

- SUBJECT:** Extending statute of limitation for sexual assault
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Hinojosa, Dunnam, Keel, Talton, Garcia, Green, Kitchen, Martinez Fischer, Shields
- 0 nays
- WITNESSES:** For — Kevin F. Lawrence, Texas Municipal Police Association; Gary Zumwalt and Fowler Brown, Austin Police Department; Sherry Boyles and Lyn Williams, Texas Association Against Sexual Assault; Michele M. Clark, SafePlace; Jeffrey Barnard, Dallas County Chief Medical Examiner; Christopher Watson; *Registered, but did not testify:* Bree Buchanan, Texas Council on Family Violence; Annette Burrhus-Clay, Texas Association Against Sexual Assault; James D. Jones, San Antonio Police Officers' Association
- Against — None
- BACKGROUND:** Code of Criminal Procedure, art.12.01 sets limits on the time that indictments for felony criminal offenses can be brought against individuals. Indictments for sexual assault must be brought within five years from the date of the commission of the offense, except for sexual assaults committed against children.
- Indictments must be brought within 10 years of the 18th birthday of the victim for sexual assault of a child, aggravated sexual assault of a child, and indecency with a child involving sexual contact. Indictments for indecency with a child involving only exposure must be presented within 10 years from the commission of the offense.
- There is no time limit on bringing indictments for murder and manslaughter.
- Deoxyribonucleic acid, or DNA, is the microscopic genetic material in body cells and can be used to identify an individual from samples of blood, semen, saliva, skin, or hair.

**DIGEST:** HB 656 would eliminate time limits for bringing indictments for sexual assaults in which biological matter is collected and subject to DNA testing with results that do not match the victim or any other known person.

The bill also would increase the time limit for bringing indictments for other sexual assaults of adults from five years to 10 years from the date of the commission of the offense.

HB 656 would take effect September 1, 2001. It would apply only to offenses for which the time limit for bringing an indictment had not run out before September 1, 2001.

**SUPPORTERS SAY:** HB 656 would give prosecutors the necessary flexibility to take advantage of scientific advances when handling sexual assault cases that involve biological evidence. It also would recognize the seriousness of other sexual assault cases by extending the current statute of limitation.

Allowing indictments anytime for sexual assault cases that involve biological evidence would give prosecutors another way to approach these cases. Under current law, if prosecutors want to keep a case active they must either indict a suspect for sexual assault within the statute of limitations or issue a “John Doe” indictment that describes — but does not name — a suspect. However, these requirements do not give prosecutors enough tools to properly handle all cases.

In some cases, biological evidence may not be subject to a DNA test within the statute of limitations period. For example, law enforcement officers might not test a piece of evidence because they do not believe it contains DNA or because of limitations in DNA testing. Scientific advances might make testing feasible later, and a DNA profile could be developed and a suspect identified. In these cases, prosecutors may not have had enough information to adequately describe a suspect and issue a “John Doe” indictment before the DNA evidence was tested.

In other cases, there may be no known suspect to compare to DNA evidence from a sexual assault and law enforcement officers may not want to tip their hand by issuing a “John Doe” indictment for a suspect they have not fully identified.

HB 656 would allow evidence to be tested and an indictment issued whenever law enforcement officers and prosecutors are ready to make their case, without having to rush through a “John Doe” indictment. It is only reasonable that the statute of limitations be changed to recognize that biological evidence can be preserved and accurately tested for decades after an offense, making the prosecution of sexual assaults involving biological evidence feasible after the current statute of limitations has expired.

A 10-year statute of limitation for sexual assault is a more appropriate time frame for bringing indictments for this serious offense. Victims often may not report a sexual assault because they are traumatized, fearful, and embarrassed, or they might have a repressed memory about an offense. A 10-year statute of limitation would give victims adequate time to recover from the trauma of a sexual assault and to report the crime. It also would give law enforcement officers and prosecutors time to investigate the case and issue an indictment, something not always feasible under the current five-year limitation.

Persons accused of sexual assault would be able to adequately defend themselves just as do defendants accused of other crimes with 10-year-plus statutes of limitations. As in all crimes, defendants would be presumed to be innocent, and accusations would have to be proved in court beyond a reasonable doubt. Prosecutors would be cautious about pursuing questionable cases with weak or little evidence. Accusations that might be brought for ulterior motives would be questioned by defense attorneys and prosecutors alike.

A 10-year statute of limitations for sexual assault would place the limit on par with Texas’ 10-year limit for other serious crimes. These include indecency with a child involving exposure and theft by a public servant. Other than applying to sexual assault, the current limit of five years is used only for property crimes — theft, burglary, robbery and arson.

Increasing the time limit to 10 years also would bring Texas in line with other states, about 20 of which have statutes of limitations for sexual assault of 10 or more years.

OPPONENTS  
SAY:

Under current law, prosecutors already have sufficient tools to issue indictments in sexual assault cases that have biological evidence — even if a suspect is not known by name. They simply have to work within the existing statute of limitations to conduct a DNA test and use the resulting DNA description in a “John Doe” indictment that describes, but does not name, a suspect. There is no reason to give law enforcement officers and prosecutors an infinite amount of time to procrastinate in conducting a test and issuing an indictment. If biological evidence exists, it should be tested and a “John Doe” indictment issued. The interests of justice are best served if indictments are issued as soon as possible within a definite time frame after a crime, and a special exception should not be made for sexual assaults.

HB 656 also would lengthen the statute of limitation for sexual assaults to the point that defendants could be unable to adequately defend themselves. Five years is certainly enough time for adult victims to report a sexual assault, law enforcement officers to investigate a crime, and prosecutors to issue an indictment. Over time, witnesses’ memories fade, evidence is difficult to obtain, and it can become increasingly difficult to mount a defense.

Extending the statute of limitation to 10 years for some sexual assaults and indefinitely for those involving biological evidence could expose more persons to false accusations. False accusations of sexual assault are sometimes made, either because of an ulterior motive to hurt the accused or to follow up on so-called recovered memories that could be false. Extending the statute of limitations would only exacerbate this problem.

Current law reserves the 10-year statute of limitations for crimes that may be hard to detect such as theft by a public servant or certain sex crimes involving children. When a sexual assault occurs, victims know it has occurred, and they should be able to involve the criminal justice system within five years.

OTHER  
OPPONENTS  
SAY:

HB 656 would not go far enough. The statute of limitations on sexual assault and sex crimes against children should be made even longer or eliminated altogether.

NOTES:

A related bill, SB 117 by Wentworth, would increase the statute of limitation on adult sexual assault to 15 years and would increase the statute of limitation to 15 years from the 18th birthday of the victim for indecency with a child involving sexual contact, and sexual assault and aggravated sexual of a child. SB 117 has been referred to the Senate Criminal Justice Committee.

Another related bill, SB 436 by Staples, would eliminate the time limits for bringing indictments for sexual assault, aggravated sexual assault of adults and children, and indecency with a child involving sexual contact. The limit for indecency with a child involving exposure would increase from five years from commission of the offense to 10 years from the 18th birthday of the victim. SB 436 has been referred to the Senate Criminal Justice Committee.