

**SUBJECT:** Allowing additional days in a county jail for probation violation

**COMMITTEE:** Criminal Jurisprudence — community substitute recommended

**VOTE:** 8 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody, Schaefer, Toth  
0 nays  
1 absent — Hughes

**WITNESSES:** For — Mollee Westfall, 371st District Court; (*Registered, but did not testify*: Lon Craft, Texas Municipal Police Association; Leighton Iles, Tarrant County Community Supervision and Corrections Department; Bill Shier)  
  
Against — John Dahill, Texas Conference of Urban Counties; (*Registered, but did not testify*: Greg Hamilton, Sheriff's Association of Texas)  
  
On — Mark Mendez, Tarrant County Commissioners Court; Jeanette Moll, Texas Public Policy Foundation; Allen Place, Texas Criminal Defense Lawyers Association

**BACKGROUND:** Code of Criminal Procedure art. 42.12 sec. 12 authorizes judges to require persons being put on community supervision (probation) for felony offenses to serve up to 180 days in a county jail as a condition of community supervision.

**DIGEST:** CSHB 1242 would allow judges to order persons on community supervision for felonies to serve time in a county jail — in addition to the 180 days currently allowed — as a condition of probation if the judge determined that the person violated a condition of probation after being warned. The jail term would be limited to:

- three days for a first violation;
- seven days for a second violation;
- 14 days for a third violation; and

- 21 days for a fourth or subsequent violation.

Judges would first have to give a written warning to probationers that clearly communicated the consequences of violating a condition of community supervision, including the ability of a judge to modify the community supervision, to require felony defendants to serve additional days in confinement as authorized by the bill, and to revoke the community supervision.

The bill would take effect September 1, 2013, and apply to persons placed on community supervision on or after that date.

**SUPPORTERS  
SAY:**

CSHB 1242 is needed to give judges another tool to handle felons who are on probation with the goals of motivating them to follow the rules, decreasing costs for the state, and prioritizing prison space for violent offenders.

Currently, there is a 180-day limit on the amount of time that felons on probation can be required to serve in county jails. If a probationer has served all 180-days judges do not have the option of sending them back to jail if they later break a rule on probation. At that point judges' options are limited to revoking community supervision and sending the offender to a prison or modifying the terms of probation, and these extremes may seem inappropriate.

CSHB 1242 would address this issue by giving judges the option of a limited number of additional days that that could be used to get offenders' attention with a kind of "jail therapy" and to motivate them to follow the rules. The bill would require judges to give a written, clear warning to probationers to ensure that they were aware of any potential sanctions. When judges use CSHB 1242 to require a jail term, they would operate under and respect the current procedures for amending probation requirements to ensure defendants had notice and a chance to respond to the change. Under programs similar to the one that would be authorized by the bill, probationers meet with judges for every change to probation conditions such as the jail time that would be authorized by the bill.

CSHB 1242 is modeled on a successful program in Hawaii that has been shown to significantly lower the probability that the participants will reoffend, which improves public safety. A similar pilot program in Tarrant County has been successful. These programs are based on the idea that

probationers will respond to immediate sanctions rather than longer, more severe punishments that may seem remote.

CSHB 1242 would not lead to increased overall costs to counties. Most likely it would be used in a limited number of cases, and the days that probationers can be jailed are capped. Defendants who have their probation revoked generally spend significant time in jail before they are transferred to the Texas Department of Criminal Justice, and when a probation revocation is avoided because of a few days of shock-jail time, the overall number of days in county jails would be reduced.

OPPONENTS  
SAY:

CSHB 1242 could increase costs for counties that would have to house the probationers sent back to jail under the bill. Counties have been wrestling with paying to house in county jails offenders, such as those having their parole and probation revoked, who should be the state's responsibility, and this bill could exacerbate those problems.

OTHER  
OPPONENTS  
SAY:

It is unclear whether a defendant would be afforded the chance to respond before the sanctions in CSHB 1242 would be imposed. The bill requires that the judge give a warning but not that a person be given an official chance to respond.