

SENATE AMENDMENTS

2nd Printing

By: Thompson, Woolley, Button, Alvarado,
Truitt, et al.

H.B. No. 3

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the imposition of a sentence of life without parole on
3 certain defendants who commit certain sexual offenses.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 5(d), Article 42.12, Code of Criminal
6 Procedure, is amended to read as follows:

7 (d) In all other cases the judge may grant deferred
8 adjudication unless:

9 (1) the defendant is charged with an offense:

10 (A) under Sections 49.04-49.08, Penal Code; or

11 (B) for which punishment may be increased under
12 Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it
13 is shown that the defendant has been previously convicted of an
14 offense for which punishment was increased under any one of those
15 subsections;

16 (2) the defendant:

17 (A) is charged with an offense under Section
18 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the
19 victim, or a felony described by Section 13B(b) of this article; and

20 (B) has previously been placed on community
21 supervision for any offense under Paragraph (A) of this
22 subdivision; or

23 (3) the defendant is charged with an offense under:

24 (A) Section 21.02, Penal Code;

1 (B) Section 22.011, Penal Code, that is
2 punishable under Section 12.42(c)(4), Penal Code; or

3 (C) [~~(B)~~] Section 22.021, Penal Code, that is
4 punishable under Subsection (f) of that section or under Section
5 12.42(c)(3) or (4), Penal Code.

6 SECTION 2. Section 508.145(d), Government Code, is amended
7 to read as follows:

8 (d)(1) An inmate serving a sentence for an offense described
9 by Section 3g(a)(1)(A), (C), (D), (E), (F), (G), (H), (I), (J), or
10 (K), Article 42.12, Code of Criminal Procedure, or for an offense
11 for which the judgment contains an affirmative finding under
12 Section 3g(a)(2) of that article, is not eligible for release on
13 parole until the inmate's actual calendar time served, without
14 consideration of good conduct time, equals one-half of the sentence
15 or 30 calendar years, whichever is less, but in no event is the
16 inmate eligible for release on parole in less than two calendar
17 years.

18 (2) Notwithstanding Subdivision (1), an inmate
19 serving a sentence for an offense described by Section 3g(a)(1)(E)
20 or (H), Article 42.12, Code of Criminal Procedure, is not eligible
21 for release on parole if the inmate is serving a sentence for an
22 offense for which punishment was enhanced under Section
23 12.42(c)(4), Penal Code.

24 SECTION 3. Sections 12.42(b) and (d), Penal Code, are
25 amended to read as follows:

26 (b) Except as provided by Subsection (c)(2) or (c)(4), if it
27 is shown on the trial of a second-degree felony that the defendant

1 has been once before convicted of a felony, on conviction he shall
2 be punished for a first-degree felony.

3 (d) Except as provided by Subsection (c)(2) or (c)(4), if it
4 is shown on the trial of a felony offense other than a state jail
5 felony punishable under Section 12.35(a) that the defendant has
6 previously been finally convicted of two felony offenses, and the
7 second previous felony conviction is for an offense that occurred
8 subsequent to the first previous conviction having become final, on
9 conviction he shall be punished by imprisonment in the Texas
10 Department of Criminal Justice for life, or for any term of not more
11 than 99 years or less than 25 years.

12 SECTION 4. Section 12.42(c)(4), Penal Code, is amended to
13 read as follows:

14 (4)(A) Except as provided by Paragraph (B) and
15 notwithstanding [~~Notwithstanding~~] Subdivision (1) or (2), a
16 defendant shall be punished by imprisonment in the Texas Department
17 of Criminal Justice for life without parole if it is shown on the
18 trial of an offense under Section 21.02, 22.011, or 22.021 that the
19 defendant has previously been finally convicted of:

20 (i) [~~(A)~~] an offense under Section 21.02,
21 22.011, or 22.021; or

22 (ii) [~~(B)~~] an offense that was committed
23 under the laws of another state and that contains elements that are
24 substantially similar to the elements of an offense under Section
25 21.02, 22.011, or 22.021.

26 (B) A defendant may not be punished as described
27 by this subdivision as a result of any conviction of an offense

1 under Section 22.011, Penal Code, for which an affirmative finding
2 was entered under Article 42.017, Code of Criminal Procedure.

3 SECTION 5. The change in law made by this Act applies only
4 to an offense committed on or after the effective date of this Act.
5 An offense committed before the effective date of this Act is
6 governed by the law in effect on the date the offense was committed,
7 and the former law is continued in effect for that purpose. For
8 purposes of this section, an offense was committed before the
9 effective date of this Act if any element of the offense occurred
10 before that date.

11 SECTION 6. This Act takes effect September 1, 2011.

ADOPTED

MAY 24 2011

Atty Gen
Secretary of the Senate

By: *James Huff*
Substitute the following for ___B. No. _____:

H.B. No. 3

By: Huffman

C.S. ___B. No. _____

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1 AN ACT

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3 certain defendants who commit certain sexual offenses.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 5(d), Article 42.12, Code of Criminal
6 Procedure, is amended to read as follows:

7 (d) In all other cases the judge may grant deferred
8 adjudication unless:

9 (1) the defendant is charged with an offense:

10 (A) under Sections 49.04-49.08, Penal Code; or

11 (B) for which punishment may be increased under
12 Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it
13 is shown that the defendant has been previously convicted of an
14 offense for which punishment was increased under any one of those
15 subsections;

16 (2) the defendant:

17 (A) is charged with an offense under Section
18 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the
19 victim, or a felony described by Section 13B(b) of this article; and

20 (B) has previously been placed on community
21 supervision for any offense under Paragraph (A) of this
22 subdivision; or

23 (3) the defendant is charged with an offense under:

24 (A) Section 21.02, Penal Code; or

1 (B) Section 22.021, Penal Code, that is
2 punishable under Subsection (f) of that section or under Section
3 12.42(c)(3) or (4), Penal Code.

4 SECTION 2. Section 508.145(d), Government Code, is amended
5 to read as follows:

6 (d)(1) An inmate serving a sentence for an offense described
7 by Section 3g(a)(1)(A), (C), (D), (E), (F), (G), (H), (I), (J), or
8 (K), Article 42.12, Code of Criminal Procedure, or for an offense
9 for which the judgment contains an affirmative finding under
10 Section 3g(a)(2) of that article, is not eligible for release on
11 parole until the inmate's actual calendar time served, without
12 consideration of good conduct time, equals one-half of the sentence
13 or 30 calendar years, whichever is less, but in no event is the
14 inmate eligible for release on parole in less than two calendar
15 years.

16 (2) Notwithstanding Subdivision (1), an inmate
17 serving a sentence for an offense described by Section 3g(a)(1)(E),
18 Article 42.12, Code of Criminal Procedure, is not eligible for
19 release on parole if the inmate is serving a sentence for an offense
20 for which punishment was enhanced under Section 12.42(c)(4), Penal
21 Code.

22 SECTION 3. Sections 12.42(b) and (d), Penal Code, are
23 amended to read as follows:

24 (b) Except as provided by Subsection (c)(2) or (c)(4), if it
25 is shown on the trial of a second-degree felony that the defendant
26 has been once before convicted of a felony, on conviction he shall
27 be punished for a first-degree felony.

1 (d) Except as provided by Subsection (c)(2) or (c)(4), if it
2 is shown on the trial of a felony offense other than a state jail
3 felony punishable under Section 12.35(a) that the defendant has
4 previously been finally convicted of two felony offenses, and the
5 second previous felony conviction is for an offense that occurred
6 subsequent to the first previous conviction having become final, on
7 conviction he shall be punished by imprisonment in the Texas
8 Department of Criminal Justice for life, or for any term of not more
9 than 99 years or less than 25 years.

10 SECTION 4. Section 12.42(c)(4), Penal Code, is amended to
11 read as follows:

12 (4) Notwithstanding Subdivision (1) or (2), a
13 defendant shall be punished by imprisonment in the Texas Department
14 of Criminal Justice for life without parole if it is shown on the
15 trial of an offense under Section 21.02 or 22.021 that the defendant
16 has previously been finally convicted of:

- 17 (A) an offense under Section 21.02 or 22.021; or
18 (B) an offense that was committed under the laws
19 of another state and that contains elements that are substantially
20 similar to the elements of an offense under Section 21.02 or 22.021.

21 SECTION 5. The change in law made by this Act applies only
22 to an offense committed on or after the effective date of this Act.
23 An offense committed before the effective date of this Act is
24 governed by the law in effect on the date the offense was committed,
25 and the former law is continued in effect for that purpose. For
26 purposes of this section, an offense was committed before the
27 effective date of this Act if any element of the offense occurred

1 before that date.

2 SECTION 6. This Act takes effect September 1, 2011.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 25, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB3 by Thompson (Relating to the imposition of a sentence of life without parole on certain defendants who commit certain sexual offenses.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Penal Code as it relates to the punishment enhancement provisions for life imprisonment without parole, which apply to certain repeat and habitual felony offenders convicted of continuous sexual abuse of a young child; including certain sexual assault and aggravated sexual assault offenses. The bill would amend the Code of Criminal Procedure to include certain sexual assault offenses with enhanced punishment as prescribed by the bill, to the list of offenses not eligible for deferred adjudication. The bill would also amend the Government Code to provide that certain 3g felony sexual assault and aggravated sexual assault offenses with enhanced punishment as prescribed by the bill, are not eligible for release on parole. The bill would take effect September 1, 2011 and apply only to an offense committed on or after the effective date.

Increasing the penalty for any criminal offense is expected to result in increased demands upon the correctional resources of counties or of the State due to longer terms of probation, or longer terms of confinement in county jails or prison. For this analysis, it is assumed implementing the provisions of the bill would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources of those agencies for the first five years following passage of the bill.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, SD, LM, ADM, ESi, GG

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 21, 2011

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB3 by Thompson (Relating to the imposition of a sentence of life without parole on certain defendants who commit certain sexual offenses.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Penal Code as it relates to the punishment enhancement provisions for life imprisonment without parole, which apply to certain repeat and habitual felony offenders convicted of continuous sexual abuse of a young child; including certain sexual assault and aggravated sexual assault offenses. The bill would amend the Code of Criminal Procedure to include certain sexual assault offenses with enhanced punishment as prescribed by the bill, to the list of offenses not eligible for deferred adjudication. The bill would also amend the Government Code to provide that certain 3g felony sexual assault and aggravated sexual assault offenses with enhanced punishment as prescribed by the bill, are not eligible for release on parole. The bill would take effect September 1, 2011 and apply only to an offense committed on or after the effective date.

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Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, LM, ADM, ESi, GG

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 19, 2011

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB3 by Thompson (Relating to the imposition of a sentence of life without parole on certain defendants who commit certain sexual offenses.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Penal Code as it relates to the punishment enhancement provisions for life imprisonment without parole, which apply to certain repeat and habitual felony offenders convicted of continuous sexual abuse of a young child; including certain sexual assault and aggravated sexual assault offenses. The bill would amend the Code of Criminal Procedure to include certain sexual assault offenses with enhanced punishment as prescribed by the bill, to the list of offenses not eligible for deferred adjudication. The bill would also amend the Government Code to provide that certain 3g felony sexual assault and aggravated sexual assault offenses with enhanced punishment as prescribed by the bill, are not eligible for release on parole. The bill would take effect September 1, 2011 and apply only to an offense committed on or after the effective date.

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Source Agencies:

LBB Staff: JOB, ADM, ESi, GG, LM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 8, 2011

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB3 by Thompson (Relating to the imposition of a sentence of life without parole on certain defendants who commit certain sexual offenses.), **Committee Report 1st House, Substituted**

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LBB Staff: JOB, ADM, ESi, GG, LM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 4, 2011

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB3 by Thompson (Relating to the imposition of a sentence of life without parole on certain defendants who commit certain sexual offenses.), **As Introduced**

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Local Government Impact

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Source Agencies:

LBB Staff: JOB, ESi, GG, LM, ADM

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

CRIMINAL JUSTICE IMPACT STATEMENT

82ND LEGISLATIVE REGULAR SESSION

May 21, 2011

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB3 by Thompson (Relating to the imposition of a sentence of life without parole on certain defendants who commit certain sexual offenses.), **Committee Report 2nd House, Substituted**

The bill would amend the Penal Code as it relates to the punishment enhancement provisions for life imprisonment without parole, which apply to certain repeat and habitual felony offenders convicted of continuous sexual abuse of a young child; including certain sexual assault and aggravated sexual assault offenses. The bill would amend the Code of Criminal Procedure to include certain sexual assault offenses with enhanced punishment as prescribed by the bill, to the list of offenses not eligible for deferred adjudication. The bill would also amend the Government Code to provide that certain 3g felony sexual assault and aggravated sexual assault offenses with enhanced punishment as prescribed by the bill, are not eligible for release on parole. At present, the offense of sexual assault is punishable as a felony of the second degree or a felony of the first degree; the offense aggravated sexual assault is a felony of the first degree, and it is punishable by a minimum time of imprisonment of 25 years in certain cases contingent upon the age of the victim.

A felony of the second degree is punishable by confinement in prison for a term from 2 to 20 years and, in addition to confinement, an optional fine not to exceed \$10,000. A felony of the first degree is punishable by confinement in prison for life or a term from 5 to 99 years and, in addition to confinement, an optional fine not to exceed \$10,000.

Increasing the penalty for any criminal offense is expected to result in increased demands upon the correctional resources of counties or of the State due to longer terms of probation, or longer terms of confinement in county jails or prison. The population impact as a result of the provisions of the bill will come from defendants who have been previously convicted of certain sexual offenses and who would now be punished by life imprisonment without parole. In fiscal year 2010, less than 5 individuals were convicted of a first degree felony and approximately 50 were convicted of a second degree felony, and sentenced to a term of incarceration in prison for sexual assault. Based on arrest history data, direct court commitments, and revocation rates, it is estimated that approximately 19 percent of those convicted of a second degree felony (who would be currently serving an estimated average sentence length of 8.33 years), would have a criminal history for certain sexual offenses and be sentenced to life imprisonment without parole as a result of the bill. In fiscal year 2010, approximately 50 individuals were convicted of a first degree felony and sentenced to a term of incarceration in prison for aggravated sexual assault; it is estimated that approximately 20 percent of those individuals (who would be currently serving an estimated average sentence length of 21.87 years), would have a criminal history for certain sexual offenses and be sentenced to life imprisonment without parole as a result of the bill. For this analysis, it is assumed the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies for the first five years following passage of the bill.

Source Agencies:

LBB Staff: JOB, LM, ADM, GG

LEGISLATIVE BUDGET BOARD

Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

82ND LEGISLATIVE REGULAR SESSION

May 19, 2011

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB3 by Thompson (Relating to the imposition of a sentence of life without parole on certain defendants who commit certain sexual offenses.), **As Engrossed**

The bill would amend the Penal Code as it relates to the punishment enhancement provisions for life imprisonment without parole, which apply to certain repeat and habitual felony offenders convicted of continuous sexual abuse of a young child; including certain sexual assault and aggravated sexual assault offenses. The bill would amend the Code of Criminal Procedure to include certain sexual assault offenses with enhanced punishment as prescribed by the bill, to the list of offenses not eligible for deferred adjudication. The bill would also amend the Government Code to provide that certain 3g felony sexual assault and aggravated sexual assault offenses with enhanced punishment as prescribed by the bill, are not eligible for release on parole. At present, the offense of sexual assault is punishable as a felony of the second degree or a felony of the first degree; the offense aggravated sexual assault is a felony of the first degree, and it is punishable by a minimum time of imprisonment of 25 years in certain cases contingent upon the age of the victim.

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LEGISLATIVE BUDGET BOARD

Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

82ND LEGISLATIVE REGULAR SESSION

April 8, 2011

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S O'Brien, Director, Legislative Budget Board

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LBB Staff: JOB, ADM, GG

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

82ND LEGISLATIVE REGULAR SESSION

April 4, 2011

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB3 by Thompson (Relating to the imposition of a sentence of life without parole on certain defendants who commit certain sexual offenses.), **As Introduced**

The bill would amend the Penal Code as it relates to the punishment enhancement provisions for life imprisonment without parole, which apply to certain repeat and habitual felony offenders convicted of continuous sexual abuse of a young child; including the offense of sexual assault, and the offense of aggravated sexual assault. The bill would amend the Code of Criminal Procedure to include certain sexual assault offenses with enhanced punishment as prescribed by the bill, to the list of offenses not eligible for deferred adjudication. The bill would also amend the Government Code to provide that certain 3g felony sexual assault and aggravated sexual assault offenses with enhanced punishment as prescribed by the bill, are not eligible for release on parole. At present, the offense of sexual assault is punishable as a felony of the second degree or a felony of the first degree; the offense aggravated sexual assault is a felony of the first degree, and it is punishable by a minimum time of imprisonment of 25 years in certain cases contingent upon the age of the victim.

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