

- SUBJECT:** Death penalty, increased punishment for sex crimes against children
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 5 ayes — Pena, Vaught, Riddle, Pierson, Talton  
0 nays  
4 absent — Escobar, Hodge, Mallory Caraway, Moreno
- WITNESSES:** For — Rhonda Kuykendall, Their Voice; David Montague, Tarrant County District Attorney; (*Registered, but did not testify*: Cathie Adams and MerryLynn Gerstenschlager, Texas Eagle Forum; Tom Gaylor, Texas Municipal Police Association; James Jones, Houston Police Department; Andy Kahan, Justice for All; Carl A. Parker, Texas State Troopers Association; Daphne Corder)
- Against — David Gonzalez, Texas Criminal Defense Lawyers Association; Ruth Epstein, ACLU of Texas; Stefanie Collins; Vicki McCuistion; (*Registered, but did not testify*: Steve Hall, The StandDown Texas Project, Will Harrell, ACLU of Texas, Lily Mae Hughes, Campaign to End the Death Penalty; Jonathan Trey Baker; Elizabeth Cole; Alison Dieter; Marjorie Loehlin)
- On — Torie Camp, Texas Association Against Sexual Assault; Shannon Edmonds, Texas District and County Attorneys Association; Allison Taylor and F. Liles Arnold, Council on Sex Offender Treatment; Robert Owen
- BACKGROUND:** **Capital offenses.** Penal Code, sec. 12.31 requires that people found guilty of capital felonies be punished by either the death penalty or life in prison without parole. Currently, only certain types of murder are eligible to be capital felonies. Penal Code, sec. 19.03 lists nine circumstances or types of victims that can qualify a murder as capital murder.
- Life sentences, restrictions for some repeat sex offenders.** Penal Code, sec. 12.42(c) establishes penalties for certain repeat sex offenses. The enhanced penalties apply when these crimes are committed against any type of victim, including children.

A life sentence is automatic for offenders convicted of sexual assault, aggravated sexual assault, aggravated kidnapping involving intent to violate or abuse sexually, and first-degree burglary committed with intent to commit certain sex offenses *if* the offender has a previous conviction for these offenses or for indecency with a child, sexual performance by a child, possession or promotion of child pornography, obscenity involving children, or prohibited sexual conduct.

Inmates sentenced to life in prison are eligible for parole only after serving 35 years, without consideration of time off for good conduct. Parole can be granted to these offenders only when approved by at least five of the seven members of the Board of Pardons and Paroles.

Government Code, sec. 508.147 requires parole panels to order the release of inmates under a program called "mandatory supervision" when inmates' actual calendar time served plus good conduct time equals their prison term. However, the Legislature has made numerous exceptions to this requirement. Inmates convicted of specified serious and violent offenses cannot be released on mandatory supervision. These include indecency with a child, sexual assault, and aggravated sexual assault. Also, an inmate may not be released under the program if the parole panel determines that the inmate's release would endanger the public.

**Statute of limitations for some sex crimes.** Under Code of Criminal Procedure, Art. 12.01(5), the statute of limitations for filing criminal charges for some sex crimes against children is 10 years from the 18th birthday of the victim. This applies to indecency with a child involving contact or exposure, sexual assault of a child, and aggravated sexual assault of a child.

The limit for filing charges for most crimes expires after a period of time ranging from three years to 10 years, with no statute of limitations for murder and manslaughter. Also, there is no limit on prosecuting sexual assault in some cases if DNA evidence is collected.

**Civil commitment for certain repeat sex offenders.** Under Health and Safety Code, sec. 841, certain repeat sex offenders and murderers whose crimes are sexually motivated and who are released from prison or a state mental health facility can be committed through civil courts to outpatient treatment and supervision. The law authorizes the civil commitment of sexually violent predators, defined in sec. 841.003 as persons who are

repeat sexual offenders and who suffer from a behavioral abnormality that makes them likely to engage in a predatory act of sexual violence.

Those who are civilly committed are subject to the state's intensive outpatient sex offender treatment, GPS tracking, housing and transportation restrictions, child safety zones, mandated polygraphs, substance use testing, registration every 30 days, and case management. Failure to comply with a commitment order can be a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000). To date, 69 offenders have been committed, 27 of whom are being monitored and receiving treatment in the community.

(For additional background, see *Should Texas Change Its Laws Dealing with Sex Offenders*, House Research Organization Focus Report Number 79-16, October 18, 2006.)

DIGEST:

HB 8 would make offenders convicted of a second serious sexual offense against children eligible for the death penalty or life without parole, increase the penalties for certain sex crimes against young children, prohibit release from prison on parole or mandatory supervision for certain repeat sex offenders and others with child victims, extend the time frame in which criminal charges can be filed for certain sex offenses with child victims, and place certain requirements on the tracking of sex offenders under the state's civil commitment program.

**Capital offense for certain repeat sex crimes against children.** HB 8 would make second convictions for first-degree "sexually violent offenses" in which the victim was younger than 14 years old capital felonies, which means that they could be punished only by the death penalty or life without parole.

HB 8 would define "sexually violent offense" as indecency with a child involving contact, sexual assault, aggravated sexual assault, sexual performance by a child, aggravated kidnapping involving intent to violate or abuse sexually, and first-degree burglary committed with intent to commit one of the sex offenses in this list.

HB 8 would prohibit courts that determine punishment in a death penalty case authorized by the bill from putting before juries a special issue currently used in capital murder cases in which the defendant may be a party to the offense. The issue allows juries to consider whether the

defendant as a party to the offense caused the death, intended to kill the victim, or anticipated that a life would be taken.

**Increasing penalties for certain offenses with victims younger than 14 years old.** HB 8 would increase the penalty from a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) or third-degree felony (two to 10 years in prison 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) for indecency with a child involving contact and for sexual performance by a child if the victim was younger than 14 years old.

HB 8 would prohibit defendants convicted of aggravated kidnapping of victims younger than 14 years old from raising during the punishment phase of their trials the issue of whether they released their victims in a safe place and therefore qualify for a lower punishment range. This would result in all convictions for aggravated kidnapping with victims younger than 14 years old, whether or not there was intent to abuse the victim sexually, being punished as first-degree felonies.

HB 8 would expand the current requirement that certain repeat sex offenders be given automatic life sentences. The bill would add indecency with a child and sexual performance by a child to the list of offenses that can trigger the automatic life sentence if the offender has a previous conviction for certain sex offenses.

**No parole for certain repeat sex offenders.** HB 8 would prohibit certain repeat sex offenders whose victims were younger than 14 years old from being released from prison on parole before their life sentences were served. This would apply to those receiving automatic life sentences for indecency with a child, sexual assault, aggravated sexual assault, aggravated kidnapping involving intent to violate or abuse sexually, first-degree burglary with the intent to commit certain sex crimes, or sexual performance by a child if they also had a previous conviction for one of these crimes or for possession or promotion of child pornography, obscenity involving materials and activities by children, or prohibited sexual conduct (incest). If given the automatic life sentence required by Penal Code sec. 12.42(c)(2) (habitual offenders), these offenders would serve life without parole.

The prohibition on parole also would apply to offenders with victims younger than 14 years old who receive a first conviction for indecency with a child involving contact, aggravated kidnapping, and aggravated sexual assault.

HB 8 would add offenders convicted for sexual performance by a child involving victims younger than 14 years old and all cases of sexual assault to the list of those who are prohibited from release from prison under the mandatory supervision program.

**Extending the statute of limitations for the prosecution of some sex crimes.** HB 8 would establish a statute of limitations of 20 years from the 18th birthday of the victim for the prosecution of "sexually violent offenses" committed against victims younger than 17 years old. The statute of limitations for indecency with a child by exposure would remain 10 years from the victim's 18th birthday.

**Tracking of offenders under civil commitment.** HB 8 would require the tracking service used to monitor sex offenders who have been placed in the state's civil commitment program to track the offenders in real time, to be able to provide real-time reports of the offenders' locations, and to provide cumulative reports of the offenders' locations.

**Effective date.** HB 8 would take effect September 1, 2007, and would apply to offenses committed on or after that date. However, the section requiring that certain types of devices be used to track persons under the state's civil commitment program would apply to anyone serving a sentence in the Texas Department of Criminal Justice on the effective date or anyone committed under the civil commitment program for an offense committed before, on, or after that date. The changes made to the statute of limitations for filing criminal charges for certain offenses would not apply if the statute of limitations in effect before September 1, 2007, barred the filing of charges. If the statute of limitations in effect before September 1, 2007, allowed the filing of charges in a case, the case would be subject to the new limit put into effect by the bill.

SUPPORTERS  
SAY:

HB 8 is necessary to provide the best protection possible for Texas children from sex offenders who commit horrific crimes and to punish appropriately those who victimize some of the most vulnerable members of society. HB 8 would be Texas' version of Jessica's Laws, the name given to a set of proposed laws targeting sex criminals with child victims

and to a national movement to implement those laws in every state. The legislation is named for Jessica Lunsford, a nine-year-old girl who was kidnapped, sexually assaulted, and murdered in 2005. A registered sex offender has been charged with the crime and is standing trial in Florida. HB 8 would put Texas in line with about half of the other states that have approved at least some portions of these proposals.

**Capital offense for certain repeat sex crimes against children.** Sex offenses against children are so horrific that the death penalty for repeat offenders would be appropriate and just punishment. Texas should protect children by authorizing the most severe penalty for people who repeatedly commit violent sex crimes against them. In some cases, other punishments, such as long prison sentences, are not adequate to address the harm offenders have caused and the danger to the community they represent. HB 8 is crafted to apply the death penalty to the most dangerous offenders -- those who have shown that they will repeat their crimes.

The history of the death penalty in Texas shows that it would not be used for low-level offenses or those for which evidence is less than solid. As with all death penalty cases, prosecutors would decide carefully when to seek the death penalty and would reserve it for only the worst crimes. Juries would be able to consider the circumstances of each case and to reserve the death penalty for appropriate cases. Traditionally, only about 10 percent to 20 percent of cases that qualify as capital crimes are tried as death penalty cases, and there is no reason to expect any different treatment of the crimes described by HB 8. As in all death penalty cases, juries would have to answer questions about a defendant's future dangerousness and consider mitigating circumstances when deciding on a death sentence.

Concerns that making serious sex crimes against children eligible for the death penalty would prompt offenders to kill victims are unfounded. Other states with similar laws have seen no rash of child killings. In fact, authorizing the death penalty for repeat child rapists would be a powerful deterrent to offenders who have been convicted once of raping a child. A potential death sentence should not deter family members from protecting children from heinous crimes by reporting those crimes.

Texas should join the growing number of states instituting such laws. At least five states – Florida, Louisiana, Montana, Oklahoma, and South Carolina – have authorized the death penalty for people who commit

repeat serious sex crimes against children, and other states are considering it.

Texas should do whatever is necessary to protect its children without waiting for the U.S. Supreme Court to rule specifically about the death penalty for child rapists. When the court ruled in 1977 in *Coker v. Georgia*, 433 U.S. 584, that the death penalty was disproportionate punishment for the crime of raping an adult woman and therefore forbidden by the Eighth Amendment as cruel and unusual punishment, it did not rule on the constitutionality of sentencing child rapists to death. The issues involved in cases of repeat child rapists are different than those in the *Coker* case, and the language in *Coker* was limited specifically to the rape of an adult and did not touch on the rape of children. Even if a law authorizing the death penalty for repeat child rapists were reviewed by the U.S. Supreme Court, it is far from certain that it would reject such a law given the court's current composition, its recent use of state laws in evaluating the death penalty, and recent research on the harm that sexual abuse does to children and on the recidivism of those who sexually assault them.

Texas should not shy away from authorizing the death penalty because of the length or cost of the appeals process. The state has decided that some crimes are so heinous that they are worth the time and cost to implement the death penalty, and the predatory behavior of repeat child rapists rises to that level. Recently enacted changes to the laws governing death sentence appeals should shorten that process.

HB 8 would not allow the language in current law concerning parties to offenses to be put before the jury simply because that language applies to the death of an individual and does not fit the sex crimes described by the bill. If a jury instruction specifically concerning parties to offenses is necessary, the bill could be amended to include one. In addition, it is highly unlikely that prosecutors would seek the death penalty or that juries would impose it for someone who was not the main actor in one of the sex crimes detailed in the bill.

**Increasing penalties for certain offenses with victims younger than 14 years old.** HB 8 would increase the penalties for certain sex crimes committed against young victims to first-degree felonies to make the potential punishments more appropriately fit these crimes. Children under 14 years old are some of the most vulnerable members of society and

deserve whatever protections the state can give them. Making these crimes first-degree felonies would give courts the option of imposing long prison sentences, if appropriate, on offenders who prey on these children. HB 8 would do nothing unusual by designating harsher punishments for crimes committed against certain types of victims. The state often draws a line to define crimes and punishments, such as making the murder of someone under six years old a capital felony.

HB 8 would close a loophole in current law by adding indecency with a child and sexual performance by a child to the list offenses that could trigger automatic life sentences for repeat offenders. This would help ensure that all appropriate offenses could be either the first or second offense needed to qualify for the habitual offenders punishment.

**No parole for certain repeat sex offenders.** Denying parole to certain serious offenders described by HB 8 would be appropriate punishment for these serious crimes and would help protect the public. HB 8 would ensure that repeat sex offenders who are given automatic life sentences under the state's repeat offender statute would receive life without parole and never leave prison to victimize anyone else. Although this change is important to ensure these offenders would not ever be released, it is not a significant departure from current law because these offenders already must serve at least 35 years without parole consideration and are rarely, if ever, paroled.

The bill also would protect the public by requiring that offenders who commit the serious crimes of indecency with a child involving contact, aggravated kidnapping, and aggravated sexual assault would serve their entire sentences on their first offense.

It is inappropriate to have even the possibility of parole for these offenders. Although parole rates for sex offenders have been low, about 10 percent to 12 percent in recent years, in the past they have been much higher. HB 8 is necessary to make a statement about the state's policy on punishing sex offenses against children.

The Texas Department of Criminal Justice (TDCJ) has the expertise and resources to manage offenders who are ineligible for parole. The department already deals with many hard-to-manage inmates, and privileges and punishments within a prison can be used as management tools. Studies have shown that these offenders do not pose a disproportionate risk of violence in prison.

**Extending the statute of limitations for the prosecution of some sex crimes.** Lengthening the time limit for filing charges in certain cases of sex crimes against children would be warranted because of the special circumstances surrounding child sex abuse cases and the seriousness of these crimes. Child victims of sex crimes often are unable to speak out immediately about their abuse because they are traumatized, fearful, or embarrassed or have repressed their memories of the offense. When relatives are involved in the crime, victims often speak out only after they are older and no longer dependent on their families. Extending the statute of limitations would allow these victims to mature and gain the financial and emotional stability necessary to speak out.

Because of the negative consequences and pain that can arise from accusing someone of child sexual assault, cases of false accusations would be rare. As in all crimes, defendants would be presumed innocent, and accusations still would have to be proven beyond a reasonable doubt. Because proving older cases would be difficult, prosecutors would use discretion and be especially cautious about pursuing questionable cases with weak or little evidence. Accusations or retaliation stemming from ulterior motives, such as anger at being cut out of a will, would be questioned by defense attorneys and prosecutors alike. In addition, current law includes penalties for false testimony.

Extending Texas' statute of limitations would bring the state in line with about 30 other states in which the statute of limitations is more favorable to child victims of sex crimes.

**Tracking of offenders under civil commitment.** HB 8 would ensure that the state's most dangerous sexual predators who are living in the community – those under civil commitment – were adequately tracked by requiring that their monitoring be in real time. Although this technology is in use now, it would be best to require its use so that a judge or the Council on Sex Offender Treatment would not impose a lower standard in some future case.

OPPONENTS  
SAY:

Texas' current law works adequately to punish and supervise sex offenders, and while HB 8 is well intended, it actually could make it more difficult to protect children from harm. Resources should be used to enforce current law allowing long prison sentences and restricted parole for dangerous offenders and should be used to invest in the treatment of sex offenders and the prevention of child abuse. Such investment would be

preferable to enacting overly broad, expensive laws. With its many deficiencies, the death penalty in Texas should not be expanded.

**Capital offense for certain repeat sex crimes against children.** The death penalty would be a disproportionate punishment for admittedly heinous sex crimes against children. The death penalty should be reserved for especially vicious murders, and although raping a child is a hideous offense that warrants severe punishment, it should not be equated with murder by punishing offenders with death. Long prison terms, such as those imposed by current law, or life without parole could be used to punish repeat child rapists and protect the public.

HB 8 would cast too broad a net and would make some lesser offenses eligible for the death penalty. For example, the bill would allow two convictions of indecency with a child involving contact, but not necessarily penetration, to be eligible for the death penalty. This would raise the risk that the law would impose an excessive punishment and fail to pass the proportionality test established by the U.S. Supreme Court, which in general requires the punishment to be proportional to the crime. Although some prosecutors and juries may use the authority in HB 8 to impose the death penalty judiciously, this authority could easily be abused, given the highly charged atmosphere surrounding sex offenses against children.

There is no evidence that the death penalty would deter child rapists, many of whom are sexually violent predators who habitually prey on children. Further, the prospect of receiving a death sentence actually might be counterproductive by giving offenders a perverse incentive to kill their victims so they could not serve as witnesses to a crime potentially punishable by death. In addition, children and their families might be less likely to report sexual assault by a relative for fear that the family member might be executed.

Since the reinstatement of the death penalty in 1976, most states have limited the punishment to murder cases. Texas should not enact a law of questionable constitutionality simply because it is politically popular, especially given clues by the U.S. Supreme Court that death penalty laws that would be rarely imposed or that are not supported by a broad national consensus would be ruled unconstitutional.

Obtaining a death sentence and navigating the lengthy appeals process is expensive, time consuming, and often traumatic for victims. Any changes to Texas' death penalty statutes could invite unwanted scrutiny by the U.S. Supreme Court of the state's often-litigated death penalty scheme and risk having the court rule the entire system unconstitutional.

**Increasing penalties for certain offenses with victims younger than 14 years old.** By increasing the penalty to a first-degree felony for some crimes committed against victims younger than 14 years old, HB 8 could impose excessive punishment in some cases and would distort the hierarchy of offenses in the Penal Code that seeks to rank crimes and punishments by their severity. In some cases, this could result in disparate treatment of similar victims subject to similar harm based arbitrarily on the age of the victim. This could result in never-ending calls to continually change this age and increase the penalty for even more offenses.

**No parole for certain repeat sex offenders.** By prohibiting a certain group of offenders from eligibility for release on parole, HB 8 would remove the ability of the Board of Pardons and Paroles to evaluate these offenders and to make release decisions that best serve society. Current law requires these inmates to serve long terms before being eligible for parole, and the Board of Pardons and Paroles has been extremely cautious about releasing sex offenders on parole. Although few are approved, it would be better to continue allowing these offenders to be eligible for parole, for both prison management reasons and to recognize that some offenders could be rehabilitated and society best served if they were released on parole. Managing inmates without being able to use parole as an incentive for good behavior could be difficult and expensive.

**Extending the statute of limitations for the prosecution of some sex crimes.** Current law already has carved out a unique, exceptionally long time limit for filing charges in serious child sex crimes, which is both appropriate and adequate. Extending the statute of limitations even further could render defendants unable to defend themselves adequately and infringe upon their right to due process. Over time witnesses' memories fade, and evidence becomes more difficult to obtain. Also, a longer statute of limitations could give false hope to victims that prosecutors might take up old cases resting on evidence that is too weak to obtain a conviction.

Extending the statute of limitations could result in an increased number of false accusations of sex crimes, which could lead to the conviction of

innocent people. HB 8 also would raise the stakes in such cases because punishment for some crimes could include a death sentence. Children and adults occasionally make false accusations either because of an ulterior motive to hurt the accused or, following therapy, as a result of so-called “recovered memories” that are, in fact, false. In these cases, the highly charged atmosphere surrounding sex offenses against children can lead to an overreaction by the criminal justice system and to proceedings in which defendants are effectively presumed guilty and innocent people go to prison.

**Tracking of offenders under civil commitment.** It is unnecessary to require that offenders in the state's civil commitment program be tracked in real time. The global positioning system (GPS) used to monitor these offenders already operates this way and would meet the requirements in HB 8. Judges and the agency that monitors those who have been civilly committed, the Council on Sex Offender Treatment, should have the flexibility to impose the type of monitoring they deem appropriate. Placing technological requirements in statute could be counterproductive if judges or the agency wanted to adopt a different, better system that did not strictly meet the specific parameters established by the bill.

OTHER  
OPPONENTS  
SAY:

**Capital offense for certain repeat sex crimes against children.** HB 8 would not provide adequate protection for a defendant who may be tried as a party to one of the sex crimes that would be made a capital felony by the bill. Current law requires juries deciding punishment in death penalty cases to be given a special issue to consider with respect to whether the defendant who has been convicted as a party to capital murder actually caused the death, intended to cause the death, or anticipated that a death would occur. This allows juries considering a death sentence to weigh whether a party to an offense was a main actor in the crime. HB 8 contains no such consideration for parties to the sex crimes that could receive a death sentence under the bill, and some limiting instruction may be required under U.S. Supreme Court rulings. Relying on individual courts to devise their own charges could lead to challenges to the Texas law.

**No parole for certain repeat sex offenders.** By including all aggravated kidnapping of victims younger than 14 years old on the list of no-parole offenses, HB 8 would go too far by prohibiting parole for first offenses that may not have been sex crimes.

**Extending the statute of limitations for the prosecution of some sex crimes.** Because of the lifelong effects of sex crimes against children, it may be appropriate to eliminate altogether the statute of limitations for filing charges for some serious offenses.

**NOTES:**

A similar bill, SB 68 by Deuell, has been referred to the Senate Criminal Justice Committee. SB 68 contains a provision not in HB 8 that would require a minimum 25-year sentence for first convictions of first-degree sexually violent offenses if the victim was younger than 14 years old.

On February 5, Gov. Perry declared legislation relating to the prosecution, punishment, and supervision of certain sex offenders and to certain crimes involving sex offenders to be an emergency matter for immediate consideration by the Legislature.

**Amendments to HB 8 adopted by the House on February 28.**

The House adopted three amendments to HB 8 during floor debate on February 28.

The first, by Rep. Riddle, would establish procedures to be followed when courts submit special issues for juries to consider during the punishment phase of a trial for a person being considered for the death penalty under HB 8. The way a jury answers the questions submitted to it determines whether the offender is sentenced to death or to life in prison. The procedures established in the amendment and the questions it would require juries to answer would be the same as those used in current death penalty trials, including questions about future dangerousness and mitigating circumstances, except for one provision.

Current law includes a provision that places before juries a special issue dealing with a defendant who is a party to an offense. It asks juries to consider whether the defendant as a party to an offense caused the death, intended to kill the victim, or anticipated that a life would be taken.

The Riddle amendment would require that juries deciding whether to impose the death penalty for parties to the offenses in HB 8 consider whether the party engaged in conduct prohibited by the criminal offense or did not engage in the conduct but intended that the offense be committed against a victim.

Another adopted amendment, by Rep. Dutton, would amend a provision in the original that would have allowed indecency with a child involving both contact and exposure to trigger an automatic life sentence if the offender had a previous conviction for certain sex offenses. The amendment would allow only indecency involving contact to trigger a life sentence for these repeat offenders.

Another adopted amendment, by Rep. Pierson, would name the bill the "Jessica Lunsford Act."

**Proposed floor substitute.**

Rep. Riddle has distributed a proposed amendment to HB 8 that would be a complete floor substitute. According to a statement distributed by Rep. Riddle, the substitute contains the first four pages of HB 436 by Madden, which would create a new criminal offense called "continuous sexual abuse of young child or children."

The proposed floor substitute would create a new offense for continuous sexual abuse of young children, making first offenses punishable by a minimum of 25 years in prison and second offenses punishable by death or life without parole.

The substitute would not include the death penalty provisions found in the original bill nor would it amend the current law requiring automatic life sentences for some repeat sex offenders. It also would not increase penalties for certain sex offenses nor impose any requirements on the tracking of sex offenders under the state's civil commitment program.

**New offense for continuous sexual abuse of a young child.** Under the floor substitute, a person would commit the new offense if, during a period of 90 or more days, the person committed a specified sex offense more than once or committed more than one of the specified offenses, regardless of whether the offenses were committed against one or more victims. Defendants would have to be 17 years or older, and victims would have to be children or a child younger than 14 years old.

The sex offenses that could constitute the new offense of continuous sexual abuse of a young child would be:

- aggravated kidnapping with the intent to violate or abuse sexually;
- indecency with a child involving contact;
- sexual assault;
- aggravated sexual assault;
- first-degree burglary committed with the intent to commit one of the offenses listed above; or
- sexual performance by a child.

Juries would not be required to agree unanimously on which specific offenses were committed or when they were committed. Juries would have to agree unanimously that the defendant, during the 90-day or longer period, committed an offense more than one time or committed more than one of the specified offenses.

It would be an affirmative defense to prosecution that the defendant was not more than five years older than the youngest victim of one of the offenses, that the sex act was consensual, and that the defendant was not a registered sex offender or did not have a reportable conviction under the sex offender registration act.

A first offense of continuous sexual abuse of a young child would be a first-degree felony punishable by a term of life or 25 to 99 years in prison. Second offenses would be considered capital felonies punishable by either death or life without parole. Those serving prison sentences for the new offense would have to serve a minimum of 25 years in prison, without consideration of good conduct time, before being eligible for release on parole. Offenders with sentences of more than 50 years would not be eligible for parole until their actual time served equaled one-half of their sentence or 30 calendar years, whichever was less, without consideration of good conduct time.

The floor substitute would add continuous sexual abuse of a young child to the list of offenses that can make murder committed while committing another crime qualify for capital murder, which is punishable by the death penalty or life without parole.

The substitute would require the Texas Court of Criminal Appeals to change a death sentence given for continuous sexual abuse of a young child to life without parole if the U.S. Supreme Court found that the death penalty provisions in the floor substitute were unconstitutional.

**Statute of limitations for new offense and certain sex crimes.** The statute of limitations for the new offense of continuous sexual abuse would be 20 years from the 18th birthday of the victim or victims. As is the case in current law for sexual abuse, no statute of limitations would apply to when charges could be filed in cases of continuous sexual abuse of a young child if DNA evidence were collected.

Like the original bill, the floor substitute would establish a statute of limitations of 20 years from the 18th birthday of the victim for the prosecution of certain sex crimes if those crimes were committed against a person younger than 17 years old. This limit would apply to aggravated kidnapping with intent to violate or abuse the victim sexually, indecency with a child involving contact, sexual assault, aggravated sexual assault, first-degree burglary if committed with the intent to commit one of these sex offenses, and sexual performance by a child.

**Other laws.** The floor substitute would treat the new offense of continuous sexual abuse of a young child in the same way that other serious sex offenses are treated in parts of the Penal Code, Code of Criminal Procedure, Civil Practices and Remedy Code, Education Code, Family Code, Government Code, Health and Safety Code, and Occupations Code.

In the Code of Criminal Procedure, the floor substitute would weave the new offense into various procedures used in criminal cases, including those for jury instructions, protective orders, personal bonds, testimony of child victims, deferred adjudication, crime victims' rights, and sex offender registration.

The new offense would be added to Penal Code provisions addressing the failure to stop or report the sexual assault of a child and those addressing certain sentencing requirements for multiple prosecutions.

In the Civil Practices Code, the new offense would be included in laws about the statute of limitations for bringing civil suits and those governing suits to abate common nuisances.

The Education Code would be amended to address the handling of students who commit the new offense in the same way as students who commit other serious sexual offenses.

The new offense would be included in the Family Code with other serious sexual offenses that affect the definition of abuse, reporting the sexual abuse of a minor by certain entities, and involuntary terminations and other aspects of parent-child relationships.

In the Government Code, the new offense would be included in provisions governing the state's DNA database, child safety zones imposed on some sex offenders, the requirements for an extraordinary vote for release on parole, and other parole matters.

The floor substitute also would include the new offense in Health and Safety Code provisions on the state's civil commitment program and the regulation of nursing homes and similar facilities.

The Occupations Code would include the new offense with other serious sexual offenses in provisions addressing the suspension of nurses' licenses.

**Effective date.** The floor substitute would take effect September 1, 2007, and apply only to offenses committed on or after that date. The change to the civil commitment statute would apply to anyone serving a sentence in the Texas Department of Criminal Justice on or after September 1, 2007, or to anyone who was civilly committed before, on, or after that date. The change made to the statute of limitations would not apply if the statute of limitations for filing criminal charges in effect before September 1, 2007, barred the filing of the charges.