

SUBJECT: Deferred-adjudication probation

COMMITTEE: Criminal Jurisprudence: committee substitute recommended

VOTE: 7 ayes-- Browder, Burnett, Jones, Maloney, Nabers, T. Smith,
Waldrop

0 nays

1 present, not voting-- Hernandez

3 absent-- Cofer, Hudson, Uher

WITNESSES: For-- None

Against-- None

On-- Valinda Hathcox, director of programs, State Bar;
Richard Gray III, executive assistant to the Attorney
General

BACKGROUND: Texas has two kinds of probation. Under the traditional one, the court, after finding the defendant guilty, may suspend the sentence, impose a fine, and place the defendant on probation.

Under the other kind, the court finds that the evidence substantiates a finding of guilt but defers the actual adjudication of guilt. In this instance, the law provides that the court may place the defendant on probation "on reasonable terms and conditions as the court may require."

DIGEST: The bill would spell out a court's authority to make a defendant pay a fine and satisfy certain other conditions of probation under the deferred-adjudication process. The conditions of probation include paying court costs, supporting one's dependents, restitution to a victim, undergoing alcohol or drug-abuse therapy, reimbursement of the county for court-appointed counsel, etc. The bill would affect probation for misdemeanors and certain felonies.

SUPPORTERS SAY: The bill would not really change the law. It would make clear that the interpretations and practices of many courts are indeed proper. It would promote the use of deferred adjudication.

Deferred adjudication is better than traditional probation. It keeps a conviction off one's record. But some judges have been reluctant to use it. They feel unsure about their authority to collect a fine or impose certain conditions as part of the probation. There have even been some court challenges to assessing such fines. This bill would let courts use deferred adjudication with confidence.

SUPPORTERS
SAY:
(continued)

Some defendants would be getting off too easily if the court could not impose a fine. One particular example is for DWI's. Deferred adjudication allows a DWI driver to keep his license. But a fine is needed as a deterrent to the crime. And the court should not be reluctant to require restitution and alcohol-abuse therapy as part of the probation.

OPPONENTS
SAY:

The bill distorts the purpose of a deferred adjudication. It is supposed to permit one to have a clean record if he takes rehabilitative steps such as drug-abuse therapy or restitution. Instead, this bill would allow a court to impose a fine simply as an additional punishment. It is wrong to punish someone who will later be declared to have done no wrong.

The bill is a back-door approach to increasing the penalty for an offense. Requiring a fine puts the defendant into the position of having to "buy" a deferred adjudication. This is especially unfair to poor people. Justice should not be for sale.

OTHER
OPPONENTS
SAY:

This bill is unnecessary. The law, properly read, already allows a judge to assess a fine and impose the listed conditions. To enact this bill would give more ammunition to attacks on fines imposed under the current law.