

- SUBJECT:** Allowing state-jail felony sentences to be split between jail, probation
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 8 ayes — Herrero, Burnam, Canales, Hughes, Leach, Moody, Schaefer, Toth
0 nays
1 present, not voting — Carter
- SENATE VOTE:** On final passage, April 15 — 30-0
- WITNESSES:** For — Marc Levin, Texas Public Policy Foundation Center for Effective Justice; (*Registered, but did not testify:* Travis Leete, The Texas Criminal Justice Coalition)
Against — None
On — Shannon Edmonds, Texas District and County Attorneys Association
- BACKGROUND:** Under Penal Code, sec. 12.35, state-jail felonies are punished by a sentence of 180 days to two years in a state jail and an optional fine of up to \$10,000. Under Code of Criminal Procedure, art 42.12, sec. 15(a), judges can suspend the imposition of a sentence and place a person on community supervision (probation) or order the sentence executed.
- DIGEST:** CSSB 1173 would add a judicial option for handling state-jail felony punishments. When ordering a state-jail sentence to be executed, judges could order it executed in whole, as under current law, or in part. If the sentence was ordered executed in part, a term of community supervision would begin immediately upon the offender's release from jail. This option would be prohibited in cases in which a jury assessed punishment.
The bill would require specific information to be in presentencing reports for state jail felonies. The reports, which are completed by local community supervision and corrections departments, would have to

contain recommendations for conditions of supervision that the local probation department considered advisable or appropriate for the offender.

Before imposing a sentence in a state-jail felony case in which a judge was assessing the punishment, the judge would have to review the presentence investigation report. Judges would have to determine whether the best interest of justice required the judge to suspend the sentence and place the person on community supervision or whether a sentence should be executed in whole or part.

A judge suspending a sentence in part would be required to impose conditions of community supervision consistent with the recommendations in the presentence investigation report.

CSSB 1173 would take effect September 1, 2013, and apply only to the sentencing of offenses that occurred on or after that date.

**SUPPORTERS
SAY:**

CSSB 1173 would create an option for handling state-jail felons that would improve their rehabilitation, increase public safety, and save the state money.

The state-jail system originally was created to handle low-level, non-violent offenders who would benefit from the increased treatment and rehabilitation programs available in the facilities as opposed to state prison. These state-jail programs were never established and funded as promised.

Instead, offenders are either put on probation or left to serve their time in a state jail without substantial treatment, rehabilitation, or education options. In addition, the vast majority of offenders released from state jails receive no post-release community supervision. CSSB 1173 would provide a third option — serving part of a sentence in a state jail and part on probation.

The split-sentence option could help reduce offender recidivism by allowing time in the probation system with access to meaningful services and resources, such as employment support and substance-abuse treatment while under the supervision of a probation officer. Currently, the recidivism rate among state-jail offenders is about 31.1 percent, worse than the recidivism rate of 22.6 percent for those released from prison, and the 14.8 percent for those on probation for felonies who have their probation revoked. Lower recidivism rates would translate into fewer

repeat offenses and increased public safety.

CSSB 1173 could save the state money while offering a more effective approach to handling state-jail felons. State jails cost about \$43 per day per offender, and state costs for probation can range from \$1.38 per day to \$7 per day for certain treatment programs.

The author plans to offer a floor amendment that would clear up questions about the bill's interaction with current law.

**OPPONENTS
SAY:**

It is unclear how parts of CSSB 1173 would be implemented and how they would interact with current laws. For example, in most cases only final convictions can be used to enhance a subsequent offense. When offenders finish probation, however, they are discharged and do not receive a final conviction. It is unclear how state-jail sentences that are split would be handled. Also, if offenders serving a split sentence had their probation revoked, it is uncertain how much time they could serve in a facility because other laws limit the time that state-jail felons who are put on probation can serve in a state jail if their probation is revoked.

NOTES:

Rep. White plans to offer a floor amendment that would designate offenses given split sentences as final convictions.