

**SUBJECT:** Length of probation terms and mandatory review of probation

**COMMITTEE:** Corrections — committee substitute recommended

**VOTE:** 4 ayes — Madden, Hochberg, Dunnam, Haggerty  
0 nays  
3 absent — McReynolds, Jones, Oliveira

**WITNESSES:** For — Joan Burnham and Penny Rayfield, Austin/Travis County Reentry Roundtable; Will Harrell, ACLU, NAACP, LULAC; Todd Jermstad, Texas Probation Association; Allen Place, Texas Criminal Defense Lawyers Association; Ana Yanez-Correa, Texas Criminal Justice Coalition; Clifford Gay; (*Registered, but did not testify*: Suzanna Hupp, Texans for Public Safety Solutions; Beth Olson, Texas Baptist Christian Life Commission; Michael Pichinson, Texas Conference of Urban Counties; Marcelo Tafoya, League of Latin American Citizens (LULAC) District 7)  
  
Against — (*Registered, but did not testify*: Greg Miller, Tarrant County District Attorney)  
  
On — Marc Levin, Texas Public Policy Foundation; Tom Plumlee, Tarrant County CSCD Probation Advisory Committee; Bonita White, Texas Department of Criminal Justice, Community Justice Assistance Division; Larry Gist; Dana J. Hendrick

**BACKGROUND:** Under Code of Criminal Procedure (CCP), art. 42.12, after a criminal defendant has been convicted or pleaded guilty or *nolo contendere*, a judge may suspend the imposition of the sentence and place the defendant on community supervision, also called probation.  
  
Persons sentenced to a prison term of more than 10 years cannot be placed on probation. For first-, second- and third-degree felony offenses, the minimum length of a probation term that can be imposed is the minimum period of imprisonment that the felony carries and the maximum term length is 10 years. For state jail felony offenses, the minimum probation

term is two years and the maximum is five years. The maximum probation term in misdemeanor cases is two years.

Offenders guilty of certain violent and serious crimes listed in CCP, art. 42.12 sec. 3(g) are not eligible for judge-ordered probation. These crimes are often referred to as "3g" offenses. This means that persons convicted of murder cannot be placed on probation by a judge, but they can receive deferred adjudication for murder from a judge. Juries can place people convicted of murder on probation.

Probation terms can be extended under some circumstances. CCP art. 42.12, sec. 22(c) allows judges to extend probation periods as often as the judge deems necessary, as long as the total probation period does not exceed the limit of 10 years for first-, second-, third-degree felonies, and state jail felons and three years for misdemeanors.

Under CCP, sec. 20, judges can reduce or terminate probation terms after defendants have completed one-third of their original terms or two years, whichever is less.

The vast majority of criminal cases are resolved through plea agreements, and most plea-bargain cases result in probation.

**DIGEST:**

CSHB 1678 would make numerous changes to the laws governing probation, including: reducing the maximum length of some third-degree felony probation terms; requiring judges to review defendants for possible early termination of their probation; requiring judges to give defendants credit on their sentences for successfully completing certain treatment programs; and eliminating mandatory community service requirements.

**Length of probation terms.** CSHB 1678 would reduce from 10 years to five the maximum probation term for certain third-degree felonies. This would apply only to:

- third-degree felony property offenses, except for on-line solicitation of a minor done with intent to engage in sexual contact, sexual intercourse, or deviant sexual intercourse; and
- third-degree felony controlled substance offenses in Chapter 481 of the Health and Safety Code.

**Mandatory review for possible reduction or termination of probation.**

Judges would be required to review defendant's records and consider whether to reduce or terminate probation after defendants had served one-half of their sentences or two years, whichever was more. However, judges would not have to review the records of defendants who were delinquent in paying restitution, fines, costs, or fees that they have the ability to pay or defendants who have not completed court-ordered counseling or treatment. Judges would be required to notify the prosecutor before conducting the review. Judges who determined that a defendant had failed to fulfill the conditions of probation would be required to tell the defendant in writing what would be necessary to fulfill the conditions.

The current prohibition on early termination for state jail felons would be eliminated so that these defendants could have their probations terminated or reduced before the end of their terms.

The bill would make “3g” defendants ineligible for early termination and would continue the prohibition on early termination for offenders subject to the state’s sex offender registration laws and those convicted of certain intoxication offenses.

**Continuation of probation.** Judges' current authority to extend a period of probation would be modified so that extensions could be made only on showings of good cause.

**Giving credit against a sentence.** CSHB 1678 would require judges to give defendants on probation as a condition of deferred adjudication credit against their sentences for time spent in a substance abuse treatment facility or another court-ordered residential program or facility if they had successfully completed the program. To defendants whose probation was revoked, judges also would have to give credit for time spent in the same facilities if the defendant successfully completed the program.

CSHB 1678 would require judges to give state jail felons credit against their sentences for time spent in a substance abuse treatment facility or another court-ordered residential program or facility as a condition of deferred adjudication probation if the defendant successfully completed the treatment program.

If a state jail felon's probation were revoked and the felon was required to serve time in a state jail, a judge would be required to credit the defendant

for time served in a substance abuse treatment facility or another court-ordered residential program or facility if the defendant successfully completed the program.

**Community service.** CSHB 1678 would give judges discretion about whether to require probationers to perform community service, instead of the current mandate that all defendants be required to do so. The bill also would remove the minimum number of community service hours specified in current law for each category of offense.

**Jury-recommended probation.** CSHB 1678 would prohibit a person convicted of murder from receiving jury-recommended probation.

**Payment of probation fees by credit, debit card.** The director of a local probation department could, with judicial approval, authorize a system to accept payment of fees, fines, court costs or other charges by debit or credit card and could collect a fee for processing the payment by debit or credit card.

**Effective date.** CSHB 1678 would take effect September 1, 2007, and would apply only to persons initially placed on probation on or after that date. The provisions allowing debit and credit card payments would apply to fees, fines, court costs, and charges paid after September 1, 2007.

SUPPORTERS  
SAY:

**Length of probation terms.** CSHB 1678 would improve sentencing dynamics by allowing for shorter but more intense supervision terms for certain non-violent property and drug offenders who commit third-degree felonies. This would be a better use of probation resources and would lead to more meaningful probation oversight for all offenders.

CSHB 1678 would limit these shorter terms to the lowest level of felonies and to non-violent offenses. First- and second-degree felonies, serious and violent "3g" offenders, and sex offenders would not fall under these provisions.

Current probation terms of up to ten years are inappropriate and unrealistic for these low-level non-violent offenses. Even rehabilitated probationers assigned such a lengthy probation term can easily violate one of the numerous and detailed conditions of probation. By reducing terms of probation, CSHB 1678 could decrease the likelihood that a probationer would be tripped up by a technicality and sent to prison for a violation that

may not warrant the use of a state prison bed. State prisons are operating at capacity now, and beds should be reserved for the most serious and violent offenders. CSHB 1678 more closely would align Texas' probation terms with those in other states.

Offenders who would be able to pay off their restitution should be able to do so within the terms authorized by CSHB 1678.

Code of Criminal Procedure sec. 22 allows for probation terms to be extended and could be used if a shorter term was inappropriate for one of the third-degree felons described by CSHB 1678.

**Mandatory review for possible reduction or termination of probation.**

CSHB 1678 would ensure that judges take a critical look at most probationers and give judges a formal opportunity to release from probation those defendants who are doing a good job. The bill would not mandate that a judge terminate probation in any case or institute a bias toward early release because all decisions would remain within the full discretion of a judge. The bill would ensure that prosecutors were kept in the loop by requiring that they be notified before a judge conducted a review. There are ways for prosecutors to share information about a case without a formal hearing.

Although current law authorizes judges to review probationers, the bill would require a review of all cases. Public safety would be protected by making persons convicted of "3g" offenses ineligible for early termination and by continuing the current prohibition on early termination for certain intoxication offenses and sex offenders.

CSHB 1678 would conserve judicial resources by not requiring judges to review cases in which defendants were delinquent in their required payments or had not completed court-ordered treatment or counseling. Judges would be required to tell defendants why probation is not being terminated so that defendants understand what they have done wrong and what they need to do for the remainder of their terms. This would help prevent unreasonable standards for some defendants.

**Giving credit against a sentence.** Requiring judges to give defendants credit against a sentence for time spent in a substance abuse treatment facility and court-ordered treatment programs would be reasonable since the time spent in the program is required by the court and these are secure

facilities. This time is analogous to time spent in jail and should be treated the same.

To ensure that defendants do not just mark their time in a program without working on their rehabilitation, CSHB 2193 would require that they successfully complete the program to receive credit on their sentences. These treatment facilities are required to provide probation departments with certain information and reports so that an offender's time in the facility could be evaluated to determine whether the treatment was successful.

**Community service.** CSHB 1678 would give judges more discretion and flexibility in assigning community service. Current mandates that the service be imposed in all cases can lead to probation requiring service that is inappropriate. In some cases, it would be better for defendants to concentrate on other factors such as getting a job or attending a treatment class instead of performing community service. Judges should have the authority to make decisions on a case-by-case basis.

**Payment of probation fees by credit, debit card.** Giving probation departments the authority to collect fees by debit and credit cards would mirror the authority given to other entities to collect fees, fines, and costs.

OPPONENTS  
SAY:

**Length of probation terms.** Reducing the maximum length of probation terms for some third-degree felonies could upset the sentencing dynamics currently used in Texas. In many of these felony cases, prosecutors enter into plea agreements because of the availability of 10-year probation terms. Long probation terms can help ensure that a defendant is rehabilitated and not a danger to the public, partly because they give courts the option of revoking probation and sending defendants to prison if they do not meet probation conditions. Without this option, prosecutors could be less inclined to agree to probation in some third-degree felony cases.

In general, probation terms currently established by courts are not unreasonable. They include getting a job, supporting dependents, and not committing another crime. Many probationers who are doing a good job over the years are placed on a kind of inactive status while they pay their debts and check in with probation officers. Other probationers who are not doing a good job deserve to continue under long-term supervision.

Not all third-degree felony and drug offenses would be appropriate for the shorter probation terms mandated by CSHB 1678. Probation terms of more than five years may be appropriate for such crimes as arson, high-dollar thefts, and breach of computer security.

Offenders with high amounts of restitution to pay could have difficulty doing so under the shorter timelines. A requirement that restitution amounts of between \$20,000 and \$100,000 be paid within five years could be unrealistic.

**Mandatory review for possible reduction or termination of probation.**

Current law allows judges to review offenders at their own discretion and to reduce or terminate a probation term after one-third of the original term, or two years, whichever is less. The requirement that judges review probationers upon completion of one-half of their terms would be unrealistic.

The mandatory review established in CSHB 1678 could contribute to distortions in the state's sentencing. The review, with what many would see as a bias toward terminating probation, could lead prosecutors to view the maximum five-year terms as two and one-half year terms, which may be unreasonable and unacceptable to some prosecutors, victims, and members of the public.

Requiring judges to notify prosecutors before a review would be insufficient. Prosecutors should be able to submit input on a potential reduction or termination.

It is unnecessary and burdensome to require judges to tell defendants in writing why they did not receive an early termination. Defendants are aware if they have not met their probation conditions and do not need to receive a written document from the judge. Judges may prefer not to put their reasoning in writing because they decided not to terminate a case on the basis of something less concrete, such as a combination of the nature of an offense, a defendant's criminal history, and the effort the defendant has put into meeting the terms of probation.

**Giving credit against a sentence.** CSHB 1678 could infringe on judicial discretion by requiring judges to give credit to defendants for time spent in substance abuse programs and court-ordered residential programs or facilities. Rather than mandating that judges give this kind of credit,

judges should be given the authority to make these decisions on a case-by-case basis.

Without establishing an objective definition of "successfully complete" or giving judges the authority for judges to determine what it means, it would be possible for a defendant to "successfully complete" a treatment program but still have a record that did not warrant credit against a sentence.

**Community service.** Current law mandates community service and sets minimum requirements to ensure the uniform application of community service laws. Eliminating mandatory community service could result in disparate treatment of defendants from court to court.

OTHER  
OPPONENTS  
SAY:

**Length of probation terms.** CSHB 1678 would not go far enough in allowing for reduced probation terms. The bill would limit the reduced terms to property offenses that are third-degree felonies, but it could do more to help the state focus its resources on those who really need them by allowing other felons to also have terms reduced.

**Giving credit against a sentence.** CSHB 1678 should include a standard way of determining how much credit to give to offenders. It is unclear whether the credit should be day-for-day or some other method.

NOTES:

The committee substitute made numerous changes to the original bill, including: adding other court-ordered residential programs or facilities to the types of programs that offenders would get credit for; excluding certain on-line solicitation of a child offenses from those that would have their maximum probation reduced; adding the prohibition for persons convicted of murder from receiving jury-recommended probation; making it mandatory, instead of discretionary, that state jail felons receive credit against their sentences for time in treatment facilities and that offenders receive credit for time in treatment programs if their probation were revoked; and eliminating the minimum number of community service hours, while the original bill left the minimum and eliminated the maximum number of hours allowed.

The fiscal note for HB 1678 estimates that it would cost the state about \$646,477 for fiscal 2008-09.