

Should Texas Change Its Laws Dealing With Sex Offenders?

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Several states, including Texas, currently are considering proposals to amend their laws dealing with sex offenders. These proposals include long mandatory minimum sentences, increased monitoring of released offenders, and expanded child safety zones. Some states also are considering joining the growing list of states that authorize the death penalty for persons who commit repeat sexual assault against children. In addition to proposed changes at the state level, many Texas cities have enacted local ordinances that restrict the movement and activities of sex offenders beyond the limits established in state law.

These proposals have been motivated in part by public pressure and a desire among lawmakers to continue to find new ways to harshly punish sex offenders and to restrict and monitor their whereabouts following their release from custody. In addition, the 2005 sexual assault and murder of Jessica Lunsford in Florida was another in a series of horrific crimes that shocked the public and has renewed interest in changing laws dealing with child sex offenders. The Florida case has led to a national movement to enact a package of laws, called “Jessica’s Laws” (see box on page 4), that target offenders who sexually abuse children. Other factors such as advances in technology and increased screening of offenders to determine their risk levels also have contributed to the call for changes.

This report examines the debate over some of the proposals to amend the state’s laws punishing and supervising sex offenders, especially those who prey on children. Supporters of these proposals argue that tough laws – including proposals to close loopholes in current laws, ensure compliance with the law, and take advantage of new technologies – are needed to provide the best protection possible for our children and to appropriately punish those who victimize minors. Critics argue that current law works adequately to punish and supervise sex offenders and that while many of the proposals are well intended, they would be ineffective and unintentionally may make it more difficult for law enforcement and the courts to protect children from

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harm. Some opponents argue that the state should focus its resources on specific, dangerous offenders and invest in the treatment of sex offenders and the prevention of child abuse rather than enacting overly broad, expensive requirements for all sex offenders.

Current law

Until recently, sex offenders in Texas generally were governed by the same laws that applied to other criminal offenders. Throughout the 1990s, however, states and the federal government began establishing a framework of laws that treat this group of criminal offenders differently. Provisions in the Texas statutes that involve harsher punishments for sex offenders include automatic life sentences for certain repeat sex offenders, requirements that certain offenders serve longer sentences before being considered for parole, and requirements that certain offenders be approved by a larger number of parole officials before receiving parole. Other Texas statutes require that convicted sex offenders living in the community register with local law enforcement officials, prohibit certain sex offenders from living near areas where children gather, and allow the application of civil laws to require that some sex offenders undergo treatment and supervision after they leave prison.

Supporters of these laws often cite the monstrous nature of sex crimes against children, the long-term harm suffered by victims, and sex offenders' high-risk of re-offending as reasons to establish a special legal framework to govern sex offenders. They argue that because the stakes are so high, the state should do all it can to protect children, who are some of the most vulnerable members of society. According to supporters, the fact that victims often know or are related to their abusers is no reason to avoid protecting children from other offenders. New, tougher statutes can help strengthen current law, fill the gaps that have allowed additional crimes to take place, lead to better enforcement of and compliance with current law, and raise public awareness about how to keep children safe, they say.

Critics of these laws often argue that horrific cases triggering the adoption of new laws do not necessarily represent a fundamental flaw in the state's legal structure. In a politically charged atmosphere fed by exhaustive media coverage, these admittedly tragic crimes often trigger the adoption of tough laws that, critics say, may be ineffective

or even counterproductive as efforts to protect children from sex offenders. Many of these critics question the once commonly held idea that recidivism rates among sex offenders are particularly high and say that the emergence of a separate legal framework fails to account for different types of sex offenders, many of whom are related to or know their victims or are youths who made bad choices, such as adult teens who have sex with minor teens. Many of the extra requirements and restrictions placed on sex offenders create a false sense of security, are difficult and costly to enforce, and make rehabilitation and reintegration into society by sex offenders difficult, if not impossible, critics argue. Some contend that some requirements and restrictions constitute additional punishments and therefore could infringe on the constitutional rights of offenders. Government resources, which often do not include enough for sex offender treatment, should be focused on the most dangerous offenders, some argue.

Prison terms for sex offenses. Terms of incarceration and fines that are used to punish sex offenses are laid out in the Penal Code. Numerous crimes have sexual elements, but discussions of sex offenses focus primarily on three: indecency with a child, sexual assault (formerly known as rape), and aggravated sexual assault. Sexual assault committed against a young victim is one of the ways that the offense can be elevated to "aggravated." For example, the crime of sexual assault is considered aggravated if the victim was age 13 or younger.

Texas law punishes as felonies all sex offenses against children that result in mandatory registration for the offender. The sexual assault of a child (Penal Code, sec. 22.011) is a second-degree felony, punishable by two to 20 years in prison with an optional fine of up to \$10,000. Aggravated sexual assault of a child (Penal Code, sec. 22.021) is first-degree felony, punishable by life in prison or a term of five to 99 years and an optional fine of up to \$10,000. Indecency with a child (Penal Code, sec. 21.11) involving contact is a second-degree felony, and indecency involving exposure is a third-degree felony, punishable by two to 10 years in prison and an optional fine of up to \$10,000.

At the end of fiscal 2005, approximately 36,520 adult sex offenders were under state supervision in Texas. About 24,220 offenders were in prison for sex offenses, roughly 3,970 were on parole or mandatory supervision, and at least 8,330 were on probation (community supervision).

Repeat offenders. Offenders convicted a second time of the two most serious offenses against a child – sexual assault of a child or aggravated sexual assault of a child – automatically receive a life sentence under Penal Code, sec. 12.42(c)(2). 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 upon approval by at least five of the seven members of the Board of Pardons and Paroles. In general, other repeat offenders are punished under Penal Code, sec. 12.42, which outlines penalties for repeat and habitual felony offenders.

Sex offender registration. In 1991, the state first required some sex offenders to register with law enforcement authorities. In 1995, in part as a response to the high-profile case surrounding the abduction of seven-year-old Ashley Estell from a Plano park, the 74th Legislature enacted additional laws punishing and supervising sex offenders, which included expanding the list of offenses that require sex offenders to register. Also in the mid-1990s, Congress enacted laws requiring each state to establish a sex offender registry and community notification system, making federal funds contingent on states' compliance. Texas currently has about 45,300 registered sex offenders.

Code of Criminal Procedure, ch. 62, specifies a long list of sex crimes for which offenders must register their home addresses with local law enforcement authorities and periodically verify this information. Other offenders can be required to register as a condition of probation or parole. Criminal justice officials must notify local law enforcement authorities when sex offenders being released from custody plan to move to their jurisdictions. The Department of Public Safety (DPS) maintains a statewide sex offender database that is available online to the public.

In general, depending on the severity of the offense, a person's duty to register lasts either for life or for 10 years following the date the person is released from prison or finishes a probation sentence. Failure to register or comply with any of the requirements of ch. 62 is a felony.

Offenders are assigned numeric risk levels depending on the severity of the offense and other factors, which are included in the DPS database. When an offender is assigned the highest risk level of three, DPS must mail or deliver written notice to addresses near the offender's residence, and local law enforcement agencies are authorized to use other means, such as newspaper notices, to notify the public

about these high-risk offenders. In some cases, local law enforcement must notify officials in the school district where the offender intends to live.

Under certain limited circumstances outlined in ch. 62, some offenders, including certain juvenile offenders, can ask courts to exempt them from registration requirements or for an early termination of their responsibility to register.

In 2006, Congress updated federal law affecting states' sex offender registry and notification programs. To comply with federal law, Texas must make numerous changes to its sex offender registry program, and DPS is working to identify these changes. Noncompliance could result in a reduction in federal criminal justice grants. Among the changes the state will have to make are adding a small number of additional offenses to the list that require registration, designating some additional offenses for lifetime registration and increasing the registration periods of others from 10 years to 15 years or 25 years, and instituting different deadlines for offenders to verify periodically their addresses and other information.

Child safety zones. Currently, judges are required to prohibit certain sex offenders from living, working, or entering specified areas. These restrictions apply to offenders convicted of certain sex crimes who are placed on probation or parole. Courts and the parole board also can use their general authority to impose child safety zones on other offenders not named in the statutes. There is no authority, however, for courts or the parole board to apply such restrictions to offenders who are released from prison after completing their sentences or freed from the conditions of probation or parole.

Under Code of Criminal Procedure, art. 42.12, sec. 13B, judges must prohibit child-sex offenders on probation from going within 1,000 feet of premises where children commonly gather – including schools, day-care facilities, playgrounds, youth centers, public swimming pools, and video arcades – and must prohibit offenders from supervising or participating in athletic, civic, or cultural activities with participants under the age of 18. Offenders can ask courts to modify the zones under certain circumstances – if it interferes with the offender's ability to attend school or hold a job, for example. Judges also have explicit authority, but are not required, to impose child safety zones if an offender is placed on probation for certain violent offenses.

The following offenses require the imposition of child safety zones on probationers (Code of Criminal Procedure, Art. 42.12, sec. 13B) and parolees (Government Code, sec. 508.187):

- indecent exposure;
- indecency with a child;
- sexual assault;
- aggravated sexual assault;
- prohibited sexual conduct;
- sexual performance by a child;
- possession or promotion of child pornography;
- aggravated kidnapping with intent to violate sexually; and
- burglary of a premises or habitation with intent to commit certain sex crimes

Child safety zones also must be imposed on certain sex offenders who are paroled from prison. Under Government Code, sec. 508.187, parolees convicted of specified offenses and whose victims were children are barred from going within a distance specified by the parole panel of schools and other places children commonly gather and from participating in programs involving children.

Punishments for violations of child safety zones by a probationer are at the discretion of the judge overseeing the offender, and those by parolees are handled by parole officers and the parole board. Punishments range from a modification of the conditions of probation or parole to the revocation of probation or parole and the offender's return to prison.

Safety zone laws in other states. Numerous other states restrict where sex offenders can live. Several of the laws are similar to Texas' child safety zone requirements. However, some impose larger geographic restrictions – for example, prohibiting offenders from being 1,500 or 2,000 feet from certain areas – and some apply to areas not covered by Texas statute. Some states prohibit sex offenders from working within a certain distance of locations such as schools, parks, swimming pools, and bus stops.

In 2006, the Georgia Legislature enacted a law barring sex offenders from living within 1,000 feet of any child care facility, church, school, or area where minors congregate. The law's definition of "areas where minors congregate" includes school bus stops, which formed a principal basis for a class action lawsuit brought by some of the state's approximately 11,000 registered sex offenders. In July, a

federal judge allowed the law to take effect after temporarily blocking its enforcement. The judge ruled that he could not continue to block enforcement of the law because the law defined "a school bus stop as designed by local school boards" and no board had done so yet. Three counties subsequently complied with the law by designating bus stops, and the court again stopped enforcement of the law. So far the judge has not ruled on the law's constitutionality, which had been challenged on the grounds that the law results in additional, unfair punishments that were not in place when the sex offenders originally were sentenced and that the offenders were not able to challenge the punishments.

Locally enacted child safety zones. Local governments in several states – including many in Texas – have enacted similar restrictions on where sex offenders can live. In general, Texas home-rule cities are authorized

Jessica's Laws

Jessica's Laws is the name given to a set of proposed laws targeting sex criminals and a national movement to implement them in every state. This package of 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 currently is standing trial in Florida. The proposals vary by state, but generally include:

- mandatory minimum sentence of 15 years, 25 years, or life in prison for certain crimes;
- lifetime electronic monitoring for serious offenses;
- requiring sex offenders to serve their entire sentences without being released early for good behavior; and
- prohibiting sex offenders from living within 2,000 feet of schools and parks.

Several states have approved at least some portions of the proposals. Nearly half of the states have enacted versions of Jessica's laws, according to a September 2006 article in CQ Researcher. In November 2006, California voters will decide a ballot initiative that would implement many of the provisions of Jessica's Laws.

to enact restrictions as city ordinances, punishable only by fine, but general-law cities and counties cannot unless given explicit authority by the Legislature.

About two dozen Texas cities have imposed local child safety zones as of the summer of 2006, according to the Texas Municipal League. Carrollton's ordinance, approved in May 2006 and similar to those in other cities, prohibits a registered sex offender whose victim was younger than age 16 from living within 1,000 feet of any site where children commonly gather, including parks, schools, and day-care centers. A violation is a misdemeanor punishable by a fine of up to \$500 per day. The ordinance applies to offenders – those currently or formerly on probation or parole – for as long as they must register as sex offenders. By contrast, state law allows child safety zone requirements to be imposed on offenders only while they are on probation or parole. Under Texas law, some sex offenders must register for 10 years and some for life.

In August 2006, Sen. Jane Nelson asked the attorney general to issue an opinion on whether municipalities have the authority to prohibit registered sex offenders from living in certain locations within those cities. Specifically, she sought an opinion on whether a local municipality's authority to impose child safety zones would be limited by state law dealing with child safety zones or by the Texas Constitution's equal protection and due process provisions.

In October 2006, U.S. District Judge Richard L. Young in Indiana temporarily suspended the enforcement of an Indianapolis ordinance, which was approved in May, that prohibits registered sex offenders from going within 1,000 feet of playgrounds, parks, and other sites where children commonly gather. The judge said that the ordinance was unconstitutional because it was too vague, violated at least one offender's right to vote, and violated *ex post facto* provisions in the Constitution that prohibit increased punishment through laws enacted retroactively.

Electronic monitoring. Currently, sex offenders can be subjected to electronic monitoring by the judge overseeing their probation or by a parole board upon their release from prison. Offenders who are released following completion of their full prison sentences are not subject to electronic monitoring, except for the small number of offenders who go through the state's civil commitment process.

At the end of fiscal 2005, there were about 3,970 sex offenders on parole. Upon release, such offenders may be subject to one of the following methods of electronic monitoring:

1) Passive global positioning system (GPS) tracking. About 1,500 offenders on the state's super-intensive supervision program (SISP), including approximately 750 sex offenders, are monitored through a passive GPS bracelet that records an offender's daily whereabouts. For this type of monitoring, parole boards consider offenders who have been convicted of a serious or violent crime – including those listed in the Code of Criminal Procedure Art. 42.12, sec. 3g – offenders convicted of crimes resulting in bodily injury or threat of bodily injury, and confirmed members of prison gangs. This tracking method costs about \$4.41 per offender day.

In addition, there are about 65 sex offenders outside the SISP who are monitored with passive GPS.

2) Active GPS tracking. About 30 offenders on the SISP, including 29 sex offenders, are monitored through a more active GPS device that shows an offender's movements in real time. For example, if an offender did not arrive home on schedule or removed the monitoring bracelet, a computer would alert the offender's parole officer or a command center. This tracking method costs about \$9.95 per offender per day.

In addition, some parolees are monitored via radio frequency electronic monitoring technology at a cost of approximately \$2.16 per offender per day. This method, which is less stringent than GPS tracking, is not used to monitor paroled sex offenders.

Judges can place any probationer on electronic monitoring. The use of this technology by local probation departments varies widely. According to the Texas Department of Criminal Justice (TDCJ), at the end of fiscal 2005 there were about 7,900 sex offenders on probation for felony offenses and about 440 sex offenders on probation for misdemeanors. While about 3,180 probationers of all types were subject to electronic monitoring in fiscal 2005, TDCJ reports that 135 of those were sex offenders monitored on special sex offender caseloads. However, additional sex offenders not on specialized caseloads also may have been subject to electronic monitoring.

Civil commitment. Under Health and Safety Code, sec. 841, certain repeat sex offenders and murderers whose crimes are sexually motivated and 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). Offenders who do not comply with any requirement of civil commitment can be charged with another offense and possibly returned to prison.

The 76th Legislature enacted the Texas law in 1999, and civil commitment trials began in 2000. To date, 66 offenders have been committed, 28 of whom are being monitored and receiving treatment in the community. Twenty-three offenders are still in TDCJ custody either waiting to be released into the community or after returning to prison due to a violation of a condition of civil commitment. Of the 15 remaining offenders, 10 are in county jails with pending civil commitment charges, one lives in a state hospital, another lives in a state school, two have absconded, and one has died.

Several state agencies and Montgomery County participate in civil commitments. A Multidisciplinary Team (MDT) with members from TDCJ, TDCJ-Victim Services, Texas Department of State Health Services (TDSHS)-Council on Sex Offender Treatment, TDSHS-Community Mental Health, and DPS reviews each sex offender with more than one sexually violent offense to determine if the person is a repeat sexually violent offender and whether the person is likely to commit a new sexually violent offense upon release. If a majority of the MDT agrees that the person meets these criteria, it will recommend that the offender be evaluated for a behavior abnormality. If an expert concludes that the offender has a behavior abnormality, TDCJ may refer the case to the state's Special

Prosecution Unit, which files court petitions asking for civil commitment. The State Council for Offenders, part of TDCJ, provides defense attorneys for indigent offenders on trial for civil commitment.

The Montgomery County courts, where the civil commitment cases are filed, estimate that in fiscal 2006 it cost about \$1.4 million to evaluate sex offenders for potential civil commitment, hold the trials, and hold biennial reviews of previously committed sex offenders. In addition, there are costs for treatment and supervision of sex offenders who have been civilly committed.

The Council on Sex Offender Treatment administers treatment programs for those who have been civilly committed. Treatment costs for fiscal 2006 are estimated at \$1.15 million, with the average cost per year for each client residing in the community at approximately \$30,000 to \$36,000. This includes treatment, case management, residential housing, transportation, satellite tracking, substance-use testing, biennial reports, different kinds of testing such as polygraphs, and medications.

Proposals and debate

Most of the proposals to change Texas law would increase supervision of sex offenders or toughen penalties for these crimes. Most would apply to offenders with child victims, although some advocates would apply tougher penalties to all sex offenders. Proposals that would increase the supervision of offenders include enlarging safety zones, increasing electronic monitoring, and expanding the state's civil commitment program by increasing the resources to identify and commit sex offenders. Proposals for tougher penalties include imposing long mandatory minimum sentences for sex crimes against children and the death penalty for some offenses. Another proposal would lengthen the statute of limitations for sex crimes involving children.

Expanding child safety zones. One proposal would enlarge the geographic size of the state's child safety zones and forbid the presence of sex offenders in additional locations. Some Texas cities are contributing to this debate by adopting their own child safety zone restrictions that apply to offenders who may not be subject to child safety zones under state law.

Supporters of expanding child safety zones argue that current state law does not go far enough and that Texas should expand the size of its safety zones to better protect children. Expanding child safety zones would help keep sex offenders further away from places where children congregate and allow law enforcement officers to penalize those who violate these provisions. Courts in other states have ruled that residency restrictions are a form of civil regulation rather than punishment, do not deprive offenders of their rights, and are related to the goal of protecting children.

Offenders should be capable of reintegrating into society without living or loitering near children. Concerns that offenders would experience hardships such as being unable to live in public housing or near public transportation are outweighed by the need to protect children. Concerns that expanded zones would drive offenders underground and discourage them from registering with local authorities could be addressed by better enforcement of current law or increased penalties for failing to register.

Opponents of expanding child safety zones say that child safety zones should not be enlarged because they are largely ineffective at protecting children. Safety zones create a false sense of security because they are difficult to enforce and do not prevent access to children by other dangerous people who are not subject to safety zone restrictions. Further, the majority of children who are sexually abused are harmed by people they know – often family members – rather than strangers who might be kept at bay by a child safety zone. The ability of a sex offender to commit another crime has nothing to do with where the offender lives. Expanded safety zones also could be vulnerable to legal challenges on the grounds that they did not advance a legitimate state interest or were used to punish offenders or deprive them of constitutional rights.

Larger child safety zones could make it difficult for sex offenders to find places to live and work and could stymie the efforts of authorities to monitor them. For example, prohibiting sex offenders from living near bus stops could make almost every residential neighborhood off limits. This could result in some offenders moving frequently or skirting compliance with registration requirements by living “underground” in cars, tents, or trailers. In addition, larger zones could deprive offenders access to affordable housing and public transportation or force them to live in rural areas that do not have needed treatment or law enforcement resources more readily available in urban and suburban

areas. Offenders also might be distanced from families that often provide support and stability, which could further undermine efforts to track and supervise these offenders. Overly broad infringement of constitutional freedoms such as the right to travel or associate with others could not be adequately justified to pass constitutional muster.

Supporters of local child safety zone laws argue that local governments are well within their authority to restrict the movements of sex offenders and should do so if appropriate for their areas. Texans are used to following and complying with local regulations that vary from place to place – night time curfews that exist in certain areas, for example. Locally enacted child safety zones would not serve as unconstitutional added “punishment” for offenders. Instead, they would be collateral consequences of a conviction similar to others that do not constitute punishment, such as sex offender registration or deportation of sex offenders who are not U.S. citizens. Concerns about enforcement should be left to local governments, which can decide how to allocate their resources.

Opponents of local child safety zone laws argue that such policies lead to a patchwork of ordinances that make it difficult for offenders to know with which rules they must comply. Applying such restrictions to persons who have completed their prison or probation terms and are required to register as sex offenders could transform registration into a punishment, which could run afoul of constitutional prohibitions against double jeopardy and cruel and unusual punishment. As more local governments enact such ordinances, nearby communities often feel pressure to pass similar laws, which could lead to offenders being driven from an entire region. Finally, local ordinances can be ineffective because municipal courts can enforce them only by levying fines. Although offenders who do not pay these fines can be jailed for contempt of court, this process seldom is used.

Increasing electronic monitoring of sex offenders. Proposals to ramp up the state’s electronic monitoring program include subjecting all released sex offenders to mandatory electronic monitoring and expanding the length of time that they are monitored beyond their time on probation or parole.

Supporters of expanded electronic monitoring argue that a larger number of sex offenders on parole and probation should be tracked electronically for longer periods of time. To ensure that all dangerous offenders

are monitored, a statewide policy for probationers and parolees and those who finish their sentences is necessary. The state has enacted other similar statewide requirements for offenders. For example, judges and parole boards must require that certain offenders stay out of child safety zones, and certain sex offenders are required to register with local law enforcement authorities for 10 years or for life even after they are released from prison, probation, or parole. Although electronic monitoring has limitations, it is another tool that Texas should use to its fullest to help protect children.

Opponents of expanded electronic monitoring say current law allowing judges and parole boards to place any offender under electronic monitoring is sufficient to ensure public safety. Judges and parole boards are best able to evaluate individual offenders and decide who should be monitored electronically, for how long, and at what level. Mandating electronic monitoring for certain types of offenders would infringe on judicial and parole board discretion, and this potentially expensive technology could lead to the inefficient allocation of state resources. In addition, overreliance on electronic monitoring would not effectively protect victims because most sex offenders commit their crimes in authorized locations, such as the home, and because the technology has limitations and GPS signals can be lost. Offenders who are so dangerous that they need open-ended, high-level electronic monitoring should be considered for the state's civil commitment program.

Increasing funding for civil commitment.

Another proposal would allocate more state money for the civil commitment of sex offenders.

Supporters of expanding the state's civil commitment program say Texas should appropriate more money for the civil commitment of sexually violent predators. The relatively small number of persons being committed by the state reflects the limited resources allocated to these efforts and not the number of predators who should be committed. Other states civilly commit many more offenders than Texas and spend much more on their programs. All other states with civil commitment statutes place offenders in lock-down facilities, while Texas uses only outpatient treatment with offenders living in homes or halfway houses. Texas should continue with the outpatient treatment model – especially given recent research questioning the effectiveness of in-prison treatment programs – but should ensure that

the current statutory criteria are rigorously applied to all offenders so that all dangerous predators are closely supervised.

Opponents of expanding the state's civil commitment program say the program already is working to supervise and treat the most dangerous sex offenders. A vast expansion of the program could lead to charges that it had become overly broad and to a court finding that it functioned as an additional, unconstitutional means of punishing sex offenders who had completed their sentences. Instead of expanding the civil commitment program, it would be wiser to spend additional resources on treatment for all sex offenders.

Mandatory minimum sentences. Lengthy minimum sentences of 15 to 25 years or life without parole have been proposed for a range of sex crimes against children.

Supporters say that long, mandatory prison terms are appropriate punishment for sex offenders who victimize children, some of the most vulnerable members of society. In addition to protecting victims, witnesses, and other children by keeping sex criminals behind bars, long sentences would help deter other potential offenders. Long mandatory sentences would not make crimes more difficult to prosecute but instead would ensure that offenders were punished appropriately. Instead of accepting plea bargains that reflect less serious offenses, prosecutors should be required in some cases to devote the resources necessary to obtain convictions for the actual crimes that were committed. Long mandatory sentences reflect the continual need to examine and amend laws to ensure tougher statutes dealing with sex offenders and better enforcement of those laws. Mandatory minimums ensure that sex offenders are not quickly run through the criminal justice system and then set free to prey again on children.

Mandatory minimum laws could be made flexible enough to allow judges some discretion to impose lesser sentences in limited types of cases or under certain circumstances. For example, if a judge found the existence of substantial and compelling mitigating circumstances – for example, the youth of the offender or the fact that the defendant acted under extreme distress or under the domination of another person – the law could allow the imposition of a lesser sentence.

The number of prison beds available in Texas should not determine the state's response to dangerous sexual predators. For particularly heinous offenses or for repeat offenders, mandatory life-without-parole would be appropriate and necessary to ensure that the worst sex criminals could never return to society. The option to seek such a sentence would give prosecutors one more tool to use at their discretion.

Opponents of lengthy mandatory minimum sentences argue that Texas law already allows for a range of appropriate punishments to deal with sex offenders, including long prison terms and mandatory life sentences for some repeat sex offenders who victimize children. Requiring long prison terms indiscriminately could result in inappropriate punishments and distort Texas' sentencing scheme. For example, under Texas law murder is a first-degree felony punishable by life in prison or a sentence of five to 99 years. While it is possible today that a person convicted of sexually assaulting a minor could receive a longer sentence than a murderer, that likelihood would increase under a mandatory sentencing scheme for sex offenders. Texas' current sentencing scheme gives courts the flexibility to decide appropriate punishment on a case-by-case basis, including long prison terms when necessary. Sentences of life-without-parole should be reserved for murderers.

By making defendants less inclined to plead guilty, long mandatory minimum sentences could make it more difficult for prosecutors to reach plea agreements. In cases where evidence was not airtight, this could lead prosecutors to not file charges or to accept plea bargains to lesser crimes. Fewer plea agreements also might lead to unnecessary trials that could further traumatize victims or to the prosecution of some cases as lesser crimes because the victim was reluctant to testify or the evidence was not sufficiently strong. In addition, some jurors might be reluctant to render guilty verdicts in cases where they felt the mandatory minimum punishment was too harsh.

Finally, the establishment of long mandatory minimums could increase the demand for prison beds, something the state can ill afford since it has run out of capacity to house offenders and is currently leasing beds from counties.

Death penalty for sex crimes against children. In June 2006, Oklahoma became the fifth state to authorize the death penalty for persons who commit repeat serious sex crimes against children. Although four other states – Florida,

Louisiana, Montana, and South Carolina – have such laws, only one offender has been sentenced to death in a case that did not involve a murder, and this Louisiana case remains on appeal.

In 1977, the U.S. Supreme Court ruled in *Coker v. Georgia*, 433 U.S. 584 (1977), 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. The court did not rule on the constitutionality of sentencing child rapists to death.

Texas law on the death penalty and on serious sex offenders. In Texas, a person can receive the death penalty only following a conviction of murder committed under one of nine specific circumstances listed in Penal Code, sec. 19.03. These include the murder of a person under the age of six and murder committed in the course of committing or attempting to commit aggravated sexual assault or kidnapping. The most serious sentence that can be imposed on child rapists in Texas is life in prison, which carries with it the possibility of parole. Repeat offenders may receive an automatic life sentence with stricter parole criteria (see page 3).

Other states. In 1995, Louisiana became the first of five states to authorize the death penalty for sexually assaulting a child. Louisiana's law authorizes the death penalty for persons convicted of aggravated rape in which the victim was under the age of 12. The Louisiana Supreme Court has ruled that the law is constitutional because the Coker decision dealt with an adult victim, not a child. South Carolina and Oklahoma approved similar statutes in 2006, joining Montana and Florida.

Under Florida's law, an offender who is over the age of 18 and commits sexual battery upon a person younger than age 12 can be sentenced to death. Montana's statutes authorize the death penalty for second offenses of sexual intercourse without consent. Since the U.S. Supreme Court has prohibited the death penalty in cases of adult rape, the Montana law generally is interpreted as authorizing the death penalty (along with other penalties) for repeat offenders with child victims. Oklahoma's law requires the death penalty or life in prison without parole for those found guilty more than once of rape and other sex crimes against children under the age of 14. Under South Carolina law, repeat offenders who sexually assault children under the age of 11 are eligible for the death penalty.

Supporters of authorizing the death penalty for sex offenses against children say such crimes are so horrific that the death penalty is appropriate, just punishment, especially for repeat offenders. Texas should protect children by authorizing the most severe penalty for people who abuse them. As with all death penalty cases, juries would be able to consider the circumstances of each case and impose the appropriate sentence. 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. Authorizing the death penalty for repeat child rapists would be a powerful deterrent to offenders who have been convicted once of raping a child.

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 will reduce the length of that process.

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 or for additional states to pass similar laws. The issues involved in cases of repeat child rapists are different than those in the Coker case, which prohibits the death penalty only in cases of adult rape. 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 – such as considering the number of states that forbid the execution of juveniles in ruling that such executions are unconstitutional – and recent research about the harm that sexual abuse does to children and the recidivism of those who sexually assault them.

Opponents say that the death penalty is 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 those imposed by current law – or life without parole can be used to punish repeat child rapists and protect the public. Furthermore,

obtaining a death sentence and navigating the lengthy appeals process is expensive, time consuming, and often traumatic for victims.

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 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. In addition, any changes to Texas' death penalty statutes would invite scrutiny of the state's often-litigated death penalty scheme by the U.S. Supreme Court, which might rule it unconstitutional.

Extending the statute of limitations for the prosecution of some sex crimes. Under Code of Criminal Procedure, Art. 12.01(5), the statute of limitations for some sex crimes is 10 years from the 18th birthday of the victim. While the legal limit for the prosecution of most crimes expires after a period of time ranging from three years to 10 years, no statute of limitations applies to murder and manslaughter. In addition, there is no limit on prosecuting sexual assault in some cases if DNA evidence is collected. The special provision for sex crimes applies to indecency with a child involving contact, sexual assault of a child, and aggravated sexual assault of a child. Some critics of current law say that the statute of limitations for sex crimes against children should be extended to 20 years or eliminated altogether.

Supporters of extending the statute of limitations argue that the change is 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. The statute of limitations should be extended for

child sex abuse cases so that young victims have a chance to mature and gain the financial and emotional stability necessary for them to speak out about the crimes committed against them. All victims should not be held to the same cutoff date for prosecuting their crimes because some will take longer than others to gain the ability to speak out. A longer statute of limitations in criminal cases would allow for both punishment of offenders and healing and closure for victims. Because of the lifelong effects of sex crimes against children, it may be appropriate to eliminate the statute of limitations for some serious offenses.

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 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.

Finally, 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.

Opponents say that extending the statute of limitations could render defendants unable to adequately defend themselves and infringe upon their right to due process. Over time witnesses' memories fade, and evidence is 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. Current law already has carved out a unique, exceptionally long limit for serious child sex crimes, which is adequate. Although sex crimes against children are heinous and should be punished severely, these crimes should not be equated with murder by completely eliminating the statute of limitations.

In addition, 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. 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 jail.

– by Kellie Dworczyk

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