

- SUBJECT:** Allowing felony judgment and sentence in absence of certain defendants
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 8 ayes — Gallego, Christian, Fletcher, Kent, Miklos, Moody, Pierson, Vo  
0 nays  
3 absent — Hodge, Riddle, Vaught
- WITNESSES:** For — Martin Braddy; (*Registered, but did not testify:* Katrina Daniels, Bexar County District Attorney’s Office)  
  
Against — None
- BACKGROUND:** Code of Criminal Procedure, art. 42.14 allows for a judgment and sentence to be rendered in the absence of the defendant in misdemeanor cases.  
  
Code of Criminal Procedure, art. 42.12, sec. 3g, prohibits persons convicted of certain serious and violent crimes from receiving judge-ordered community supervision (probation). These often are referred to as “3g offenses.” They are: murder; capital murder; indecency with a child; aggravated kidnapping; aggravated sexual assault; aggravated robbery; sexual assault; injury to a child, elderly individual, or disabled individual; sexual performance of a child; certain drug offenses; and certain felonies involving use of a deadly weapon.  
  
Under Code of Criminal Procedure, art. 42.07, a sentence cannot be pronounced if:
- the defendant has been pardoned;
  - the defendant is incompetent to stand trial; or
  - the person about to be sentenced is not the person who was convicted.
- DIGEST:** CSHB 107 would amend the Code of Criminal Procedure, art. 42.14, to allow judgment and sentence in the absence of the defendant in felony cases if the defendant was imprisoned in a penal institution and the

defendant was not charged with a 3g offense or a felony for which it was alleged that:

- a deadly weapon was used or exhibited during commission of the offense or during immediate flight from the commission of the offense; and
- the defendant used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited.

The defendant also would be required to reduce to writing before a district court having jurisdiction in the county where the defendant was imprisoned:

- a waiver of the right to be present at the rendering of the judgment and sentence or to have counsel present;
- an affirmation that the defendant did not have anything to say as to why the sentence should not be pronounced and that there was no reason to prevent the sentence under art. 42.07;
- a statement that the defendant had entered into a written plea agreement with the attorney representing the state in the prosecution of the case; and
- a request that the judge pronounce sentence in the case in accordance with the plea agreement.

The defendant and the prosecutor would have to enter into a written plea agreement that would be made a part of the record in the case, and the sentence would have to be pronounced in accordance with the plea agreement.

The bill would take effect on September 1, 2009.

**SUPPORTERS  
SAY:**

CSHB 107 would save the criminal justice system significant transportation costs, while protecting defendants' rights and interests. Current law allows for judgment in absentia for misdemeanor cases, but final judgment and sentencing in felony cases cannot be done in absentia. CSHB 107 would extend judgment in absentia to non-violent felony offenses. The judgment and sentencing in absentia would be optional; the defendant, prosecutor, and court all would have to agree. The bill would not compromise anyone's basic rights.

Defendants may face criminal charges in more than one Texas county. If the defendant is found guilty and incarcerated in one county, the defendant still may face the charges brought by another county. If those charges are for a felony, the defendant personally must travel to that location. By including certain non-violent felonies in the procedures for judgment and sentencing in absentia, CSHB 107 would save Texas counties significant costs on transporting and processing these defendants.

Sometimes defendants would be the ones requesting judgment and sentencing in absentia. Defendants might request a judgment in absentia in order to resolve all their cases, rather than serving time on one, then facing incarceration in other county on another charge. Offenders might request judgment and sentencing in absentia in order to have their sentences served concurrently, to stay in the penal facility to which they are currently assigned, to be close to their family, to avoid the risk of being assigned a new cell mate, or to protect seniority for prison jobs.

Defendants would not face undue pressure to agree to these judgments. The agreement would need the approval of two judges — a district judge where the defendant was located and a district judge in the county where the defendant was charged. In order for a judgment and sentencing to take place in absentia, all parties would have to agree.

**OPPONENTS  
SAY:**

CSHB 107 would encourage defendants to waive their rights for the convenience of a county's budget. Defendants could be pushed by prosecutors to agree to sentencing in absentia as a condition for a plea agreement. The state should not encourage the waiver of basic rights.

**NOTES:**

The committee substitute differs from the bill as filed by excluding defendants charged with certain felonies, including "3g offenses," from being eligible for judgment and sentencing in absentia.