

**SUBJECT:** Raising age for capital murder of child from under 6 to under 10 years old

**COMMITTEE:** Criminal Jurisprudence — favorable, without amendment

**VOTE:** 5 ayes — Gallego, Aliseda, Burkett, Carter, Zedler  
0 nays  
4 absent — Hartnett, Christian, Y. Davis, Rodriguez

**SENATE VOTE:** On final passage, March 30 — 28-2-1 (Ellis, Rodriguez nay; Van de Putte present, not voting)

**WITNESSES:** For — (*Registered, but did not testify:* Katrina Daniels, Bexar County District Attorney’s Office; Diana Martinez, Tex Protects, The Texas Association for the Protection of Children; Kevin Petroff, Harris County District Attorney’s Office)  
Against — None

**BACKGROUND:** Capital murder is defined by Penal Code, sec. 19.03 as murder in a specific situation or of a specific type of person. The nine types of capital murder include murder of an individual under 6 years old. The penalty for capital murder is death or life without parole. If the defendant was a juvenile certified to stand trial as adult, a sentence of life in prison is available.

**DIGEST:** SB 377 would raise the victim age threshold that makes a murder of a young child a capital murder from under 6 years old to under 10 years old.  
The bill would take effect September 1, 2011, and would apply only to offenses committed on or after that date.

**SUPPORTERS SAY:** SB 377 would adjust Texas’ capital murder statute to better protect one of the state’s most vulnerable populations – young children. In 1993, an age threshold for a victim younger than 6 years old was established in order for a murder to be a capital murder. However, recent cases, including a 6-year old Houston boy being beaten to death over eight hours, have

illustrated the need to raise this threshold. In order to create the strongest deterrent possible, the murder of children younger than 10 should be added to the capital murder list so that murderers could be given either life without parole or death.

Punishments for this crime under current law are inadequate. Under current law, the murder of a child between 6 and 9 years old can be punished as a first-degree felony, which can mean life in prison or a sentence of five to 99 years. A murderer is eligible for parole when time served equals one-half of the sentence, without the consideration of good conduct time, or 30 years, whichever is less. This means that someone who murdered a young child can be given a wide range of prison terms and eventually be eligible for parole, something that should be unacceptable in Texas.

SB 377 would bring Texas' capital murder statute in line with other states. Twenty-four states use the age of a victim as an aggravating factor in their capital murder statutes, and most use a victim age of under 12 years old to classify capital murder. The state with a threshold closest to that of Texas uses 11 years old.

Since Texas instituted life without parole, death sentences have decreased, and it is likely that SB 377 would result in life-without-parole cases, not a significant expansion of the death penalty. However, as with all death penalty cases, prosecutors would decide carefully when to seek the death penalty and would be able to use it for the worst crimes. The state has decided that some crimes are so heinous that they are appropriately considered capital offenses, and the murder of children under 10 years old rises to that level.

Concerns about the criminal justice system as a whole and wrongful convictions from long ago should not stop the state from ensuring that young children are protected by Texas' capital murder statute. It is unfair to use cases that may be decades old to argue against SB 377 when in the past two decades, the state's criminal justice system has improved substantially, resulting in a just and fair system.

**OPPONENTS  
SAY:**

The Legislature should not expand the crimes that qualify for the death penalty, given the problems inherent in the state's criminal justice system and given the state's problem with wrongful convictions. In Texas, at least 42 men have been exonerated after wrongful convictions, according to the

Innocence Project, and the possibility of a wrongful conviction occurring on a death penalty case is especially disturbing. Until the full range of reforms to deal with wrongful convictions is enacted, it would be inappropriate to expand the death penalty.

Texas' death penalty statutes should not be compared to those of other states, which imposes fewer death sentences and execute fewer inmates. The use of aggravating factors in other states should not be a factor in Texas crafting its capital murder statutes, given the disparity in how the statutes are used.

While murdering a child is a heinous crime, persons who murder young children in Texas already are punished harshly. Murdering a 6-, 7-, 8-, or 9-year old child would be a first-degree felony that most likely would receive a very long prison term or a life sentence. A person would have to serve at least half of a sentence, meaning 30 years for a life sentence, before even being considered for parole. In such cases, parole would be extremely unlikely.

OTHER  
OPPONENTS  
SAY:

Setting an arbitrary standard for a victim's age to make the murder of a child a capital offense always will leave out those above the line. It would be best to leave Texas' statute as it has been since 1993. Leaving the age for capital murder at 6 years old protects the youngest and most vulnerable children.

NOTES:

The House companion bill, HB 1065 by Riddle, was reported favorably, without amendment, by the House Criminal Jurisprudence Committee on April 26.