

- SUBJECT:** Allowing probation for state jail felons with jury trials
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 6 ayes — Keel, Denny, Escobar, Hodge, Raymond, Reyna
0 nays
3 absent — Riddle, Pena, P. Moreno
- WITNESSES:** For — Ann del Llano, ACLU of Texas; Kevin P. Keating, representing Charles Rosenthal Jr., Harris County District Attorney; Allen Place, Texas Criminal Defense Lawyers Association
Against — None
- BACKGROUND:** Under Code of Criminal Procedure, art. 42.12, sec. 4(d), when a jury sentences a defendant convicted of a state jail felony, the defendant is not eligible to receive community supervision (probation).

Under Code of Criminal Procedure, art. 15(c)(1), judges can impose on state jail defendants any conditions of probation that they can impose on other offenders, except that if the judge is sentencing a state jail felon to a term of confinement in a county jail as a term of probation, the confinement cannot exceed 90 days.
- DIGEST:** CSHB 1759 would allow state jail felons who opted for jury sentencing to be eligible for probation. Defendants convicted of state jail felonies who automatically had their sentences suspended and were placed on probation by a judge would not be eligible for jury-recommended probation. The bill also would remove the current 90-day limit on county jail terms that judges can give when placing state jail felons on probation.

The bill would take effect September 1, 2005, and would apply to defendants who filed a motion for jury-recommended probation on or after that date regardless of when the offense was committed. The change in county jail terms allowed as a condition of probation would apply only to defendants placed on probation after the bill's effective date.

**SUPPORTERS
SAY:**

CSHB 1759 would make two changes in the laws dealing with state jail felons to continue conforming the statutes so that, in general, state jail felons are treated like other felons. When the state jail felony laws were enacted in 1993, many unique provisions were crafted to treat this group of offenders differently from other offenders. However, support for special conditions applying to state jail felons has decreased, and the trend has been for the Legislature to change the law in many situations to treat state jail felons like other felons. CSHB 1759 would continue this trend.

State jail felony defendants now can receive probation if they plead guilty or are sentenced by a judge, but they cannot receive probation if they opt for jury sentencing. This undermines the flexibility and intent of the laws governing state jail felonies, which are lower-level, nonviolent crimes. Current law leads to disparate results and skews decisions made by defendants. CSHB 1759 would give juries the full range of punishment options so that penalties could be tailored to fit individual defendants. The number of additional jury trials resulting from CSHB 1759 would be small enough not to burden the courts. The state should not have a statute that dissuades defendants from exercising their right to jury trials.

CSHB 1759 also would remove the current limit of 90 days on county jail terms that judges can give when placing state jail felons on probation so that these offenders would be treated like other probationers who receive terms in county jails or state jails. The minimum and maximum terms for these sentences, generally up to 180 days in a county jail or 90 to 180 days in a state jail, would apply to state jail felons just like they apply to other felons. With the change in CSHB 1759, state jail felons could participate in rehabilitation or treatment programs when the program was longer than the 90-day cap. CSHB 1759 also would give judges more flexibility in handling state jail felons and more options in dealing with probation violations. State jail felons already are being sent to county jails as a condition of probation, so the changes in CSHB 1759 should not have a significant impact on local resources.

**OPPONENTS
SAY:**

CSHB 1759 could increase the work of courts if more defendants accused of state jail felonies opted for jury trials, rather than choosing trials by judges or pleading guilty to preserve the option of probation.

Removing the 90-cap on some terms of confinement in county jails could tax the resources of some counties if it led to more state jail felons being sentenced to longer terms in county jails. Many counties are at or near

capacity, and even a few more people serving time in their jails could be a burden.

NOTES: The companion bill, SB 904 by Whitmire, has been referred to the Senate Criminal Justice Committee.