

- SUBJECT:** Reducing maximum jail time for deferred adjudication probation
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 9 ayes — Hinojosa, Dunnam, Keel, Talton, Garcia, Green, Kitchen, Martinez Fischer, Shields
- 0 nays
- WITNESSES:** For — None
- Against — Gregg Cox, Travis County District Attorney’s Office; Dana J. Hendrick, Texas Probation Association; *Registered but did not testify:* Caroline Rickaway, Brazoria County Community Supervision and Corrections Department, Texas Probation Association
- On — Bruce Isaacks, Denton County District Attorney
- BACKGROUND:** Code of Criminal Procedure, art. 42.12, sec. 5(a) allows a judge to place a defendant who pleads guilty or *nolo contendere* (no contest) on deferred adjudication if the judge believes the best interests of the defendant and society will be served. This means all proceedings against the defendant are deferred until the defendant completes or violates community supervision. A defendant who successfully complete deferred adjudication will not have a final conviction. If the defendant violates deferred adjudication and has it revoked, the defendant will be found guilty of the crime and face a previously agreed upon sentence.
- As part of deferred adjudication, the defendant can be jailed for up to 180 days. In addition, the judge can impose jail time on the defendant for violating terms of the probation and allow the defendant to stay on deferred adjudication.
- DIGEST:** CSHB 1499 would amend Code of Criminal Procedure, art. 42.12, sec. 5(a) to limit the maximum time a judge could jail a defendant on deferred adjudication to 30 days.

This bill would take effect on September 1, 2001 and would apply only to defendants placed on deferred adjudication for offenses committed on or after that date.

**SUPPORTERS
SAY:**

If a case warrants no conviction, then it should not warrant incarceration. In deferred adjudication cases, there has been no final finding of guilt. Judgment is postponed until deferred adjudication ends. If prosecutors or a judge wanted to incarcerate the defendant, then they should not offer deferred adjudication. If the conviction was going to be deferred, then the prison or jail sentence should be as well. Judges and prosecutors still would have a hammer to keep defendants in line – the agreed-to sentence the defendant would have to serve if the defendant violated the conditions of deferred adjudication. This bill would keep defendants who did not merit jail time from serving time behind bars.

**OPPONENTS
SAY:**

This bill would limit the discretion of the judiciary to impose jail as a sanction on deferred adjudication offenders. Deferred adjudication often is used for fairly young offenders, such as college students who possess a small amount of an illegal drug. Placing them in county jail as part of the probation scares them and keeps them from coming back. The purpose of deferred adjudication is to give first-time offenders a second chance and to keep them from returning to the judicial system. Judges and prosecutors would prefer not to have to drop the hammer of the agreed-upon sentence for violating the probation. Allowing a judge to sentence offenders to up to six months of jail time up front helps keep them in line.

This bill would limit prosecutors' ability to offer deferred adjudication as a plea bargain and judges' ability to accept it. Some sex offenders are eligible for deferred adjudication. The only reason prosecutors will allow a plea bargain in some of those cases is because of the court's ability to offer extended jail time as a sanction. If this bill were enacted, it would result in fewer plea bargains for deferred adjudication and more people being sent to the penitentiary.

NOTES:

HB 1499 as filed would not have allowed any jail time for defendants on deferred adjudication probation.