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## FISCAL IMPACT REPORT

SPONSOR: HJC DATE TYPED: 3/17/03 HB 53/HJCS  
SHORT TITLE: Sex Offender Parole Provision SB \_\_\_\_\_  
ANALYST: Gilbert

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$0.1 See Narrative		

### SOURCES OF INFORMATION

#### Responses Received From

Administrative Offices of the District Attorney  
Public Defenders Office  
The Adult Parole Board  
Criminal and Juvenile Justice Coordination Council

### SUMMARY

#### Synopsis of Bill

House Judiciary Committee substitute for House Bill 53 creates a new parole-eligibility category specific to sex offenders. The bill defines sex offender as any person convicted of, or who pleads guilty to,:

- (1) criminal sexual penetration in the first, second or third degree;
- (2) criminal sexual contact with a minor; or
- (3) sexual exploitation of children.

Under existing law, a sex offender would be subject to a two-year term of parole. Currently, this is the term assigned to all first, second or third degree felonies. HB 53/HJCS changes the parole term for sex offenders to “not to exceed 20 years.”

In determining the term of parole for a sex offender, HB 53/HJCS provides the parole board may consider:

- (1) the nature and circumstances of the offense for which the sex offender was incarcerated;
- (2) the nature and circumstances of a prior sex offense committed by the sex offender;
- (3) rehabilitation efforts engaged in by the sex offender, including participation in treatment programs while incarcerated or elsewhere; and
- (4) the danger to the community posed by the sex offender.

HB 53/HJCS grants the parole board the authority to order reasonable conditions of parole with which a sex offender must comply. These conditions may include:

- (1) being subject to intensive supervision by a parole officer;
- (2) participating in an outpatient or inpatient sex offender treatment program;
- (3) an agreement not to use alcohol or drugs;
- (4) an agreement not to have contact with certain persons, or a class of persons; and
- (5) being subject to alcohol testing, drug testing, polygraph examination, or another similar such examination which may be used to determine if the sex offender is in compliance with the terms and conditions of his parole.

HB 53/HJCS provides that the parole board must review the terms and conditions of a sex offender's parole at four-year intervals. During a review hearing, the state shall bear the burden of proving to the board that a sex offender should remain on parole. The board may decide to continue a sex offender's parole, but may also determine that certain terms and conditions of parole are no longer necessary.

Finally, HB 53/HJCS provides that the parole board must notify the chief public defender of an upcoming parole hearing for a sex offender, and the chief public defender shall represent the sex offender at the parole hearing.

#### Significant Issues

- (1) It is widely believed that sex offenders cannot be rehabilitated. This class of criminal is known for its high rate of recidivism.
- (2) HB 53/HJCS gives significant discretion and flexibility to the parole board. At the same time, by mandating that in no event will the parole period be greater than 20 years, it protects offenders from indefinite parole.
- (3) The public defenders office raises an equal protection argument because sex offenders, as a class of criminal, are subject to conditions that other classes of criminals are not.

#### **FISCAL IMPLICATIONS**

HB 53/HJCS does not contain an appropriation. However, since this bill increases parole periods from the current 2 years up to a possible total of 20 years and mandates the Chief Public Defender to represent all sex offenders at their parole hearings, additional FTE's may be necessary.

HB 53/HJCS may also discourage plea agreements, which would increase the number of cases going to trial. This would impact the courts, the public defenders office and the district attorneys office. These trials are difficult and costly.

### **ADMINISTRATIVE IMPLICATIONS**

The parole board will be required to make minor changes to its' policies, procedures, rules and regulations.

The board will see an increase in the number of parole hearings. For example, if a sex offender is placed on parole for a period of 20 years, the board would have to review his parole status a total of five times (once every 4 years). Without HB 53/HJCS, the parole term would simply be two years total.

The board will likely see a slight increase in administrative responsibilities in those instances where it orders alcohol or drug testing, or attempts to assess a parolee's compliance with the terms and conditions of his parole.

### **OTHER SUBSTANTIVE ISSUES**

The substitute bill requires the state to bear the burden of proving to the board that a sex offender should remain on parole. The board may decide to continue a sex offender's parole, but may also determine that certain terms and conditions of parole are no longer necessary. *In the original HB 53, if the sex offender satisfactorily demonstrates and the board finds that the sex offender's parole may be discharged or that certain terms and conditions of parole are no longer necessary, the board may amend its order accordingly.*

Both the public defenders office and the district attorneys office have raised the issue of "equal protection". Does treating sex offenders different from other types of criminals constitute grounds for an equal protection claim?

Under HB 53/HJCS, the chief public defender is notified before a sex offender is to go before the parole board. The district attorney should be notified as well. This would allow victims to be notified in order that they may address the board, and would allow the State an opportunity to also present a position.

RLG/yr/njw