

**SUBJECT:** Limiting deferred adjudication for sex offenders

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

**VOTE:** 6 ayes — Place, Talton, Dunnam, Galloway, Hinojosa, Nixon  
1 nay — Keel  
2 absent — Farrar, A. Reyna

**SENATE VOTE:** On final passage, April 4 — voice vote

**WITNESSES:** No public hearing

**BACKGROUND**  
:  
Under most circumstances, when a person has pleaded guilty or nolo contendere to a criminal charge, judges can defer further proceedings and place the defendant on community supervision (probation) when in their opinion the best interest of society and the defendant will be served. In this situation, no adjudication of guilt has occurred, and a person is said to be on *deferred adjudication*. Judges can impose fines and require any reasonable condition of community supervision. If defendants violate a condition of their community supervision, judges may proceed with an adjudication of guilt and impose the full range of punishments available for the offense. If a defendant successfully completes the deferred adjudication, judges are required to dismiss the proceedings and discharge the defendant. Judges cannot grant deferred adjudication for persons charged with certain offenses involving certain intoxication and alcoholic beverage offenses and certain drug offenses.

For most offenses judges can dismiss proceedings and discharge defendants prior to the expiration of the defendants' term of community supervision. However, persons placed on deferred adjudication for certain sex offenses committed against children must serve at least two-thirds of their deferred adjudication before the proceedings may be dismissed and the defendant discharged.

**DIGEST:** CSSB 381 would make changes concerning the handling of deferred adjudication for defendants accused of certain sex crimes.

CSSB 381 would take effect September 1, 1997.

**Deferred adjudication.** CSSB 381 would allow a judge to place certain sex offenders on deferred adjudication only if the judge made a finding in open court that placing the person on community supervision was in the best interest of the victim. This would apply to persons charged, regardless of the age of the victim, with:

- indecency with a child;
- sexual assault; and
- aggravated sexual assault; and

to persons charged with the following offenses committed against children:

- sexual performance of a child;
- possession or promotion of child pornography;
- indecent exposure;
- prohibited sexual conduct (incest);
- aggravated kidnapping with intent to abuse sexually; and
- first-degree burglary with intent to commit indecent exposure, indecency with a child, sexual assault, aggravated sexual assault, prohibited sexual conduct, or aggravated kidnapping with intent to abuse sexually.

**Trying multiple offenses together or separately.** If a person were found guilty of or entered into a plea bargain for two or more of certain specified sex offenses occurring in the same criminal episode, the sentences could run concurrently (at the same time) or consecutively (one after the other). This would apply to the following offenses committed against a victim who was younger than 17 years old: indecency with a child, sexual assault, aggravated sexual assault, prohibited sexual conduct or sexual performance by a child.

The right of the defendant to have the offenses tried separately would not apply to prosecutions for indecency with a child, sexual assault, aggravated sexual assault, prohibited sexual conduct, or sexual performance by a child if committed against a victim who was younger than 17 years old unless the court determined that the defendant or the state would be unfairly prejudiced by a trying the offenses together. In these cases, the judge could order the offenses to be tried separately or other relief.

**Deferred adjudication as a previous offense.** CSSB 381 would specify that deferred adjudication for certain sex offenses would be counted as a previous offense in determining whether a new sex offense qualified as a previous offense that resulted in a repeat offender being automatically sentenced to life in prison.

Persons would be considered to have been previously convicted of an offense if they had been found guilty by a court or entered a plea of guilty or no contest in return for a grant of deferred adjudication, regardless of whether the sentence was imposed or whether it was probated and the person put on community supervision. Convictions in other states for offenses similar to the Texas offenses that result in a life in prison sentence would count as previous convictions.

**Public notification of sex offender whereabouts.** CSSB 381 would change which sex offenders who committed their offenses against children were subject to newspaper notification of their whereabouts under the state's sex offender registration and notification law. The bill would eliminate a current exemption from the newspaper notification requirements for all offenders given deferred adjudication and would exempt *only* offenders given deferred adjudication for prohibited sexual conduct (incest).

SUPPORTERS  
SAY:

CSSB 381 would put some reasonable, appropriate parameters on the use of deferred adjudication for sex offenders who commit their crimes against children. These sex offenders tend to be repeat offenders who prey on the most vulnerable members of society. Because of the seriousness of these offenses and the danger that the offenders represent, it is appropriate to restrict the use of deferred adjudication for these offenders. CSSB 381 would help lift the veil of secrecy that too often works to the benefit of sex offenders when they are granted deferred adjudication.

Requiring judges to make a determination in open court that deferred adjudication was in the best interest of the victim in the most serious sex offenses cases would ensure that victims are taken into consideration. Current law, which requires judges to consider only the best interests of society and the defendant, unfairly leaves victims outside of the determination.

Giving judges the discretion to try multiple offenses together in the situations listed in CSSB 381 would be appropriate because of the serious nature of these sex crimes and the difficulty of multiple trials for child victims. Defendants sometimes use their right to have multiple offenses tried separately as a tactic to traumatize victims by putting them through multiple trials and to delay their ultimate sentences. CSSB 381 would restrict defendants' right to multiple trials for serious sex offenses committed against children so that child victims cannot be forced to undergo multiple trials. However, CSSB 381 would include a safeguard for defendants because this restriction would not apply if a judge determined that the defendant or the state would be unfairly prejudiced by trying the offenses together.

CSSB 381 would give courts the flexibility to order sentences for multiple sex offenses from the same criminal episode to run concurrently or consecutively. Currently, if multiple sex offenses are tried together, defendants serve their sentences concurrently. This can result in an inappropriately light punishment in which justice is not served for someone found guilty of multiple sex offenses against children. CSSB 381 would allow courts this option only if the offenses were part of the same criminal episode.

By making deferred adjudications on some sex offenses count as a previous offense if the person was convicted of another sex offense, CSSB 381 would ensure that a repeat sex offender's past was considered and that the offender would be properly punished. Currently, a previous deferred adjudication for a sex crime does not count as a previous offense that can be used to enhance a punishment for a person who committed another crime. Repeat sex offenders should not be punished like first-time offenders and should have their past offenses — even if given deferred adjudication — considered when they have committed another offense.

CSSB 381 would ensure that the public is notified, through current newspaper notification requirements, of the whereabouts of sex offenders who committed their offense against a child, even those given deferred adjudication. Exempting those given deferred adjudication as current law does, can put the public and children at risk. The public deserves to know the whereabouts of these offenders. To protect victims in the most sensitive cases and ensure they are not victimized again, CSSB 381 would continue to prohibit newspaper notification about offenders who are given deferred adjudication for incest.

**OPPONENTS  
SAY:**

Special criminal statutes and exceptions should not be carved out for sex crimes. Deferred adjudication for sex crimes should continue to be treated in the same manner as for other offenses. CSSB 381 could be the first unwise step in eliminating deferred adjudication altogether for sex offenses. Deferred adjudication is an important tool, especially in sex offenses cases that may be difficult to prove or defend in a trial, that should not be restricted.

It is unnecessary to require judges to make a determination about the best interest of victims before granting deferred adjudication for certain sex cases. Judges already have to make a finding that deferred adjudication would be in the best interest of society and the defendant and the interests of the victim should be considered as part of the interests of society. This provision could work to discourage the granting of deferred adjudication for sex offenses because judges might feel pressured not to make such a finding given the charged atmosphere often surrounding sex offenses.

CSSB 381 would give too much power to the state and treat defendants unfairly by taking away defendants' right to have multiple offenses tried separately and by giving judges the ability to make defendants serve sentences consecutively. There are circumstances when a defendant might want to be tried for multiple offenses separately, and this right should be retained. For example, a defendant might not want a court to be prejudiced concerning one charge with evidence from another charge. By allowing defendants to be required to serve sentences consecutively, even if tried separately, CSSB 381 could distort justice and allow the trial process to be manipulated to the advantage of the prosecution. For example, a defendant could feel pressured to plead guilty to one set of consecutive sentences out

of fear of having to go through several costly trials. In addition, because defendants could have to serve sentences consecutively, CSSB 381 would remove an existing incentive for defendants try and resolve multiple offenses in one trial instead of using additional resources to try multiple offenses.

It would be wrong to allow deferred adjudication for some sex offenses to count as previous offenses when determining punishment for a current offense because persons given deferred adjudication have not been judged guilty of their offense. For the same reason, persons given deferred adjudication, and therefore not found guilty, should not be subjected to newspaper notification of their whereabouts.

**OTHER  
OPPONENTS  
SAY:**

CSSB 381 should balance the changes made in a defendant's right to have offenses tried separately by giving defendants the right to have multiple charges consolidated into one trial.

CSSB 381 does not go far enough and should change the maximum term of deferred adjudication for serious sex offenses from 10 years to 20 years.

**NOTES:**

The committee substitute deleted from the Senate-passed version of the bill provisions that would have excluded a judge's failure to make a finding that deferred adjudication was in the best interest of the victim as a grounds for setting aside a plea, deferred adjudication or conviction, raised the maximum deferred adjudication term for certain sex offenses to 20 years, and prohibited judges from placing certain sex offenders on deferred adjudication.