

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 381  
By: Shapiro  
Criminal Justice  
3-26-97  
Committee Report (Substituted)

### **DIGEST**

Currently, a judge is authorized to grant deferred adjudication in cases of certain sexual or sexually assaultive offenses. When a person is granted deferred adjudication, there is no finding of guilt and the offense cannot be used to enhance a subsequent offense. Furthermore, under the present system, the maximum amount of time a person can be put on deferred adjudication is 10 years and persons can be given an unlimited number of deferred sentences in their lifetime.

In an attempt to stiffen the consequences for sex offenders who are granted deferred adjudication, this legislation raises the maximum period of community supervision from 10 to 20 years, prohibits judges from giving deferred adjudication to an offender more than once, and allows deferred sentences to be used as enhancements for subsequent sentences. In addition, C.S.S.B. 381 requires the public to be notified when an individual has been given deferred adjudication and directs the judge to place a defendant on community supervision only if it is in the best interest of the victim. This bill also provides for the prosecution of certain defendants charged with or convicted of sexual or sexually assaultive offenses.

### **PURPOSE**

As proposed, C.S.S.B. 381 establishes the civil and criminal consequences of a grant of deferred adjudication for a sexual or a sexually assaultive offense, and provides for the prosecution of certain defendants charged with or convicted of those offenses.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 5(a), (c), and (d), Article 42.12, Code of Criminal Procedure, to authorize a judge to place on community supervision a defendant charged with an offense under Section 21.11, 22.011, or 22.021, Penal Code (regarding indecency with a child, sexual assault, and aggravated sexual assault), regardless of the age of the victim; or a defendant charged with a felony described by Section 13B(b), including indecent exposure, prohibited sexual conduct, sexual performance by a child, possession or promotion of child pornography, and aggravated kidnapping and burglary involving certain sexual offenses, only if the judge makes a finding in open court that placing the defendant on community supervision is in the best interest of the victim. Provides that the failure of the judge to find that deferred adjudication is in the best interest of the victim is not grounds for the defendant to set aside the plea, deferred adjudication, or any subsequent conviction or sentence. Prohibits the period of community supervision for a defendant charged with one of these felonies from being more than 20 years. Authorizes the judge to grant deferred adjudication unless the defendant is charged with an offense under Section 21.11, 22.011, or 22.021, Penal Code, or a felony described by Section 13B(b); and has previously been placed on community supervision for any offense under Subsection (2)(A) of this section. Makes conforming changes.

SECTION 2. Amends Section 3.03(b), Penal Code, to authorize the sentences, if the accused is found guilty of more than one offense arising out of the same criminal episode, to run concurrently or consecutively if each sentence is for a conviction of an offense under Section 21.11, 22.011, 22.021, 25.02, or 43.25, committed against a victim younger than 17 years of age, regardless of

certain circumstances; or for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), committed against a victim younger than 17 years of age, regardless of certain circumstances.

SECTION 3. Amends Section 3.04, Penal Code, by adding Subsection (c), to provide that the right to severance does not apply to a prosecution for offenses described by Section 3.03(b)(2) unless the court determines that the defendant or the state would be unfairly prejudiced by a joinder of offenses, in which event the judge may order the offenses to be tried separately or may order other relief as justice requires.

SECTION 4. Amends Section 12.42, Penal Code, by adding Subsection (g), to provide that for the purposes of Subsection (d)(2), a defendant has been previously convicted of an offense listed under Subsection (d)(2)(B) (including those offenses listed under Section 13B(b), Article 42.12, Code of Criminal Procedure, except indecent exposure) if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of other factors; and a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed under Subsection (d)(2)(B) is a conviction of an offense listed under that subsection.

SECTION 5. Amends Section 3(e), Article 6252-13c.1, V.T.C.S., to make a conforming change.

SECTION 6. Amends Section 4(f), Article 6252-13c.1, V.T.C.S., to make a conforming change.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 1997.

SECTION 9. Emergency clause.

#### **SUMMARY OF COMMITTEE CHANGES**

Amends the relating clause to include the prosecution of certain defendants charged with or convicted of sexual or sexually assaultive offenses.

#### SECTION 1.

Amends Section 5(a), Article 42.12, Code of Criminal Procedure, to provide that the failure of the judge to find that the deferred adjudication is in the best interest of the victim is not grounds for the defendant to set aside the plea, deferred adjudication, or any subsequent conviction or sentence.

Amends Section 5(d), Article 42.12, Code of Criminal Procedure, to authorize a judge to grant deferred adjudication unless the defendant has previously been placed on community supervision for any offense under Subsection (2)(A), rather than under this section.

#### SECTION 2.

Adds Section 3.03(b), Penal Code, to authorize sentences, if the accused is found guilty of more than one offense arising out of the same criminal episode, to run concurrently or consecutively if each sentence is for a conviction of certain sexual and sexually assaultive offenses.

#### SECTION 3.

Adds Section 3.04(c), Penal Code, to establish the right to severance under this section.

#### SECTION 4.

Adds Section 12.42(g), Penal Code, to provide that for the purposes of Subsection (d)(2),

a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed under Subsection (d)(2)(B) is a conviction of an offense listed under that subsection.