

SUBJECT: Probation and parole restrictions for solicitation of capital murder

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Gallego, Fletcher, Kent, Miklos, Moody, Pierson, Vaught, Vo
0 nays
3 absent — Christian, Hodge, Riddle

WITNESSES: For — Andy Kahan, Mayor's Crime Victims Office; Shelley Ferrill;
(*Registered, but did not testify:* Marc Chavez, Lubbock County District Attorney's Office; Katrina Daniels, Bexar County District Attorney Susan D. Reed; Eric Kugler, Harris County District Attorney's Office; Steven Been; Terri Been; John Ferrill; Mary Lou Ferrill)

Against — None

BACKGROUND: Code of Criminal Procedure, art. 42.12, sec. 3g, prohibits persons convicted of certain serious and violent crimes from receiving judge-ordered community supervision (probation). These offenses, often referred to as "3g offenses," are: murder; capital murder; indecency with a child; aggravated kidnapping; aggravated sexual assault; aggravated robbery; sexual assault; injury to a child, elderly individual, or disabled individual; sexual performance of a child; certain drug offenses; and certain felonies involving use of a deadly weapon.

Under Government Code, sec. 508.145(d), "3g" offenders are ineligible for parole until their time served equals half their sentence or 30 years, whichever is less, without consideration of good conduct time, and a minimum of two years.

Under Government Code, sec. 508.147, certain inmates are required to be released on a type of parole called mandatory supervision when their time served plus good conduct time equals their sentence. Under Government Code, sec. 508.149(b), this release is discretionary, and offenders may not be released if a parole panel determines the inmate's good conduct time is not an accurate reflection of the potential for rehabilitation or the release would endanger the public. Government Code, sec. 508.149(a) makes

offenders convicted of certain crimes and with previous convictions for those crimes ineligible for this type of release, including those convicted capital murder or of first- or second-degree murder.

Under the crime of criminal solicitation in Penal Code, sec. 15.03, it 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) to request, command, or try to induce another person to commit capital murder.

DIGEST:

CSHB 493 would add criminal solicitation of capital murder to the list of offenses in Code of Criminal Procedure art. 42.12, sec. 3(g) that make persons convicted of the crime ineligible to receive judge-ordered community supervision. Persons convicted of criminal solicitation of capital murder also would be ineligible for parole until their time served, without consideration of good conduct time, equaled one-half of their sentence or 30 years, whichever was less, and a minimum of two years. The bill also would make these offenders ineligible for release on mandatory supervision.

The bill would take effect September 1, 2009, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 493 is necessary to ensure that persons who solicit capital murder are punished appropriately and to ensure that they are considered for parole only after serving a fair portion of their sentence and at appropriate intervals. Because actually employing another person to commit murder is a capital offense, soliciting capital murder should at least carry the consequences that come with a 3g offense.

Currently, someone convicted of soliciting capital murder could receive probation by a judge, a punishment which would not reflect the seriousness of this crime. An offender who commits capital murder and one who employs someone to commit capital murder cannot receive probation from a judge and neither should someone who solicits someone to commit this offense. Solicitation of capital murder is as serious as the numerous other 3g offenses for which judges cannot order probation.

CSHB 493 also would ensure that offenders who solicited capital murder were not eligible for parole until they had served a significant portion of their sentences and that, like other serious offenders, could not be released under the mandatory supervision program. These offenders currently are

eligible for parole consideration when their time served plus their good conduct time equals one-fourth of their sentence, or 15 years, whichever is less. This can result in an offender being considered and released on parole without serving enough of a sentence to be adequately punished. CSHB 493 would address this problem by making initial parole eligibility occur only after the time served, without consideration of good conduct time, equaled one-half of the sentence or 30 years, whichever was less, with a minimum of two years.

Also under current law, if these offenders are denied parole they must be considered again annually. Having these offenders come up for parole consideration so often can be traumatic and burdensome for victims who want to weigh in with the parole board on the decision and who often relive the crime each time they do. Placing this offense on the list of offenses for which initial parole consideration can be postponed until a large portion of a sentence has been served would result in the parole board having the ability to set off subsequent considerations for five years at a time.

**OPPONENTS
SAY:**

CSHB 493 is unnecessary. Current law already severely punishes the crime of solicitation of capital murder, and elevating it to 3g status would reduce the options available to judges and curtail their ability to handle each case individually. Each case is different, and judges need discretion in sentencing to ensure that justice is served. As the list of 3g offenses grows, some of the distinctions in the seriousness of different crimes blurs.

By delaying consideration for parole longer than under current law — both initially and after the initial decision — CSHB 493 would restrict the ability of the parole board to frequently consider a case and to make appropriate decisions on individual cases. Parole eligibility does not ensure release, and the board should be able to consider parole for offenders who commit criminal solicitation of capital murder more frequently than would be allowed by CSHB 493. Current law does not overly burden victims, but balances their needs with a fair system of review.

NOTES:

The committee substitute added the provisions prohibiting consideration of offenders convicted of solicitation of capital murder from being considered for parole until they had served one-half or 30 years of their sentences, whichever was less.

The companion bill, SB 1832 by Patrick, passed the Senate by 30-0 on April 20 and was reported favorably, without amendment, by the House Criminal Jurisprudence Committee on April 30, making it eligible to be considered in lieu of HB 493.