

SUBJECT: Allowing the governor to grant more than one reprieve in a capital case

COMMITTEE: Criminal Jurisprudence — favorable without amendment

VOTE: 9 ayes — Gallego, Christian, Fletcher, Kent, Miklos, Moody, Pierson, Riddle, Vo

0 nays

2 absent — Hodge, Vaught

WITNESSES: For — Terri Burke, ACLU of Texas; Steve Hall, Stand Down Texas Project; Rebecca Lightsey, Texas Appleseed; (*Registered, but did not testify*: Ed Davis, Episcopal Diocese of Texas)

Against — None

BACKGROUND: Texas Constitution, Art. 4, sec. 11(b) and Code of Criminal Procedure, Art. 48.01 authorize the governor to grant reprieves, commutations, and pardons in criminal cases upon the recommendation of a majority of the Board of Pardons and Paroles. The governor also has the power to grant one reprieve of up to 30 days in a capital case, without the recommendation of the board.

DIGEST: HJR 58 would amend Art. 4, sec. 11(b) of the Constitution to allow the governor to grant more than one reprieve in a capital case. Each reprieve could not exceed 30 days.

The proposal would be presented to the voters at an election on Tuesday, November 3, 2009. The ballot proposal would read: “The constitutional amendment authorizing the governor to grant more than one reprieve in a capital case.”

SUPPORTERS SAY: HJR 58 and its accompanying enabling legislation, HJR 58 by Thompson, are necessary to give the governor more discretion in the clemency process for death penalty cases. Currently, the governor’s power to grant reprieves on his or her own in capital cases is limited to one 30-day reprieve, and this may not be enough to intervene appropriately in all cases. This

proposal would solve this problem by allowing the governor to grant more than one reprieve.

The governor's role in the clemency process is to act as a critical safeguard against a miscarriage of justice, and in some cases this may mean postponing an execution for more than 30 days. Questions may arise about whether a defendant received a fair trial, whether new evidence should be tested or older evidence re-tested, or whether a defendant is deserving of mercy. Some of these issues may not be able to be resolved during the one 30-day reprieve allowed under current law or may surface after the one reprieve has been issued. It is important for the governor to be able to act unilaterally, especially if a reprieve needs to be done quickly or if the Board of Pardons and Paroles is reluctant to act. The growing number of wrongful convictions being discovered in Texas illustrates the need to build safeguards into the state's clemency system, and HJR 58 would help do that.

HJR 58 would grant reasonable, narrow authority to the governor. It would give the governor the power to grant limited reprieves only in capital cases and would not give any new power to grant pardons or commutations. The bill is permissive and would not obligate a governor to grant any reprieve. The authority granted in HJR 58 would be substantially narrower than gubernatorial power in other states, many of which do not specify a time period at all or authorize time frames for reprieves longer than 30 days.

Fears that the governor would misuse this power to thwart the death penalty or to impose a moratorium are unfounded. Granting a reprieve only postpones an execution — it does not remove the sentence. The governor is accountable to Texas voters and would be answerable to them and the Legislature if he or she used the reprieve authority to thwart the imposition of the death penalty.

Concerns about abuses of gubernatorial power generally center on clemency related to pardons or commutations of sentences without limits and not specifically to reprieves. In modern times, Texas governors have used reprieves sparingly, and there is no reason to think the powers granted to the governor in HJR 58 would be abused.

**OPPONENTS
SAY:**

HJR 58 would give too much unchecked authority and discretion to the Texas governor to grant reprieves in capital cases. It could allow a

governor to effectively impose a moratorium on the death penalty by granting unlimited authority to impose continuous reprieves that postponed execution dates. Under the proposal, this authority would have no checks or balances, such as requiring a recommendation of the Board of Pardons and Paroles.

In the past, some governors abused clemency powers, leading to the current requirement that, except for once in each capital case, the governor may grant reprieves only upon recommendation of the Board of Pardons and Paroles. HJR 58 would open the process to potential abuses again.

A unilateral gubernatorial reprieve is not the only clemency option for offenders. They may bring their cases before the Board of Pardons and Paroles, which can forward to the governor a recommendation for a reprieve, commutation, or pardon. Because the number of reprieves that can be granted through this route is not limited, death row inmates have a safeguard to ensure that meritorious issues are examined.

NOTES:

The accompanying enabling legislation, HB 1148 by Thompson, passed the House by 147-0 on April 22.

The companion proposal, SJR 7 by Ellis, and its enabling legislation, SB 169 by Ellis, have been referred to the Senate Criminal Justice Committee.