Committee OKs bill aimed at child killers

By MARSHA SHULER
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A Senate committee on Tuesday approved a bill that could result in the death penalty for anybody killing a child under 12 — a move the bills author said is partially aimed at child-abuse situations.

The Senate Judiciary C Committee approved the measure in the first scheduled legislative committee hearing to consider bills during the 1985 Legislature.

The committee also approved SB3, also by Windhorst, which specifies which crimes can be considered aggravating circumstances when a jury considers a death case.

The proposed change is in response to the Louisiana Supreme Court declaring unconstitutional one of the aggravating circumstances in current law — that the offender "has a significant prior history of criminal activity." The court said that provision is unconstitutionally vague.

Windhorst said the public believes that capital punishment should be meted out across-the-board in cases where people are killed.

But, he said, that cannot be done because of U.S. Supreme Court decisions.

Windhorst said that is one reason he wants to include in the definition of first-degree murder those cases in which the offender has the specific intent to kill or inflict great bodily harm on a victim under age 12.

"It's come to my attention that there has been some instances where individuals have beaten children to the point of death. I don't know whether this will stop it, but maybe the public just might think twice," Windhorst said.

In the attempt to correct the problem with the death penalty law, the unconstitutional language is stripped out and replaced with specific prior criminal convictions that can be considered by a jury.

Under current law, an offender's conviction on a prior unrelated murder, aggravated rape or aggravated kidnapping could be considered.

Under the proposed changes, supported by the Louisiana District Attorneys Association, a jury would consider prior convictions for aggravated burglary, aggravated arson, aggravated escape, armed or simple robbery, and sentencing an individual as a habitual offender.

The Louisiana Supreme Court voted 5-2 late last year to strike down one of the nine criteria on which a jury can rely in imposing the death penalty on constitutional grounds.

The opinion lifted the death penalty from Elliott Joseph David who was convicted of the murder of Kent Dubstre, 22, of Des Allemands. The Supreme Court let stand David's murder conviction.

The court said the significant criminal history requirement "fails to provide clear and objective standards.

"One jury may be satisfied with two convictions of simple burglary, while another might reject four such convictions as insignificant especially when weighing a person's life or death," the court said.

Current law provides no standard and leaves the court and jury free to react to nothing more than their own prejudices and the ruling standard.

Thus, a death sentence cannot stand on that ground alone, the court said, adding that the standard gives the jury too much discretion.