

SUBJECT: Authorizing public notice of offense as probation condition

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Hinojosa, Dunnam, Keel, Nixon, Wise

1 nay — Garcia

3 absent — Green, Smith, Talton

WITNESSES: For — None

Against — None

On — Ted Poe

DIGEST: HB 1162 would amend the Code of Criminal Procedure to allow judges to require persons placed on community supervision (probation) to provide public notice of their offense in the county in which they committed the offense. The notice could be in any manner required by the judge.

The bill would take effect September 1, 1999.

SUPPORTERS SAY: HB 1162 would authorize but not require judges to require probationers to notify the public about their offenses. Judges could, for example, require shoplifters to stand outside the stores from which they stole with signs saying “I am a thief,” or require batterers to apologize to their victims on the courthouse steps. This probation tool could be especially helpful with young, first-time, nonviolent offenders who commit offenses such as theft.

While at least one judge already uses these types of probation conditions, others seem reluctant to follow suit. HB 1162 would remind judges of the availability of this effective probation option and would encourage its use. Of the 79 persons who have been ordered in the past three years by one judge to notify the public of their offenses, only three have violated their probation. This compares with probation revocation rates of about 40 percent for other offenders in some counties.

HB 1162 would not infringe on judicial discretion but would leave decisions about establishing probation conditions to judges, who still would be free to craft specific conditions for each case. The statutes list numerous optional probation conditions that judges can impose, and these never have been taken to be exclusive or exhaustive lists.

This type of probation condition would not encourage vigilantism because judges would have discretion to decide which defendants could benefit from it and would not impose it on a defendant whose victim did not support it.

HB 1162 deals only with public notice, not with any kind of public corporal punishment. Defendants would continue to have the right to appeal any conditions they considered an abuse of judicial discretion.

OPPONENTS  
SAY:

HB 1162 is unnecessary because judges already have broad authority to impose conditions on probationers. The Code of Criminal Procedure allows judges to impose any reasonable condition designed to protect or restore the community, protect or restore the victim, or punish, rehabilitate, or reform the defendant.

It could be inappropriate for the Legislature to continue to enumerate probation conditions. There is a danger that some people might view lists of possible probation conditions as exclusive lists, resulting in challenges if courts deviated from the list. In addition, courts could become reluctant to craft conditions that are not on the list but that could be more appropriate for a specific case.

The state should not encourage the use of public notification of offenses as a probation option. This kind of public display may not be the best way to rehabilitate an offender and could lead to harassment and vigilantism.