

SUBJECT: Life in prison for two specified sex offenses

COMMITTEE: Criminal Jurisprudence— favorable, without amendment

VOTE: 6 ayes — Place, Talton, Galloway, Keel, Nixon, A. Reyna
0 nays
3 absent — Dunnam, Farrar, Hinojosa

SENATE VOTE: On final passage, March 17 — voice vote

WITNESSES: For — Ken Yarbrough, Texas Police Chiefs Association and Texas Police Association; Sterlene Donahue, Justice For All; Sherri Wallace, Dallas County Criminal District Attorney’s Office; Albert Cheng, Free Market Committee; Amy Wong Mok, Texas Association Against Sexual Assault; Rider Scott, Greater Dallas Crime Commission; Rick A. Watson, representing Dallas Chief of Police Bennie R. Click; Jimmy Evans

Against — None

On — Robert Kepple, Texas District and County Attorneys Association; Edmund Heimlich, Informed Citizen

BACKGROUND : Persons convicted of specified sex crimes who have been convicted of two previous felonies, one of which was a specified sex crime, must be sentenced to life in prison. This applies to persons convicted of:

- aggravated sexual assault;
- aggravated kidnapping with intent to violate or abuse the victim sexually; and
- first-degree burglary committed with intent to commit aggravated sexual assault, aggravated kidnapping with sexual intent, indecency with a child, or sexual assault; and

who have been previously convicted of two felonies, at least one of which is:

- sexual performance by a child, possession or promotion of child

- pornography;
- indecency with a child;
- sexual assault;
- aggravated sexual assault;
- prohibited sexual conduct (incest);
- aggravated kidnapping with intent to violate or abuse the victim sexually;
or
- first-degree burglary committed with intent to commit indecency with a child, sexual assault, aggravated sexual assault, prohibited sexual conduct, or aggravated kidnapping with sexual intent.

Persons serving life in prison for these offenses are not eligible for parole until they have served, without good conduct time, at least 35 years and can be released on parole only on a two-thirds vote of the entire membership of the 18-member Board of Pardons and Paroles.

DIGEST:

SB 46 would eliminate current requirements that persons convicted of specified sex crimes who have been convicted of *two* previous felonies, one of which was a specified sex crime, must be sentenced to life in prison. The bill would require persons convicted of specified sex crimes to be given life in prison if they had been previously convicted of one specified sex offense.

SB 46 would require life in prison for persons convicted of:

- aggravated sexual assault;
- sexual assault;
- aggravated kidnapping with intent to violate or abuse the victim sexually;
or
- first-degree burglary committed with intent to commit aggravated sexual assault, sexual assault, aggravated kidnapping with sexual intent, indecency with a child, or sexual assault; if

the person had been previously convicted of :

- sexual performance by a child, possession or promotion of child pornography;
- indecency with a child;

- sexual assault;
- aggravated sexual assault;
- prohibited sexual conduct (incest);
- aggravated kidnapping with intent to violate or abuse the victim sexually;
- first-degree burglary committed with intent to commit indecency with a child, sexual assault, aggravated sexual assault, aggravated kidnapping with sexual intent; or
- a crime in another state that is similar to one of the offenses listed above.

Persons serving life in prison under these circumstances would not be eligible for parole until they have served, without good conduct time, at least 35 years.

SB 46 would take effect September 1, 1997.

**SUPPORTERS
SAY:**

SB 46 would strengthen Texas' sex offender laws by creating a "two-strikes and you're out" provision for repeat sex offenders. The second time that an offender commits a serious sex offense, the offender should be sent to prison for life. Sex offenders tend to be repeat offenders who prey on the most vulnerable members of society and should be kept off the streets as long as possible. These offenders have proven that life in prison, not treatment, is the proper way to deal with them. Locking up repeat sex offenders for 35 years is not too harsh of a penalty when weighed against their continuing threat to society.

While current law requires life in prison for some sex offenders who have been committed three felonies, one of which does not have to be a sex offense, SB 46 would more narrowly target repeat serious sex offenders. Two serious sex offenses demonstrates an offenders' ongoing threat to society and the need for an offender to be given life in prison. There is no need to require three felonies, as current law does, before sending a dangerous, repeat sex offender to prison for life.

Although these offenders may face serious penalties now, these penalties are not harsh enough given the seriousness of their crimes. SB 46 would guarantee that all of these serious, repeat sex offenders would be appropriately punished and given life in prison. Life in prison under SB 46

would mean that offenders serve a minimum of 35 years, without good conduct time, before being eligible for parole. This would be longer than the minimum term that can be required under current punishment statutes. Currently, in general, these offenders could receive life in prison or a term of 15 to 99 years if punished as repeat offenders or even less if given the standard punishment for a first-degree felony. However, offenders might have to serve only a portion of this sentence, and life in prison under these circumstances would most often mean a minimum of only 30 years before being eligible for parole but could be even less. This would be inadequate punishment for the heinous crimes covered by SB 46.

SB 46 also would ensure that these offenders are not released without careful consideration by requiring that they be paroled only upon vote of two-thirds of the entire membership of the 18-member board of pardons and paroles. SB 46 would also ensure that sex crimes committed in other states would count against an offender.

The state has the prison capacity to deal with any increase in the need of prison beds that would result from this bill, and using the state's prison beds to keep repeat, serious sex offenders away from society should be a top priority. SB 46 would not result in a large number of offenders being given life in prison, but the offenders it would apply to should be given this sentence. The fiscal note estimates no impact for the first five years if SB 46 became law and a increased need for prison beds of only 400 over 20 years. In addition, some of the costs would be off-set by a savings to the state because of a reduction of the number of people on parole, according to the fiscal note.

**OPPONENTS
SAY:**

The Legislature should not continue to craft a separate punishment system for sex offenders and should not continue to erode courts' sentencing discretion, even for repeat sex offenders. SB 46 would be a move away from the 1993 Penal Code revisions that established standard punishments for repeat and habitual offenders and that used punishment ranges rather than inflexible sentencing mandates.

Persons convicted of two serious sex offenses are already being dealt with harshly and most likely are receiving life in prison or another long prison sentence under either standard punishment ranges for their offense or

penalties for repeat offenders. If they are convicted of sexual assault, aggravated sexual assault, aggravated kidnapping, or indecency with a child involving contact (all “3g” offenses), they have to serve one-half of their sentence, or 30 years, before becoming parole eligible. Even then the offenders are only *parole eligible*, and the parole board has the discretion to keep them in prison.

Continuing to define life in prison to mean 35 years before parole consideration for specified crimes would continue to undermine the Penal Code's ranking of penalties, which requires capital murderers given life in prison to serve 40 years before becoming parole eligible. The punishment for capital murder should remain significantly more serious than that for other crimes.

SB 46 could be costly to the state, with a cumulative impact after 20 years of requiring an additional 400 prison beds at an operating cost of \$5.5 million per year, according to the fiscal note. Although the state now may have prison capacity for longer prison sentences, projections show the state prison beds will fill up again in a few years.

OTHER
OPPONENTS
SAY:

SB 46 would unfairly punish all repeat sex offenders the same way without making distinctions among those who could be treated and potentially rehabilitated. Treatment, not just punishment, should be a priority.

NOTES:

Earlier this session the House passed HB 104 by Greenberg et al., which would require a sentence of life in prison for offenders who have committed two specified sex offenses. These offenders would not be eligible for parole until they had served, without good conduct time, 40 years in prison. HB 104 was referred to the Senate Criminal Justice Committee.