

SUBJECT: Prohibiting deferred adjudication community supervision for murder

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Gallego, Christian, Fletcher, Kent, Miklos, Moody, Pierson,
Vaught, Vo

1 nay — Riddle

1 absent — Hodge

WITNESSES: For — None

Against — David Gonzalez, Texas Criminal Defense Lawyers
Association; (*Registered, but did not testify*: Kevin Petroff, Harris County
District Attorney's Office)

BACKGROUND: Under Code of Criminal Procedure, art. 42.12, sec. 5, a judge may, after receiving a plea of guilty or no contest, defer further proceedings without entering an adjudication of guilt and place the defendant on community supervision (probation). If the defendant successfully completes probation, the judge must dismiss the charges and discharge the defendant. This process is known as deferred adjudication. Art. 42.12 sec. 5(d) prohibits the use of deferred adjudication for certain offenses, including some intoxication offenses, some drug-free zone offenses, and some sex offenses.

DIGEST: CSHB 825 would add murder to the list of offenses for which deferred adjudication could not be used. The bill would create exceptions to this prohibition by allowing deferred adjudication to be used if the judge determined that the defendant did not cause the death, did not intend to kill the victim or another person, and did not anticipate that human life would be taken.

The bill would take effect September 1, 2009, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 825 is necessary to close a loophole in current law that allows persons charged with murder to receive deferred adjudication, a type of probation that allows dismissal of the charges the defendant successfully meets certain conditions. Current law already prohibits judges and juries from giving probation to person convicted of murder. It makes no sense to allow defendants in these cases to receive probation through another means.

The bill would rectify an inequity in current law, which currently prohibits the use of deferred adjudication for persons charged with lesser crimes than murder, including some drug and alcohol offenses. Murder is a serious crime, and the consequences that apply to lesser crimes also should apply to it.

Currently, deferred adjudication sometimes may be granted in murder cases in which the court does not feel the victim's life was valuable, such as cases in which one drug dealer kills another. Sometimes deferred adjudication is used in inappropriate cases because the evidence is not strong or because of plea agreements. A loophole in the law should not be used to clear out weak murder cases or to punish some murders lightly. Texas law governing murder cases should ensure that all lives are valued and should treat victims equitably

Discretion in bringing charges and in sentencing and other tools in the criminal justice system exist to ensure that murder cases involving battered spouses, mercy killings or other mitigating circumstances would be handled appropriately. The bill would build some of this discretion into the law by allowing deferred adjudications in cases in which the defendant did not cause the death, did not intend the death, and did not anticipate the death.

**OPPONENTS
SAY:**

Prohibiting the use of deferred adjudication for murder cases would restrict courts' ability to treat cases appropriately. Having the option of deferred adjudication in murder cases is not a loophole in current law, but a safety valve for those cases in which it may be appropriate or useful for a plea agreement.

In some cases, mitigating circumstances may warrant deferred adjudication even though the crime committed was murder. For example, deferred adjudication may be appropriate in cases in which the defendant was a battered spouse or in which a murder was a mercy killing of a

terminally ill person who wanted to die. Current law allows judges to evaluate the unique circumstances in such cases. Deferred adjudication in murder cases is not used to make statements about the value of victims' lives, but rather in cases in which judges believe it serves the interest of justice.

NOTES:

The committee substitute added the exception for using deferred adjudication in cases of murder in which the defendant did not cause the death, did not intend the death, and did not anticipate the death.