

SUBJECT: Continuing jurisdiction by courts to handle felony case dispositions

COMMITTEE: Criminal Jurisprudence —favorable, without amendment

VOTE: 7 ayes — Keel, Riddle, Pena, Denny, Hodge, Raymond, Reyna

0 nays

2 absent — Escobar, P. Moreno

WITNESSES: For — Philip Kazen; Ann Del Llano, ACLU of Texas; Andrea Marsh, ACLU of Texas.

Against — None

BACKGROUND: Under current law, a judge may sentence an individual to what is known as "shock probation" for non-aggravated offenses. If a defendant pleads guilty, a judge may send the defendant to prison, then remove the defendant from prison within the first 180 days and place the defendant on community supervision. The judge may do this on the judge's own motion or on the motion of the prosecution or defendant if:

- the judge believed that the defendant would not benefit from further imprisonment;
- the defendant was otherwise eligible for community supervision; and
- the defendant had never been in prison for a felony.

Between 75 and 180 days in which the defendant is in prison, the sentencing judge also may suspend the sentence and place a defendant in a state boot camp program if:

- the judge believed that the defendant would not benefit from further imprisonment;
- the person was otherwise eligible for community supervision;
- the person was between the age of 17 and 26 and is physically and mentally capable of participating in a program that required strenuous physical activity; and

- the person was not convicted of an offense punishable as a state jail felony.

In certain circumstances, a defendant may be given deferred adjudication. After a plea of guilty or no contest, a judge may defer the finding of guilt and place the defendant on community supervision if the judge believes it is in the best interest of the defendant and society. If the defendant violates the terms of community supervision, the defendant may be arrested and the court may proceed with the adjudication of guilt on the original charge. At the end of the term, if the defendant has complied with the terms, the judge must dismiss the charges against the defendant.

The maximum period of deferred adjudication community supervision is 10 years in a felony case and two years in a misdemeanor case. Deferred adjudication is not available for most intoxication offenses, for selling drugs in a drug-free zone, or for the sale of controlled substances to minors.

**DIGEST:** HB 1859 would allow a judge to withdraw an adjudication of guilt and place a defendant on deferred adjudication before the expiration of 180 days after a defendant was imprisoned.

It also would allow a judge who denied such a motion to suspend a sentence to reduce the offender's period of incarceration.

The bill would take effect on September 1, 2005, and would apply to offenses committed on or after the effective date.

**SUPPORTERS  
SAY:**

Current law provides that aggravated offenders are eligible for deferred adjudication but not community supervision. Consequently, judges may not place aggravated offenders on "shock probation" even in the event the judge felt that the defendant might be susceptible to change. A short period of exposure to the violence and harshness of prison life has proven to be an effective way to scare some young offenders into shaping up. This bill would give judges the discretion to place aggravated offenders on "shock probation" in the event the judge felt that it might be the appropriate treatment for an offender.

Studies from the U.S. Department of Justice have found that incarceration slightly increases criminal behavior. Therefore, sending a person to prison who may otherwise be treatable is counter-productive. This bill would

allow judges to give those offenders who may be susceptible to change the chance to become productive members of society, rather than turning them into hardened criminals. If the defendant were to slip up, the judge would retain the discretion to send the offender back to jail.

Community supervision is significantly less costly than incarceration. HB 1859 also would reduce prison costs while helping to relieve Texas' severe prison-overcrowding problem.

HB 1859 also would give a judge the discretion to reduce a sentence if the judge chose to deny a request for shock probation. The judge is most familiar with the defendant's case and is in the best position to decide the appropriate sentence. The bill would therefore give the judge the tools necessary to craft a punishment that was most suitable for the defendant.

OPPONENTS  
SAY:

This bill would allow a judge to reduce a sentence issued by a jury. In doing so, this bill would essentially render the jury's sentence meaningless. Nowhere else in Texas law could a judge interfere with a jury's sentence in this way.

HB 1859 also would enable a judge to find a defendant guilty, send the defendant to prison, and then retract the finding of guilty upon sentencing the defendant to deferred adjudication. This also would be unprecedented in Texas law and would essentially make the initial finding of guilt a legal fiction.