

SUBJECT: Early release of a defendant from community supervision

COMMITTEE: Corrections — committee substitute recommended

VOTE: 4 ayes — Allen, Hopson, Alonzo, Haggerty

0 nays

1 present not voting — Mabry

2 absent — Stick, Farrar

WITNESSES: For — Will Harrell, American Civil Liberties Union, League of United Latin American Citizens, and NAACP; Leighton Iles, Fort Bend County CSCD; Chuck Noll, Harris County District Attorney's Office; (*Registered, but did not testify:*) Stuart M. DeLuca, TIFA, Inc.; Michelle Deitch; Dee Simpson, American Federation of State, County, and Municipal Employees

Against — None

On — Mary Anne Bramblett, Judicial Advisory Council; Judge John Creuzot; Tony Fabelo, Criminal Justice Policy Council

BACKGROUND: Code of Criminal Procedure, art. 42.12 governs community supervision (probation), under which a court places a defendant under a continuum of programs and sanctions and imposes conditions for a specific period.

In deferred adjudication, a judge defers further criminal proceedings without an adjudication of guilt and places the defendant on community supervision. On expiration of the community supervision period, if the judge has not proceeded to an adjudication of guilt, the judge must dismiss the proceedings against the defendant and discharge him or her. A judge may dismiss the proceedings and discharge a defendant before the term of community supervision expires if, in the judge's opinion, the best interest of society and the defendant will be served. The judge may not dismiss the proceedings and discharge a defendant charged with an offense requiring the defendant to register as a sex offender.

At any time after the defendant has completed one-third of the original community supervision period satisfactorily or two years, whichever is less, the judge may reduce or terminate the period of community supervision. If the judge discharges the defendant, the judge may set aside the verdict or allow the defendant to withdraw his or her plea, and must dismiss the indictment or information against the defendant. However, this provision does not apply to a defendant convicted of an offense for which the defendant must register as a sex offender, to a defendant convicted of a state jail felony, or to a defendant convicted of driving, flying, boating, or operating an amusement ride while intoxicated, intoxication assault, or intoxication manslaughter.

The judge may order a defendant on community supervision to pay the court a monthly fee of \$25 to \$60. The judge may waive or reduce the fee if the judge determines that it would cause the defendant a significant financial hardship. The judge must deposit fees paid by defendants on probation in the special fund of the county treasury, to be used for the same purposes as state aid may be used for community supervision and corrections departments.

Government Code, sec. 509.011 governs the payment of state aid to local community supervision and corrections departments. If the Community Justice Assistance Division (CJAD) of the Texas Department of Criminal Justice determines that a department complies with CJAD standards and that the department's community justice plan and supporting information are acceptable, CJAD must prepare and submit to the comptroller vouchers for payment to the department for per-capita funding, a per-diem amount for each felony defendant directly supervised by the department.

DIGEST:

CSHB 2624 would require a judge to dismiss the proceedings and discharge a defendant on deferred adjudication, other than a defendant charged with a misdemeanor or an offense requiring him or her to register as a sex offender, on the defendant's successful completion of one-third of the original period of community supervision and payment to the court of a one-time supervision termination fee of \$500, unless, in the judge's opinion the best interest of society and the defendant would be served if the defendant remained under supervision. The judge could dismiss proceedings and discharge a defendant charged with a misdemeanor, other than an offense requiring registration as a sex offender, before the expiration of the term of community supervision if, in the judge's opinion, the best interest of society and the defendant would be

served. The judge could not dismiss proceedings and discharge a defendant charged with an offense requiring registration as a sex offender before the expiration of the original term of community supervision.

If the judge required a defendant, other than one charged with a misdemeanor or an offense requiring sex-offender registration, to remain under supervision, the judge would have to enter a written statement specifying the grounds for the judge's opinion that the best interest of society and the defendant would be served if the defendant remained under supervision.

A judge would have to terminate a period of community supervision for a defendant, other than a defendant charged with a misdemeanor, an offense requiring him or her to register as a sex offender, or the intoxication offenses listed above, on the defendant's successful completion of one-third of the original period of community supervision and payment to the court of a one-time supervision termination fee of \$500, unless, in the judge's opinion, the best interest of society and the defendant would be served if the defendant remained under supervision. The original period of community supervision would begin on the date the judgment was entered in the case. For a defendant charged with a misdemeanor or required to remain under supervision, the period of community supervision would terminate on the defendant's satisfactory fulfillment of the conditions of community supervision and the expiration of the original period imposed.

The judge could terminate a period of community supervision for a defendant who pled guilty to or was convicted of a misdemeanor, other than intoxication or sex offenses, before the expiration of the original period of community supervision if the defendant satisfactorily completed one-third of that period and, in the judge's opinion, the best interest of society and the defendant would be served.

A judge could not terminate a period of community supervision early if the defendant pled guilty to or was convicted of an intoxication offense or an offense requiring registration as a sex offender.

If the judge required a defendant, other than a defendant who pled guilty to or was convicted of a misdemeanor, intoxication, or sex-offender crime, to remain under supervision, the judge would have to enter a written statement

specifying the grounds for his or her opinion that the best interest of society and the defendant would be served if the defendant remained under supervision.

The judge would have to deposit in the county's special fund any fees for supervision termination. The amount of per-capita funding received from the comptroller based on vouchers prepared and submitted by CJAD could not be less than the amount received from the comptroller under that provision during fiscal years 2004 and 2005.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 2624 would encourage judges to release probationers early, after two years or when they had completed one-third of the full probation term, whichever was less. While judges have discretion to release probationers early under current law, few judges actually do so. The bill would help make judges aware of the early-release option and would discourage local probation departments from keeping defendants on probation for extended periods of time to generate more monthly fees paid by defendants.

This bill would save money for the state. The longer offenders serve on probation, the greater the likelihood that they will be revoked for some technical violation and sentenced to prison. Currently, the average length of incarceration for a probation revocation is over four years. The bill's fiscal note projects that it would save almost \$2 million during the coming biennium and almost \$126 million through the end of fiscal 2008. These projections are reasonable and accurate. While the bill would allow a judge to refuse to grant early release under certain circumstances, it would create a presumption that certain offenders would be released early.

CSHB 2668 would make more prison beds available for violent offenders. Assuming that admission and release trends do not change significantly, the Criminal Justice Policy Council projects a growing shortfall of available prison beds, leading to backlogs in county jails as convicted felons await available beds. According to the bill's criminal justice impact statement, CSHB 2624 would decrease demand for state jail and prison beds by 87 in fiscal 2005, by 644 in fiscal 2006, and by 2,312 in fiscal 2008, which would help alleviate prison overcrowding.

The bill significantly would reduce the number of people on probation, allowing community supervision and corrections departments to focus their limited resources on more serious or violent offenders. According to the criminal justice impact statement, the community supervision population would decline by 965 defendants in fiscal 2005, 21,382 defendants in fiscal 2006, and 47,834 in fiscal 2008. Concerns about prosecutors lengthening the terms of community supervision as a result of the bill are misplaced. Texas already has, on average, some of the longest probation terms in the nation, and the terms could not be any stiffer than they are now.

CSHB 2624 would give judges and local community supervision and corrections departments more tools to ensure that defendants comply with the terms of their community supervision. Defendants who knew that they could be released early would have more incentive to cooperate. Probationers who serve overly long terms of community supervision grow tired of being on probation and are more likely to be nailed with a technical violation.

No violent or predatory offenders would be released early under the bill. Judges would retain discretion to determine if early release was appropriate. A judge would have to consider the best interest of society and the defendant and could deny early release to a probationer who did not comply with the terms of community supervision or who might endanger the public if released. Furthermore, sex offenders would not be eligible for early release under the bill. Making early release mandatory would be inappropriate, because judges should have discretion about when to release probationers.

The \$500 payment for early termination would not be unreasonable. Current law allows supervision fees of \$25 to \$60 a month, and a defendant who was discharged early would not have to continue paying those fees. Furthermore, in most jurisdictions, an offender seeking release under current law must hire an attorney to petition for an early dismissal, and the cost of hiring an attorney often exceeds \$500. The proposed fee would help to offset the decreases in revenue to local community supervision and corrections departments.

The Legislature already has decided that defendants charged with intoxication offenses should not be eligible for early release. These defendants often must undergo extensive treatment, which justifies a longer term of probation. Also, CSHB 2624 would not change the way that judges handle early release of

offenders. Current law does not require judges to notify the state before granting an early release.

OPPONENTS
SAY:

By encouraging the early release of probationers, CSHB 2624 could endanger public safety. The structure, supervision, and treatment that probation offers offenders keeps them out of trouble, and releasing them early could mean higher recidivism rates for those offenders. People who commit crimes should have to pay their full debt to society, and making it easier to release them early would undercut the punishment that a judge or jury initially imposed.

The savings estimated in the fiscal note to CSHB 2624 are questionable. The bill would be permissive, and it is impossible to know how many defendants would be discharged early, generating savings for the state.

CSHB 2624 would not require notice to the state before a court terminated community supervision early. If the state had legitimate reasons for objecting to early release, such as concerns about the safety of the community, it could not do so because of the lack of notice.

If judges began routinely releasing probationers early as a result of the bill, prosecutors likely would change their plea bargain practices to compensate. Prosecutors might not offer short initial probations out of fear that dangerous offenders would be released to the community early.

The \$500 termination fee would mean that only defendants with money would be released early. Indigent probationers would be stuck serving their full community supervision terms, while wealthier offenders could buy their way out of probation.

Because defendants who pay monthly probation fees would be discharged early, local governments would lose revenue for community supervision and corrections departments. These revenue losses would hit departments particularly hard during the current fiscal crisis.

OTHER
OPPONENTS
SAY:

CSHB 2624 would not go far enough. To ensure that probationers are discharged early, the bill should require a judge to discharge them upon completion of one-third or two years of his or her sentence. Making early release mandatory would maximize the cost savings to the state.

The bill should not exclude defendants who commit intoxication offenses. These offenders make up a large percentage of the probation population, and a judge should be able to release them early at his or her discretion.

NOTES:

As filed, HB 2624 would have required judges to discharge defendants, other than sex offenders, on deferred adjudication early after they successfully completed one-third or two years of their sentences, whichever was less. It also would have required judges to terminate community supervision after the defendant satisfactorily completed one-third of the original period or two years, whichever was less, except for defendants convicted of intoxication or sex offenses or of a state jail felony.