difficult or impossible for children to speak out about these offenses. The special circumstances surrounding these cases and the seriousness of these crimes warrant a lengthening of the statute of limitation in these limited circumstances.

Child victims of sex crimes are often unable to speak out about their crime because they are traumatized, fearful, embarrassed or have repressed the memory of the offense. These children often keep quiet about the crime because they are following the instructions of the adult who has assaulted them and told them not to tell anyone. When family members are involved in the crime, victims often speak out only after they are older and no longer dependent on their families. In addition, many children do not speak out or are told to keep quiet about their cases because such allegations could destroy their families.

HB 921 would take a moderate approach to solving this problem by lengthening the statute of limitations, but not eliminating it, and by limiting the change to the most serious sex offenses against children. The statute of limitations established by HB 921 would run for 10 years beginning after a victim's 18th birthday. This would allow for victims to mature, gain their financial independence, and move out of their childhood homes. Once victims became adults, they would be properly held to adult standards concerning reporting crimes. A longer statute of limitations in criminal cases would allow for both punishment of offenders and healing and closure for victims.

HB 921 would balance the needs of children who often need to mature before they can make an accusation of a sex crime with the needs of adults who may be accused of a crime. As in all crimes, defendants would be presumed to be innocent, and accusations would still have to be proved in court beyond a reasonable doubt. Prosecutors would be cautious about pursuing questionable cases with weak or little evidence since proving a case that is over 10 years old would be difficult. Accusations that might be brought for ulterior motives, such as anger at being cut out of a will, would be questioned by defense attorneys and prosecutors alike.

Because of the negative consequences and pain that can arise from accusing someone of child sexual assault, cases of false accusations would be rare. In addition, current law provides for penalties for false testimony.

The current statute of limitations in criminal child sexual assault cases is the same one used for forgery and provides less protection than the five-year statute of limitations for civil cases concerning child sexual assault, which

begins to run only after the child has turned 18 years old. Expanding the statute of limitations for civil suits would not do enough to adequately punish these offenders or protect the public from further crimes they may commit.

OPPONENTS
SAY:

HB 921 would unwisely lengthen the statute of limitation to the point that defendants could be unable to adequately defend themselves and false accusations would increase.

HB 921 could raise due process issues if it created a situation that infringed on persons' right to defend themselves. It already can be difficult to defend against a charge of a crime allegedly committed 10 years ago, and extending this time frame to as long as 25 years in child sex crime cases could make the task almost impossible. Over time witnesses' memories fade, and evidence is difficult to obtain. Extending the time frame for prosecution could make a defense especially difficult to mount when coupled with other provisions such as the requirement that victim testimony does not have to be corroborated in cases of child sexual assault and aggravated sexual assault.

Extending the statute of limitations could expose more persons to false accusations of these crimes and could result in convictions of innocent persons. Children and adults can make false accusations of these offenses, either because of an ulterior motive to hurt the accused or to follow up on so-called recovered memories that are in fact false. In these cases, the highly charged atmosphere surrounding sex offenses against children can lead to an overreaction by the criminal justice system and to proceedings in which defendants are presumed guilty.

The civil, not criminal, courts could be the proper place for any expansion of the statute of limitations in this area. Civil cases are disputes between two parties in which money — not liberty — is at stake, and so it is acceptable that the current five-year statute of limitations in civil cases of child sexual assault begins to run after a child turns 18 years old.

OTHER
OPPONENTS
SAY:

Other approaches could be taken to helping prosecute those who commit sex crimes against children. For example, if there is suspicion that a child has been sexual assaulted, the court could appoint an attorney to represent the child's interests and monitor the case's movement through the criminal

justice system. In addition, awareness about child sex crimes could be increased with efforts made to ensure that children know it is alright to speak out when they are assaulted.

This bill does not go far enough. The statute of limitations on sex crimes against children should be eliminated altogether.

NOTES:

The companion bill, SB 1700 by Shapiro, has been referred to the Senate Criminal Justice Committee.

A related bill, HB 1991 by Wise, would change the statute of limitations for indecency with a child, sexual assault against a child and aggravated sexual assault against a child to 10 years from the victim's 16th birthday.