

SUBJECT: Prohibiting sex offender early release from deferred adjudication or probation

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Hinojosa, Green, Keel, Nixon, Smith, Wise

1 nay — Dunnam

1 present, not voting — Garcia

1 absent — Talton

SENATE VOTE: On final passage, Local and Uncontested Calendar, March 18 — 31-0

WITNESSES: No public hearing

BACKGROUND: Under most circumstances, when a defendant has pleaded guilty or nolo contendere to a criminal charge, a judge can defer further proceedings and place the defendant on community supervision (probation) when this serves the best interest of society and the defendant. In this situation, no adjudication of guilt has occurred, and a person is said to be on *deferred adjudication*. A judge can impose a fine and require any reasonable condition of community supervision. If a defendant violates a condition of community supervision, a judge may proceed with an adjudication of guilt and impose the full range of punishments available for the offense. If a defendant successfully completes the deferred adjudication, the judge is required to dismiss the proceedings and discharge the defendant.

A judge cannot grant deferred adjudication for persons charged with certain offenses involving intoxication and alcoholic beverages, certain repeat drug offenses, or for persons charged with indecency with a child, sexual assault, aggravated sexual assault, or other specified offenses against children and who have been previously placed on probation for one of these offenses.

A judge can place persons convicted of indecency with a child, sexual assault, aggravated sexual assault, and certain sex offenses committed against children on deferred adjudication 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.

For most offenses, a judge placing someone on deferred adjudication can dismiss proceedings and discharge the defendant prior to the expiration of the defendants' term of community supervision. However, a person placed on deferred adjudication for certain sex offenses committed against children must serve at least two-thirds of the deferred adjudication before the proceedings may be dismissed and the defendant discharged.

These offenses, listed in Code of Criminal Procedure art. 42.12 sec. 13B(b) are sexual performance of a child; possession or promotion of child pornography; indecent exposure; indecency with a child; sexual assault; aggravated sexual assault; prohibited sexual conduct (incest); aggravated kidnaping with the intent to abuse the victim sexually; and first-degree burglary with intent to commit indecent exposure, indecency with a child, sexual assault, aggravated sexual assault or prohibited sexual conduct, or aggravated kidnaping with sexual intent.

In most cases, a judge can reduce or terminate probation terms after a defendant has served one-third of the original term or two years, whichever is less. However, a judge cannot reduce or terminate probation terms of persons convicted of certain offenses involving intoxication and alcoholic beverage and persons convicted of state jail felonies.

**DIGEST:**

SB 31 would prohibit judges from dismissing proceedings and discharging defendants given deferred adjudication before the end of the probation term if defendants were charged with offenses that required them to register as sex offenders. SB 31 would eliminate the authority of judges under current law to end probation terms given as part of deferred adjudication for sex offenses listed in art. 42.12 sec. 13B(b) after the defendants have served two-thirds of their sentences.

SB 31 would prohibit judges from reducing or terminating community supervision terms for persons convicted of offenses that would require them to register as sex offenders.

SB 31 would take effect September 1, 1999, and would apply to persons receiving deferred adjudication or convictions for offenses occurring on or after that date.

**SUPPORTERS  
SAY:**

SB 31 would put some reasonable, appropriate parameters on the use of deferred adjudication and probation for sex offenders. Sex offenders tend to be repeat offenders who prey on the most vulnerable members of society so it is appropriate to restrict options for their sentencing.

Because of the seriousness of these offenses and the danger that these offenders represent, it is appropriate to require that they serve all of their deferred adjudication and probation terms. Sex offenders given 10 years probation should be supervised for that entire time to ensure they receive counseling, assistance, and oversight. SB 31 would ensure that the court and probation officers could monitor these offenders for their full terms.

**OPPONENTS  
SAY:**

Special criminal statutes and exceptions should not be carved out for sex crimes. Deferred adjudication for sex crimes should continue to be treated in the same manner as it is under current law, which gives judges some discretion in handling these cases. SB 31 could be the first unwise step in eliminating deferred adjudication altogether for sex offenses. Deferred adjudication is an important tool that should not be restricted, especially in sex offense cases in which witnesses may be reluctant to testify or charges may be difficult to prove or defend in a trial.