

SUBJECT: Reduced punishments for some felons

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Hinojosa, Dunnam, Green, Nixon, Smith, Wise
0 nays
3 absent — Garcia, Keel, Talton

WITNESSES: For — Jeri Yenne
Against — None

BACKGROUND: Penal Code, sec. 12.44 allows courts to impose the confinement allowed for Class A misdemeanors upon defendants convicted of state jail felonies if that would best serve the ends of justice. When making this decision, courts must consider the gravity and circumstances of the crime and the history, character, and rehabilitative needs of the defendant.

The standard punishment for a state jail felony is 180 days to two years in a state jail and an optional fine of up to \$10,000. Class A misdemeanors are punishable by up to one year in jail and/or a maximum fine of \$4,000. Class B misdemeanors are punishable by up to 180 days in jail and/or a maximum fine of \$2,000. Third-degree felonies are punishable by two to 10 years in prison and an optional fine of up to \$10,000.

DIGEST: HB 2111 would allow courts to punish persons convicted of third-degree felonies by imposing the punishment prescribed for a Class A misdemeanors.

Courts no longer could impose Class A misdemeanor punishments on persons convicted of state jail felonies but could impose Class B misdemeanor punishments on state jail felons.

HB 2111 would take effect September 1, 1999, and would apply to offenses committed on or after that date.

**SUPPORTERS
SAY:**

HB 2111 would give courts additional sentencing flexibility in some criminal cases in which felony punishments may not be appropriate. For example, a young, first-time offender who has committed a felony may not merit prison or state jail time, but those are the only punishments generally prescribed by the Penal Code. On the other hand, probation may not be a serious enough penalty for this offender. Sending these offenders to a county jail could be the appropriate punishment, and HB 2111 would allow this option for the least serious felonies. Confinement in a county jail could get offenders' attention and impress upon them the seriousness of their conduct without exposing them to a state correctional facility. Diverting low-level, nonviolent offenders would help keep state prison beds available for more serious and violent offenders.

Current law allowing state jail felons to be punished as for Class A misdemeanors does not go far enough. HB 2111 is needed to allow punishment for third-degree felonies to be reduced below the felony level to that for a Class A misdemeanor. Before the 1993 Penal Code revisions, courts could punish persons convicted of third-degree felonies by imposing the Class A misdemeanor punishments. HB 2111 simply would return that option, then make a necessary adjustment allowing state jail felons to receive Class B misdemeanor punishments.

In some cases, prosecutors may not want to reduce a charge or craft a plea agreement for a lesser offense, because that could leave the offender without a felony conviction. Having a record of a felony conviction could be important if the offender committed another offense and the prosecutor wanted to use the habitual-offender statutes to impose a harsher punishment. Under HB 2111, offenders would retain their status as felons, but could be punished at a misdemeanor level when appropriate.

Punishments would not be reduced arbitrarily because such a decision would have to be based on the seriousness and circumstances of the crime and the defendant's history, character, and rehabilitative needs.

**OPPONENTS
SAY:**

The current balance of penalties and punishments adopted when the Legislature revised the Penal Code in 1993 should not be disturbed. Allowing punishment for third-degree felonies to be reduced to Class A misdemeanors and punishment for state jail felonies to be reduced to Class B misdemeanors would skip over the punishment just below each of those offenses. If a felony

punishment is going to be reduced, it should be to the next lower punishment and not any further. If prosecutors feel that the prescribed punishment for a crime would be too harsh, they can exercise discretion in charging persons with crimes or in crafting plea agreements.