

**SUBJECT:** Prosecuting state jail felonies as class A misdemeanors

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

**VOTE:** 5 ayes — Keel, Pena, Denny, Escobar, Reyna  
0 nays  
4 absent — Riddle, Hodge, P. Moreno, Raymond

**WITNESSES:** For — Ken Sparks  
Against — None

**BACKGROUND:** Under Code of Criminal Procedure sec. 12.44(a), courts may punish defendants convicted of state jail felonies with confinement as allowed for class A misdemeanors (up to one year in jail) if the court finds it would best serve the needs of justice.  
  
Under sec 12.44(b), when a court is authorized to impose the lesser punishment under subsec. (a), the court may authorize prosecution initially for the lesser category of offense.  
  
Deferred adjudication is a form of probation under which a judge puts off the determination of guilt while the defendant serves probation. It can result in the defendant being acquitted upon successful completion of that probation.

**DIGEST:** CSHB 2296 would allow courts, at the request of the prosecutor, to authorize prosecution of state jail felonies as class A misdemeanors.  
  
The bill would take effect September 1, 2005, and would apply only to offenses committed on or after that date.

**SUPPORTERS SAY:** CSHB 2296 would clarify that deferred adjudication could be given when a state jail felony was prosecuted as a class A misdemeanor and would ensure a uniform statewide interpretation of this law. Some judges have interpreted current law to prohibit this. When deferred adjudication was

established decades ago, not all sections of the Penal Code were modified clearly to allow the practice.

Under sec. 12.44(a), after defendants are convicted of state jail felonies they can be punished for class A misdemeanors at the judge's discretion. Under sec.(b), courts in these situations can authorize prosecution for the lesser offense. Some judges have interpreted this to require prosecution in these cases because sec. 12.44(a) says that these defendants must be *convicted* and because sec. 12.44(b) says that courts can authorize the *prosecution* of defendants for a lesser offense. They interpret this to mean that prosecution must go forward and defendants cannot be given deferred adjudication. Some judges have not interpreted the statute this way and do grant deferred adjudication in these cases.

Prohibiting these defendants from receiving deferred adjudication is unfair because defendants should not be treated differently in different jurisdictions. CSHB 2296 would solve this problem by clarifying that courts could authorize a state jail felony to be prosecuted as a class A misdemeanor, meaning deferred adjudication could be an option. This would ensure that prosecutors and judges had the full range of tools — including deferred adjudication — for these defendants, which could keep the defendants from having convictions on their records when appropriate.

CSHB 2296 would give no new powers to prosecutors or judges, nor would it harm criminal defendants. It would not require judges to grant deferred adjudication in any cases. In practice, a defendant accused of a state jail felony would have no reason not to want the option of deferred adjudication. If a defendant objected to being prosecuted for a lesser offense or to be given deferred adjudication, prosecutors and judges could proceed with prosecution for the higher offense.

OPPONENTS  
SAY:

No apparent opposition.

NOTES:

The original bill also would have allowed courts to authorize prosecutors to prosecute third-degree felonies as class A misdemeanors at the request of the prosecutor.