SUBJECT: Limiting judge-ordered probation for first-degree felony injury to a child

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Peña, Vaught, Riddle, Escobar, Mallory Caraway, Pierson

0 nays

3 absent — Hodge, Moreno, Talton

WITNESSES: For — Tom Gaylor, Texas Municipal Police Association; John Jocher, Harris County District Attorney's Office

Against — None

On — Laura Popps, Office of the Attorney General

BACKGROUND: Code of Criminal Procedure, art. 42.12, sec. 3g, prohibits persons convicted of certain crimes from receiving judge-ordered community supervision (probation). Under art. 42.18, these "3g" offenders also 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, and a minimum of two years. The 3g offenses are: murder, capital murder, indecency with a child, aggravated kidnapping, aggravated sexual assault, aggravated robbery, use of a child in the commission of a drug offense, and manufacture or delivery of certain controlled substances near an educational institution, public swimming pool, or video arcade.

Under Penal Code, sec. 22.04, it is a crime intentionally, knowingly, recklessly, or with criminal negligence, by act — or intentionally, knowingly, or recklessly by omission — to cause a child, elderly individual, or disabled individual:

- serious bodily injury;
- serious mental deficiency, impairment, or injury; or
- bodily injury.

It is also a crime for the owner, operator, or employees of a group home, nursing facility, assisted living facility, intermediate care facility for

persons with mental retardation, or other institutional care facility intentionally, knowingly, recklessly, or with criminal negligence by omission to cause a child, elderly individual, or disabled individual who is a resident of that group home or facility:

- serious bodily injury;
- serious mental deficiency, impairment, or injury;
- bodily injury; or
- exploitation.

Intentionally or knowingly causing serious bodily injury or serious mental deficiency, impairment, or injury to a child or an elderly or disabled individual is a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to $10,000). Intentionally or knowingly causing serious bodily injury to a child or an elderly or disabled individual who is a resident of a group home or facility also is a first-degree felony.

DIGEST:

HB 2719 would add injury to a child or to an elderly or disabled individual (Penal Code, sec. 22.04) punishable as a first-degree felony to the list of offenses in Code of Criminal Procedure, art. 42.12, sec. 3g(a).

In addition, the bill would add injury to a child or an elderly or disabled individual that is punishable as a first-degree felony to the list of offenses that preclude an offender from eligibility for release on parole under the conditions of Code of Criminal Procedure, art. 42.18.

The bill would take effect September 1, 2007.

SUPPORTERS SAY:

HB 2719 would ensure that offenders convicted of first-degree injury to a child or to an elderly or disabled individual stayed in prison for at least two-and-one-half years and as many as 30 years. People who are guilty of this crime have preyed on the most vulnerable members of society and should be kept off the streets as long as possible.

HB 2719 would increase sentences in a fiscally responsible manner and would have little effect on the availability of prison beds. According to the Legislative Budget Board, HB 2719 would have no significant impact on state revenue or corrections resources.

OPPONENTS SAY:

HB 2719 is not needed. Current law already harshly punishes this crime, and elevating it to 3g status would curtail the ability of judges to handle each case individually. Each case is different, and judges need discretion in sentencing to ensure that justice is served. HB 2719 would tie the hands of judges at a time when more and more jurisdictions are moving away from mandatory sentencing guidelines. If judges really are issuing too many sentences of probation for injury to a child or to an elderly or disabled individual, then the solution would be to vote those judges out of office, not tie the hands of those that were doing their jobs appropriately.

HB 2719 also could leave prosecutors unable to craft plea bargains that would result in probation for the offender. Often a plea bargain can be the best option in cases that are difficult to prove, when witnesses — especially if they are children, the elderly, or disabled individuals — are reluctant or unable to testify.