SUBJECT: Court jurisdiction to suspend a felony sentence

COMMITTEE: Corrections — favorable, without amendment

VOTE: 5 ayes — Madden, Hochberg, McReynolds, Haggerty, Jones

0 nays

2 absent — Dunnam, Oliveira

WITNESSES: For — Greg Miller, Tarrant County District Attorney's Office; Allen Place, Texas Criminal Defense Lawyers Association; (*Registered, but did not testify:* Will Harrell, ACLU of Texas, NAACP, LULAC; Michael Pichinson, Texas Conference of Urban Counties; Ballard Shapleigh, 34th Judicial District's District Attorney's Office)

Against — None

On — Larry Gist

BACKGROUND: Under Code of Criminal Procedure, art. 42.12, sec. 6(a), a court with felony jurisdiction that hands down a felony sentence continues to exercise jurisdiction over the defendant for 180 days after issuing the sentence. Before the end of that period, the judge of the court that imposed the sentence may suspend the sentence and place the defendant on probation, if in the opinion of the judge the defendant would not benefit from further imprisonment, otherwise is eligible for community supervision, and had never been incarcerated in a penitentiary serving a felony sentence.

DIGEST: HB 927 would amend Code of Criminal Procedure, art. 42.12, sec. 6(a), by extending the jurisdiction of a court over a defendant for purposes of suspending a sentence from 180 days to two years.

The bill would take effect September 1, 2007, and apply only to a defendant over whom a court had jurisdiction on or after that date.

SUPPORTERS SAY: Code of Criminal Procedure, art. 42.12, sec. 6(a) authorizes "shock probation." Shock probation is the process of sentencing a defendant and allowing the defendant to start serving a sentence in TDCJ for a few

months before allowing them out on probation. The goal is to shock defendants into good behavior by letting them know what awaits them in state prison should they violate conditions of their probation.

Art. 42.12, sec. 6(a) also is used when a judge would like to place a defendant under probation in a treatment program but wants to ensure that the defendant stays sober until a spot opens up in the desired treatment program. Allowing the defendant to start serving a prison sentence helps ensure that the defendant will not have access to drugs or alcohol while they wait to gain admittance to a substance abuse treatment program.

A third instance in which judges employ art. 42.12, sec. 6(a) is to reward an offender who has done exceptionally well in prison. An example would be an offender who has taken classes, completed a vocational training program, or has a job waiting outside of prison. If an offender has established a record of good behavior, a judge may decide to suspend the sentence and place the offender on probation. HB 927 would grant defendants up to two years to establish a sufficiently good record to convince a judge to grant probation, rather than the 180 days allowed by current law.

Many times a judge would prefer probation to parole because of the greater availability of treatment options in the probation system. Extending the time a judge could keep a defendant in prison would give the judge more flexibility to tailor a mix of punishment and treatment that was appropriate to the defendant and the offense committed. In addition, judges would not be able to grant probation to the most dangerous defendants because those who have committed 3g offenses are not eligible for probation.

OPPONENTS SAY:

Code of Criminal Procedure, art. 42.12, sec. 6(a), was drafted with a 180-day limit on the power of the judge to suspend a felony sentence because it was thought that if a six month "shock" in prison was not effective, then any additional time would not be either. From a correctional approach, the change in HB 927 from 180 days to two years would be ineffective.