



Increasing the Penalty for Injury or Disfigurement to a Child

Overview

In 2014, 151 children died due to abuse and neglect in Texas. While a number of these fatalities were due to neglect related circumstances, a significant number of these fatalities involved young children murdered by their caregivers. Between 2010 and 2013, 334 such child fatalities occurred in Texas.¹ Deaths like that of 2 year old Colton Turner, who died of blunt force trauma at the hands of his mother and boyfriend, unfortunately occur on a weekly basis in Texas. Both are charged with 1st degree Injury to a Child Causing Serious Bodily Injury, a crime that is punishable by as little as probation currently. Legislative efforts, such as HB 8 in Texas, to address crimes against children have succeeded in increasing minimum sentences for sexual offenders but have not sufficiently addressed the particularly egregious act of killing or permanently disfiguring a child. If convicted of Continuous Sexual Assault of a Child, the minimum sentence is 25 years and the defendant is ineligible for probation or parole, however the minimum sentence for injuring a child so severely that it results in their death can be as little as probation or 5 years.

Current Criminal Penalties for Child Homicides

Severe child abuse fatalities are prosecutable in Texas under two criminal statutes currently:

1) *Capital Murder of a Child Age 10 and under, punishable by imprisonment for life with no parole or the death penalty.*

In order to charge and convict a defendant with Capital Murder, which carries a stiff criminal penalty of life in prison or death, the state must show that the defendant's actions and intent were to murder the child. In the case of a fragile infant, this can be a difficult burden to meet. **In 2013 only 5 such convictions occurred in Texas.**²

2) *Injury to a Child Causing Serious Bodily Injury (SBI), punishable by probation or imprisonment ranging from 5 to 99 years with the eligibility of parole.*

The majority of child abuse fatalities in Texas are prosecuted through the charge of Injury to a Child Causing Serious Bodily Injury (SBI). In order to charge and convict under the Injury to a Child (SBI) statute, the state must show that the defendant knowingly and intentionally caused a bodily injury that caused the death, substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. **The punishment for this statute currently only ranges from probation to 5-99 years imprisonment. In 2013, 79 convictions occurred under this statute.**³

¹ FY10-13 DFPS Annual Child Fatality Report

² 2013 DPS Crime Conviction Report

³ 1st Degree Injury to Child/Elderly/Disabled; DPS/TDCJ data does not specify victim's ages

Current Penalties for Physical Abuse of a Child

Charge	Felony Degree	Sentence Range	Element Required to Indict/Convict	Example
Injury to a Child Causes Bodily Injury	3 rd	Probation or 2-10 years	Knowingly and intentionally caused bodily injury (defined by Penal Code 1.07 (8) as “physical pain, illness, or any impairment of physical condition.”	Child under the age of 17 with bruising to face caused by a caregiver who hit the child. <u>2013 Convictions</u> 579
Injury to a Child Causes Serious Bodily Injury - Reckless	2 nd	Probation or 2-20 years	Recklessly causes serious bodily injury (defined by Penal Code 1.07 (46) as “bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.”	Child under the age of 17 dies after being left in a hot car by their caregiver. <u>2013 Convictions</u> 63
Injury to a Child Causes Serious Bodily Injury	1 st	Probation or 5-99 years	Knowingly or intentionally causes serious bodily injury (defined by Penal Code 1.07 (46) as “bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.”)	Child under the age of 17 sustained injuries to the head, trunk and torso and subsequently died. Injuries were determined to be inflicted, medical examiner rules cause of death as homicide. <u>2013 Convictions</u> 79
Capital Murder of a child 10 and under	Capital	Death penalty Life/no parole Life with eligibility for parole	Knowingly or intentionally causes the death of a child under the age of 10.	Child under the age of 10 is shot by a caregiver and subsequently died. Injuries were determined to be inflicted, medical examiner rules cause of death as homicide. <u>2012 Convictions</u> 5

Recommended Changes to Statute

TexProtects recommends increasing the minimum sentence for Injury to a Child Causing Serious Bodily Injury from 5 years to 10 years. In comparison to other states such as California or Illinois, Texas falls short on the minimum sentence for such a crime. In a number of states, probation is not offered as a punishment option and the minimum sentence ranges from 10-20 years.⁴

Additionally, TexProtects recommends removing probation eligibility on 1st degree Injury to a Child SBI cases. There are a number of violent offenses already ineligible for probation like murder and capital murder. Several crimes against children are also ineligible for probation, such as sexual assault of a child, trafficking and indecency with a child.

- 1) Amend the Penal Code to reflect an increase in the minimum sentence for Injury to a Child Causing Serious Bodily Injury from 5 years to 10 years.
- 2) Amend the Criminal Code of Procedure to reflect Injury to a Child Causing Serious Bodily Injury as an offense ineligible for parole.

⁴ National District Attorneys Association. (2013). Statutory Compilation: Physical Child Abuse Penalties. Retrieved from: [http://www.ndaa.org/pdf/Physical%20Child%20Abuse%20Penalties%20Compilation%202013%20\(3\).pdf](http://www.ndaa.org/pdf/Physical%20Child%20Abuse%20Penalties%20Compilation%202013%20(3).pdf)