

SUBJECT: Extended community supervision terms for certain sex offenders

COMMITTEE: Corrections — favorable, without amendment

VOTE: 7 ayes — Hightower, Allen, Edwards, Farrar, Gray, Hupp, Marchant

0 nays

2 absent — Alexander, Serna

WITNESSES: For — Sterlene Donahue, Justice For All; Laura Lyons, Texas Association
Against Sexual Assault; David M. Page, BI Incorporated

Against — None

BACKGROUND : Code of Criminal Procedure Art. 42.12 sec. 3 authorizes judges to suspend a sentence after a conviction or plea of guilty or nolo contendere and to place a defendant on community supervision (probation). Defendants also must be put on community supervision if a jury imposes a prison sentence and then recommends to the judge that the person be put probation. If a defendant pleads guilty or nolo contendere, judges also can defer adjudication of guilt and place defendants on community supervision.

The code contains numerous restrictions on community supervision, including minimum and maximum terms. The minimum period of community supervision for persons convicted of or given deferred adjudication for certain sex offenses, including indecency with a child, sexual assault and aggravated sexual assault, is five years and the maximum term is 10 years. The code also prohibits judge-ordered probation for persons convicted of certain violent offenses, including indecency with a child involving contact and aggravated sexual assault. Indecency with a child, sexual assault, and aggravated sexual assault are all first-, second- or third-degree felonies.

Under Code of Criminal Procedure Art. 42.12 sec. 22(c), judges are allowed to extend periods of community supervision as often as they determine is necessary for first-, second- and third-degree felonies as long as the probation period does not exceed 10 years.

DIGEST: HB 2918 would allow judges to extend a period of community supervision for an additional 10 years beyond a current limit of 10 years for persons convicted or given deferred adjudication for specified sex offenses. Judges would be able to extend probation for up to 10 years for persons convicted of or given deferred adjudication for indecency with a child, sexual assault, or aggravated sexual assault. Judges would be able to extend community supervision under the provisions in HB 2918 only once, but this authority would be in addition to current authority to extend community supervision for up to a total of 10 years for first-, second-, and third-degree felonies.

To extend probation, a judge would have to have a hearing and determine that the defendant had not sufficiently demonstrated a commitment to avoid future criminal behavior and that releasing a person from probation would endanger the public. In the hearing, defendants would have to be given the same rights given to defendants in community supervision revocation hearings.

HB 2918 also would authorize Texas Department of Criminal Justice (TDCJ) to establish a good conduct time classification that requires diligent participation in treatment by inmates whom TDCJ determines need treatment and that awards good conduct time based on that participation.

The provisions allowing judges to extend community supervision terms would apply to persons charged with or convicted on or after September 1, 1997, the bill's effective date. The provisions dealing with good conduct time would apply to inmates incarcerated in TDCJ for offenses committed on or after September 1, 1997.

SUPPORTERS SAY: HB 2918 would give judges more flexibility to keep watch for an extended time over offenders who have committed indecency with a child, sexual assault, or aggravated sexual assault. This would continue the state's revisions of its criminal justice system to ensure that the most dangerous offenders are adequately supervised and that the public is adequately protected.

Extending supervision periods for persons who have committed serious sex offenses could be warranted if a judge was not satisfied with a probationers' progress but either could not or would not want to revoke probation and

send the person to prison. Or, a judge could want to extend a probation period so that a defendant would continue sex offender treatment.

HB 2918, in conjunction with current law, could allow an offender's community supervision to continue for a maximum of 20 years. Since it appears that the recidivism rate for sex offenders who are supervised is lower than for those who are not, extended community supervision terms would help reduce recidivism among offenders and make the community safer. Twenty years of supervision is not unreasonable for persons who have committed serious offenses such as indecency with a child, sexual assault, and aggravated sexual assault and avoided prison by being placed on probation. An extended community supervision term would allow a judge to monitor a person's progress and if necessary to revoke community supervision and send offenders to prison.

HB 2918 would ensure that offenders who have their community supervision extended are treated fairly by requiring a hearing before a term could be extended. Offenders would be guaranteed the same rights afforded in a probation revocation hearing, including the right to counsel. In addition, a judge would have to determine both that an offender had not demonstrated a commitment to avoid future crimes and that an offender's release from community supervision would endanger the public.

Extending the length of community supervision would cause no legal or constitutional problems. Defendants would be put on notice of the possibility of an extension of their community supervision, and the code already allows probation for first-, second-, and third-degree felonies to be extended for up to 10 years.

HB 2918 also would give TDCJ clear authority to put offenders who need treatment — including sex offenders — into a good-time category that made the award of good time dependent on diligent participation in treatment. This would give inmates an incentive to participate in treatment and would ensure that these offenders were working hard at their rehabilitation and were awarded good time only if they deserved it. Treatment could help reduce inmate recidivism and help protect the public when inmates are released. HB 2918 is broad enough to allow it to be used for inmates who need substance abuse treatment or other kinds of treatment.

The TDCJ board would be able to develop guidelines and rules about the good time category and inmate treatment to ensure that they are used fairly and consistently. Allowing TDCJ to determine who needs treatment and when it would be required as part of a good conduct category would allow the department to match treatment needs with available resources. For example, violent and sex offenders sentenced since 1995 must serve one-half of their sentences or 30 years, whichever is less, with no consideration of good conduct time before becoming eligible for parole. While these offenders may need treatment, it might make sense to require treatment only in the latter part of their sentences when they become parole eligible and good time becomes factor in their eligibility.

HB 2918 would complement other efforts being made to increase funding for parole supervision. Because current law authorizes the parole board to impose a wide range of sanctions, there is no need for HB 2918 to contain changes in the parole statutes. Efforts are being made to increase funding for parole services so that restrictions could be tightened on parolees and persons who are required to be released under the mandatory supervision laws, including sex offenders. These restrictions could include release to intermediate sanction facilities or increased monitoring.

**OPPONENTS
SAY:**

HB 2918 would unfairly single out one group of offenders for punishment beyond their original sentences. Authorizing an extra extension of community supervision time for some probationers would unfairly allow judges to keep these persons on a hook, with a possible prison sentence hanging over their head, and to make modifications to the terms of their community supervision, for as long as 20 years.

In addition, the bill could open the door for even longer extensions of supervision and for the use of extended supervision for other crimes. HB 2918 could be the first step in unwisely enacting lifetime probation.

The bill's standards to allow judges to extend probation are vague, especially the provision concerning a judge's determination of whether a defendant's release would endanger the public.

Provisions allowing TDCJ to set up a special good time classification for inmates who need "treatment" are vague. These provisions could be abused

to route troublesome or other types of inmates into a special good time category that awards less good time than other categories and that requires inmates to participate in treatment.