

SUBJECT: No mandatory supervision for injury to child, elderly, disabled person

COMMITTEE: Corrections — favorable, without amendment

VOTE: 6 ayes — Parker, White, Allen, Riddle, J.D. Sheffield, Toth
0 nays
1 absent — Rose

WITNESSES: For — (*Registered, but did not testify:* Leticia Caballero, Texas Health Care Association; Brian Eppes, Tarrant County District Attorney’s Office; Rebekah Schroeder, Texas Children’s Hospital; Steven Tays, Bexar County Criminal District Attorney’s Office; Justin Wood, Harris County District Attorney’s Office)

Against — None

On — Shannon Edmonds, Texas District and County Attorneys Association; Marc Levin, Texas Public Policy Foundation Center for Effective Justice

BACKGROUND: Penal Code, sec. 22.04 makes it a crime to intentionally, knowingly, recklessly, or with criminal negligence by act or to intentionally, knowingly, or recklessly by omission cause injury to a child, elderly individual, or disabled individual. Punishments vary from a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) to a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) with the type of injury — serious bodily injury; serious mental deficiency, impairment, or injury; or bodily injury — and other circumstances. Offenses causing serious bodily injury or serious mental deficiency, impairment, or injury are first-degree felonies when committed intentionally or knowingly.

Government Code, sec. 508.147 requires parole panels to release inmates from prison under a program called mandatory supervision when their actual calendar time served plus good conduct time equals the term to which the inmates were sentenced. However, Government Code, sec. 508.149(b) makes exceptions to this requirement and prohibits release on

mandatory supervision if a parole panel finds that an inmate's good conduct time is not an accurate reflection of his or her potential for rehabilitation and that the inmate's release would endanger the public. Due to this provision, the program is sometimes called discretionary mandatory supervision.

In addition, sec. 508.149(a) makes inmates ineligible for release on mandatory supervision if they are serving sentences or previously had been convicted of certain crimes. The list includes first-degree injury to a child, elderly individual, and disabled individual.

Inmates released on mandatory supervision are considered to be on parole and are under the supervision of the parole division of the Texas Department of Criminal Justice.

DIGEST: HB 1234 would make all felony offenses for injury to a child, elderly individual or disabled individual ineligible for release on mandatory supervision.

The bill would take effect September 1, 2013, and would apply only to offenses committed on or after that date.

SUPPORTERS SAY: HB 1234 would help ensure that those who seriously injured children, elderly individuals, and disabled individuals were not released under the state's mandatory supervision program.

Currently some, but not all, felons who are convicted of an offense under Penal Code, sec. 22.04 are barred from release on mandatory supervision. It is only those who commit first-degree offenses who are prohibited from this type of release, even though all these felony offenses involve actions that inflicted serious harm on a vulnerable child, elderly person, or disabled individual.

HB 1234 would address this issue by extending the state's current mandatory supervision policy for first-degree injury to all felony offenses of injury to a child, elderly individual, or disabled individual. All of the offenses are very serious, and the differences among first-, second-, or third-degree can be small, making it appropriate to handle mandatory supervision the same in all cases. Because of the high threshold for committing any felony injury to a child, elderly individual, or disabled individual, only those who cause serious injuries with the required intent

are convicted of this crime and would be subject to the prohibition on mandatory release.

Although release under mandatory supervision can be denied, it works as a presumed release, with the parole board having to make specific findings to halt the release. By prohibiting release on mandatory supervision, HB 1234 would recognize that any releases under the program before offenders had served a significant part of their sentence would be inappropriate given the seriousness of these crimes.

Any expenditure to better protect the most vulnerable people in society would be a warranted, appropriate use of state resources.

**OPPONENTS
SAY:**

Offenders convicted of second- and third-degree injury to a child, elderly person, or disabled person should remain eligible for mandatory supervision. These are serious offenses, but each case should continue to be considered individually through the mandatory supervision process instead of imposing a blanket provision that works to keep all such offenders in prison longer. The mandatory supervision program actually is discretionary, and being considered for mandatory supervision does not mean that an offender will be released. Offenders can be denied release on mandatory supervision if release would endanger the public and if good conduct time did not reflect an inmate's potential for rehabilitation. These provisions work to keep appropriate offenders from release under the program.

The state should be cautious about increasing terms in prison that could result in criminal justice expenditures growing over time. The fiscal note estimates that the cost of HB 1234 would be about \$1.9 million in fiscal 2014-15, an amount that would continue to grow annually.