

SUBJECT: Limiting parole and probation for aggravated assault by adding to 3g list

COMMITTEE: Corrections — favorable, without amendment

VOTE: 7 ayes — Haggerty, Staples, Allen, Culberson, Farrar, Lengefeld, Longoria
0 nays
2 absent — Ellis, Gray

SENATE VOTE: On final passage, Local and Uncontested Calendar, April 26 — 30-0

WITNESSES: No public hearing

BACKGROUND: Code of Criminal Procedure, art. 42.12, sec. 3(g) prohibits persons convicted of certain crimes from receiving judge-ordered community supervision (probation). The “3g” offenses are murder, capital murder, sexual assault of a child, aggravated sexual assault, indecency with a child involving contact, aggravated kidnaping, aggravated robbery, and some repeat drug-free zone offenses. In addition, the “3g” provisions apply to persons who use or exhibit a deadly weapon while committing a felony or who are parties to these offenses.

Parole eligibility for these offenders also is restricted. Capital murderers are not eligible for parole until they have served 40 years, without consideration of good-conduct time. All other “3g” offenders are ineligible for parole until their time served, without consideration of good-conduct time, equals one-half of their maximum sentence or 30 years, whichever is less. In no event is the inmate eligible for parole in less than two calendar years (Government Code, sec. 508.145).

In general, other offenders are eligible for parole when their time served, plus good-conduct time, equals one-fourth of their sentence or 15 years, whichever is less.

Under Penal Code sec. 22.02 persons commit aggravated assault if they cause serious bodily injury to another, including the person’s spouse, or uses a deadly weapon during the commission of assault.

DIGEST: SB 22 would add aggravated assault that causes serious bodily injury to another, including the person's spouse, to the 3g list.

SB 22 would take effect September 1, 1999, and would apply only to offenses committed on or after that date.

SUPPORTERS SAY: SB 22 would ensure that offenders convicted of aggravated assault without a deadly weapon would not receive judge-ordered probation, but would stay in prison for at least half of their sentences or 30 years, and for no less than two years. This punishment would be appropriate for someone who committed the crime of aggravated assault, which would have to include serious bodily injury.

Aggravated assault involving a deadly weapon already is a 3g offense since the 3g list includes persons using a deadly weapon in the commission of a felony. Logic dictates that all aggravated assaults should be on the list as well. Aggravated assault is a serious crime with a level of violence similar to other 3g offenses. There have been numerous cases, especially of family violence, in which aggravated assaults did not involve a deadly weapon, so they did not qualify as 3g offenses.

The Legislature is not bound by the Penal Code revisions of 1993 and has made changes to the list of 3g offenses since then.

SB 22 would help bring uniformity to the handling of aggravated assault cases without significantly reducing flexibility of judges or prosecutors. Prosecutors would retain their authority to decide how to best handle cases. Judges would still be able to set probation conditions if a jury granted probation or a person was given deferred adjudication for aggravated assault. Although some cases could be reduced to misdemeanors or some offenders given deferred adjudication, this occurs now and would be a trade off for ensuring most offenders spend more time in prison.

Although current parole approval rates may be low, some persons convicted of aggravated assault still are let out of prison early on parole. There is no guarantee that future parole boards will not start paroling even more persons convicted of aggravated assault, as has occurred in the past. SB 22 would ensure that from now on these offenders would serve at least half of their sentences before becoming eligible for parole. Any effect on state prison

capacity would be minimal and not felt for many years. The state has adequate prison capacity to deal with any additional demand for prison beds that could result from this bill.

SB 22 would exempt offenders only from judge-ordered probation. This is appropriate because, in the case of aggravated assault, only juries — as community representatives — should have authority to order probation.

OPPONENTS
SAY:

SB 22 would remove a long-standing distinction between the punishments for aggravated assault involving a weapon and those for aggravated assaults that do not involve weapons. This would mean that crimes that differ in seriousness would be treated the same way. Aggravated assault involving a weapon already is a 3g offense. Aggravated assault with a weapon involves a level of violence that does not have to be present for aggravated assault without a weapon. It deserves a harsher punishment.

SB 22 would reduce the current flexibility of prosecutors to charge most aggravated assault cases with use of a deadly weapon if circumstances warrant, leaving other cases as non-3g aggravated assault. This flexibility is based on the fact that prosecutors have a lot of leeway in deciding what to ask courts to consider a deadly weapon. There have even been cases in which fists have been found to be a deadly weapon. Without this flexibility, prosecutors could be unable to craft a plea for felony aggravated assault in difficult-to-prove cases, resulting in more cases having to be reduced to misdemeanors or more deferred adjudications. This would leave these offenders without a felony conviction on their records. SB 22 also could result in more jury trials since defendants could not get probation from a judge.

Adding to the list of 3g offenses would disturb the balance of penalties created when the Penal Code was revised in 1993. The Punishment Standards Commission, which drafted the revised Penal Code, and the Legislature made a careful study of what to place on the 3g list and decided to reserve the 3g designation for the most serious and violent crimes. Adding all aggravated assaults to the list would flatten the range of punishments.

Aggravated assault already is punished harshly. It is a second-degree felony, punishable by two to 20 years in prison and an optional fine of up to \$10,000 unless committed against a public servant, in which case it is a first-degree

felony punishable by life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000. Repeat offenses of second-degree felony aggravated assault can be punished as first-degree felonies. In addition, parole approval rates for aggravated, violent non-sex offenses currently are at about eight percent, so SB 22 would attempt to solve a problem that does not really exist.