

SUBJECT: Mandatory supervision, parole consideration restriction for injury to child

COMMITTEE: Corrections — committee substitute recommended

VOTE: 6 ayes — Parker, White, Allen, Rose, J.D. Sheffield, Toth

0 nays

1 absent — Riddle

WITNESSES: For — Andy Kahan, Victim Advocate, City of Houston; Justin Wood, Harris County District Attorney; Michelle Heinz; Laurie Thompson; (*Registered, but did not testify*: Jessica Anderson, Houston Police Department; Brian Eppes, Tarrant County District Attorney's Office)

Against — (*Registered, but did not testify*: Erica Gammill, League of Women Voters of Texas; Brian McGiverin, Texas Civil Rights Project)

On — Rissie Owens, Board of Pardons and Parole; Matt Simpson, ACLU of Texas; (*Registered, but did not testify*: Stuart Jenkins, Texas Department of Criminal Justice; Bettie Wells, Board of Pardons and Paroles)

BACKGROUND: **Mandatory supervision.** 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.

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 had been previously convicted of certain crimes. If an inmate is rejected for release to mandatory supervision under this section, parole panels are required to

reconsider the inmate for release to mandatory supervision at least twice in the two years after the rejection.

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 (TDCJ).

Consideration for parole. In general, inmates are considered for release on parole when their actual calendar time served plus good conduct time equals one-fourth of their sentences or 15 years, whichever is less. However, some inmates must serve longer portions of their sentences before being eligible for parole consideration.

Government Code sec. 508.141(g) requires the Board of Pardons and Paroles to adopt a policy establishing the dates the board may reconsider for release inmates who have been denied release on parole or mandatory supervision.

For inmates who cannot be released on mandatory supervision, the board can put off reconsideration of parole for up to five years after an initial denial. For offenders not on the list of those prohibited from mandatory supervision, the parole board must reconsider parole annually.

Injury to a child. Penal Code sec. 22.04 makes it a crime to cause injury to a child, elderly individual, or disabled individual:

- intentionally, knowingly, recklessly, or with criminal negligence by act; or
- intentionally, knowingly, or recklessly by omission.

Punishments range 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) depending on the type of 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. These offenses are second-degree felonies (two to 20 years in prison and an optional fine of up to \$10,000) when committed recklessly. Offenses causing bodily injury are third-degree felonies (two to 10 years in prison and an optional fine of up to \$10,000)

when committed intentionally or knowingly.

A person convicted of a first-degree felony for injury to a child, elderly individual, or disabled person currently is prohibited from release on mandatory supervision.

DIGEST:

CSHB 431 would add second-degree and third-degree felony convictions for injury to a child under Penal Code, sec. 22.04 to the list of offenses for which release on mandatory supervision was prohibited.

This change would apply to the release on mandatory supervision of inmates who committed offenses on or after the bill's effective date. Inmates convicted of second- and third-degree injury to a child before, on, or after the bill's effective date could have their parole consideration set off for up to five years after an initial denial.

The bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

CSHB 431 would ensure that persons who seriously injured children were not released under the state's mandatory supervision program and that a proper amount of time elapsed between parole considerations for these offenders. The need for these changes was brought to light by cases such as that of a four-year-old Texas girl who in 2009 was sexually assaulted and beaten to death. The mother of the girl received a 20-year prison sentence for injury to a child for her part in the horrific crime. Because the offense was not punished as a first-degree felony, the mother became eligible for parole after about two years and must be reconsidered for parole annually.

Currently, offenders who commit the heinous crimes punished as second- and third-degree felonies of injury to a child are eligible for release under the state's mandatory supervision program. Although release under this program can be denied, it can appear to be a presumed release, which requires the parole board to make specific findings to halt the release. By prohibiting release on mandatory supervision, CSHB 431 would recognize that this is inappropriate, given the seriousness of these crimes.

In addition, once these offenders become eligible for parole and are denied, they must be reconsidered 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 but are

forced to relive the crime each time they do. The bill would address this issue because being on the list of offenses that prohibits release on mandatory supervision allows the parole board to set off subsequent parole considerations for up to five years at a time after the first denial.

CSHB 431 would extend the state's current policy for first-degree injury to a child to the similar, serious crimes of second- and third-degree injury to a child. The difference between these felonies can be very small, making it appropriate to handle mandatory supervision and parole eligibility for all crimes of first-, second-, and third-degree felony injury to a child the same way. Children deserve this protection because they are vulnerable and often cannot or do not speak out.

Under CSHB 431, the parole board still would have flexibility to handle these cases individually and appropriately. When the cases were considered for parole, the board could decide to release or to deny release. In addition, the board would decide how long after an initial parole denial a case would be set off before reconsideration. The board could set off a case anywhere from one to five years, as it deemed appropriate.

Allowing the parole board to set off consideration of these cases for longer periods than under current law would allow the board to focus its resources on other cases. In addition, it would allow rehabilitated offenders more time to demonstrate their readiness to return to society.

**OPPONENTS
SAY:**

Offenders convicted of second- and third-degree injury to a child 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 falling under a blanket provision that works to keep all such offenders in prison longer. 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 does not reflect an inmate's potential for rehabilitation. These provisions work to keep appropriate offenders from release under the program.

Allowing the board to delay parole consideration of cases for up to five years after an initial decision could result in the five-year set off becoming the default. This could be too long in some cases in which the factors affecting parole decisions change. Current law creates a fair system of review.

NOTES:

The committee substitute differs from the bill as filed in that it would make five-year set-offs for parole reconsideration apply to offenses committed before, on, or after the bill's effective date.

According to the fiscal note, CSHB 431 would have a negative impact to general revenue related funds of approximately \$6 million through fiscal 2014-15 by increasing the length of incarceration for inmates denied release on mandatory supervision.

The companion bill, SB 189 by Huffman, is pending in the Senate Criminal Justice Committee.