

## Predator penalties criticized - Legislature: Indecency lumped with other crimes, may bring death

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AUSTIN - A coach pats a freshman cheerleader on the behind in the hall; an uncle touches his teenage niece; a baby sitter plays doctor with the young boy she's watching.

Bills moving through the House and Senate would allow for these crimes, under some circumstances, to be punished by death.

Under one version, sex offenders who have already served time - either in prison or on probation - and whose victims were younger than 14 would be eligible for life in prison without parole or execution the next time they're found guilty of inappropriately touching a child. In another version, a few repeated instances of touching could lead to such punishment.

The package of "Jessica's Laws" being championed by state leaders and moving swiftly through the Legislature is intended to deal harsh consequences to sexually violent predators. But the bills also cover indecency with a child, defined in the bill as any type of sexual touching over or under the clothing.

While that's a serious crime, many prosecutors, victims advocates and even lawmakers pushing the bills generally agree that someone convicted of groping a child shouldn't be sentenced to death. Some suggest that the legislation be changed to provide more punishment options, but the bill's authors are nonetheless pressing on with the legislation as written, saying they trust district attorneys, juries, and judges to apply the law only to the worst cases.

"This is about putting more tools in the toolbox, not handcuffing someone," said Sen. Bob Deuell, R-Greenville, the author of legislation in the Senate. "There is flexibility. It gives them a bigger tool, but it also gives them discretion to be a human being."

Criminologists say cooler heads don't always prevail in sex-crime cases. And critics of some enhanced penalties note that Texas is known for having the most active death chamber in the United States - and a slew of judges, prosecutors and juries who are willing to use it.

They also say that there's not a lot of leeway in some of the bills, which carry mandatory sentences and - on second conviction - no choice for a jury except life or death. Plus, it's unclear whether the U.S. Constitution allows for execution in any crime that doesn't involve the death of a victim.

### Limited resources

"We all want to deal with sexual predators, and we want to deal with them in the most severest of terms," said Houston Democratic Rep. Sylvester Turner, who tried unsuccessfully to add a third punishment option of a long prison sentence to the bill. "But writing bad law and hoping prosecutors will not apply what we have authorized is just not the way to govern, I'm sorry."

Some victims advocates agree, fearful that resources that could be used to focus on sexually violent predators will be diverted.

"We've got limited resources in this state, and we need to be finding those who are truly the sexual predators, the most dangerous individuals who are preying on young children, and focus our money and attention on those folks," said Torie Camp, deputy director of the Texas Association Against Sexual Assault, which raises money for sexual assault programs and awareness. "Spending that money on someone who is not a sexual predator is a waste of funds."

### Jessica's Laws

The Jessica's Laws package has passed in some form in 20 states, and it is considered a priority this session by House Speaker Tom Craddick, Lt. Gov. David Dewhurst, and Gov. Rick Perry, all Republicans. The House approved its version this week; the Senate Criminal Justice Committee will begin hearings on Dr. Deuell's bill next week.

The legislation is named after Jessica Lunsford, a 9-year-old girl who was kidnapped, raped and murdered by a convicted sex offender in Florida in 2005. The case, and the enhanced penalties for sex crimes against children sweeping across the country, have become a rallying cry for death-penalty advocates.

But others worry about unintended consequences and "outrageous results" of applying the death penalty as an enhancement on a second conviction - which is what both the House and Senate bill do - particularly when the offense isn't even violent, much less causes death.

## Enhancement

The Senate version of the bill simply adds a capital offense as an enhanced charge on a conviction. That means that anyone already convicted of a sex crime against a child, even if he received probation, would be eligible for the death penalty as early as this September if he commits another sex crime against a child, said Shannon Edmonds of the Texas District and County Attorneys Association.

Theoretically, that means that a man who groped his toddler daughter through her clothes and got 10 years' probation could, under the Senate bill, be charged with a capital crime if he gropes her again.

Constitutional provisions against new laws punishing old crimes don't apply in second convictions - a precedent set in court challenges to enhanced DWI laws - as long as the second crime is committed after the enhancement goes into effect, Mr. Edmonds said.

The House bill creates a new felony of "continuous sexual abuse," which is defined as two or more incidents of sexually violent offenses against children in a period of 30 days or more. A first conviction would bring mandatory prison time. A second would be eligible for the death penalty. Because the crime is new, previous convictions would not be a factor.

Dr. Deuell said that was his intent with the legislation but that a "lawyer would be better able to answer" the more intricate legal questions about his bill.

Both versions include indecency with a child in their list of "violent sexual offenses."

Rep. Dan Gattis, R-Georgetown, who helped craft the bill in the House, acknowledges that extreme scenarios could happen but said he hopes the system never lets it get to that point. A prosecutor could decide to go for a lesser charge, a grand jury could decline to indict a suspect or a jury could find the defendant guilty of a lesser charge.

Experts say there's no guarantee that will happen. While many indecency charges result in probation, more than 4,000 inmates are currently in Texas prisons for indecency with a child.

"This is not like bank fraud, where jurors can be very dispassionate," said Tim Bray, a criminologist at the University of Texas at Dallas. "Kids are very moving victims, and no adult - whether they're on the jury or not - wants to see a child harmed. So it's very easy for a juror to become very emotionally charged in these cases."

And "outrageous results" are not new to Texas, certainly. The case of Tyrone Brown made national headlines after The Dallas Morning News reported that he was sentenced to life in prison after testing positive for marijuana while on probation for a \$2 armed robbery in which the victim was unhurt.

"The system operates on the good faith that the prosecutor is prosecuting in good faith, that the police are arresting in good faith and that the victims are truly victims," Mr. Bray said. "There's always going to be the potential that prosecutors can take something further than it's supposed to go. But we hope and rely on ethics panels and the judge and jury to stop that it in its tracks."

• Caption: PHOTO(S): 1. Bob Deuell2. Sylvester Turner

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