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H.B. No. 385

A BILL TO BE ENTITLED

1 AN ACT
2 relating to conditions of community supervision and procedures
3 applicable to the reduction or termination of a defendant's period
4 of community supervision.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Article 42A.052(a), Code of Criminal Procedure,
7 is amended to read as follows:

8 (a) A judge who places a defendant on community supervision
9 may authorize the supervision officer supervising the defendant or
10 a magistrate appointed by the district courts in the county that
11 give preference to criminal cases to modify the conditions of
12 community supervision for the limited purposes [~~purpose~~] of:

13 (1) transferring the defendant to different programs
14 within the community supervision continuum of programs and
15 sanctions; or

16 (2) prioritizing the conditions ordered by the court
17 according to:

18 (A) the defendant's needs as determined by a risk
19 and needs assessment; and

20 (B) the defendant's progress under supervision.

21 SECTION 2. Article 42A.301(b), Code of Criminal Procedure,
22 is amended to read as follows:

23 (b) Conditions of community supervision may include
24 conditions requiring the defendant to:

- 1 (1) commit no offense against the laws of this state or
2 of any other state or of the United States;
- 3 (2) avoid injurious or vicious habits;
- 4 (3) ~~[avoid persons or places of disreputable or~~
5 ~~harmful character, including any person, other than a family member~~
6 ~~of the defendant, who is an active member of a criminal street gang,~~
7 ~~(4)]~~ report to the supervision officer as directed by
8 the judge or supervision officer and obey all rules and regulations
9 of the community supervision and corrections department;
- 10 (4) ~~[(5)]~~ permit the supervision officer to visit the
11 defendant at the defendant's home or elsewhere;
- 12 (5) ~~[(6)]~~ work faithfully at suitable employment to
13 the extent possible;
- 14 (6) ~~[(7)]~~ remain within a specified place;
- 15 (7) ~~[(8)]~~ pay in one or more amounts:
16 (A) the defendant's fine, if one is assessed; and
17 (B) all court costs, regardless of whether a fine
18 is assessed;
- 19 (8) ~~[(9)]~~ support the defendant's dependents;
- 20 (9) ~~[(10)]~~ participate, for a period specified by the
21 judge, in any community-based program, including a community
22 service project under Article [42A.304](#);
- 23 (10) ~~[(11)]~~ if the judge determines that the defendant
24 has financial resources that enable the defendant to offset in part
25 or in whole the costs of the legal services provided to the
26 defendant in accordance with Article [1.051](#)(c) or (d), including any
27 expenses and costs, reimburse the county in which the prosecution

1 was instituted for the costs of the legal services in an amount that
2 the judge finds the defendant is able to pay, except that the
3 defendant may not be ordered to pay an amount that exceeds:

4 (A) the actual costs, including any expenses and
5 costs, paid by the county for the legal services provided by an
6 appointed attorney; or

7 (B) if the defendant was represented by a public
8 defender's office, the actual amount, including any expenses and
9 costs, that would have otherwise been paid to an appointed attorney
10 had the county not had a public defender's office;

11 (11) [~~(12)~~] if under custodial supervision in a
12 community corrections facility:

13 (A) remain under that supervision;

14 (B) obey all rules and regulations of the
15 facility; and

16 (C) pay a percentage of the defendant's income to
17 the facility for room and board;

18 (12) [~~(13)~~] submit to testing for alcohol or
19 controlled substances;

20 (13) [~~(14)~~] attend counseling sessions for substance
21 abusers or participate in substance abuse treatment services in a
22 program or facility approved or licensed by the Department of State
23 Health Services, provided that, notwithstanding Subsection (a) or
24 any other law, a judge may only require a defendant to attend
25 counseling sessions or participate in treatment if:

26 (A) the results of an evaluation that is designed
27 to determine the appropriate type and level of treatment necessary

1 to address the defendant's alcohol or drug dependency indicate that
2 counseling or treatment is necessary to protect or restore the
3 community or the victim and to rehabilitate the defendant; or

4 (B) the defendant's use, manufacture,
5 possession, or delivery of a controlled substance or alcohol was an
6 element of the offense for which the defendant was placed on
7 community supervision;

8 (14) [~~(15)~~] with the consent of the victim of a
9 misdemeanor offense or of any offense under Title 7, Penal Code,
10 participate in victim-defendant mediation;

11 (15) [~~(16)~~] submit to electronic monitoring;

12 (16) [~~(17)~~] reimburse the compensation to victims of
13 crime fund for any amounts paid from that fund to or on behalf of a
14 victim, as defined by Article 56B.003, of the offense or if no
15 reimbursement is required, make one payment to the compensation to
16 victims of crime fund in an amount not to exceed \$50 if the offense
17 is a misdemeanor or not to exceed \$100 if the offense is a felony;

18 (17) [~~(18)~~] reimburse a law enforcement agency for the
19 analysis, storage, or disposal of raw materials, controlled
20 substances, chemical precursors, drug paraphernalia, or other
21 materials seized in connection with the offense;

22 (18) [~~(19)~~] reimburse all or part of the reasonable
23 and necessary costs incurred by the victim for psychological
24 counseling made necessary by the offense or for counseling and
25 education relating to acquired immune deficiency syndrome or human
26 immunodeficiency virus made necessary by the offense;

27 (19) [~~(20)~~] pay a fine in an amount not to exceed \$50

1 to a crime stoppers organization, as defined by Section 414.001,
2 Government Code, and as certified by the Texas Crime Stoppers
3 Council;

4 (20) [~~(21)~~] submit a DNA sample to the Department of
5 Public Safety under Subchapter G, Chapter 411, Government Code, for
6 the purpose of creating a DNA record of the defendant; and

7 (21) [~~(22)~~] in any manner required by the judge,
8 provide in the county in which the offense was committed public
9 notice of the offense for which the defendant was placed on
10 community supervision.

11 SECTION 3. Article 42A.303(e), Code of Criminal Procedure,
12 is amended to read as follows:

13 (e) The Department of State Health Services or the community
14 supervision and corrections department supervising the defendant
15 shall develop the continuum of care treatment plan described by
16 Subsection (d)(1).

17 SECTION 4. Articles 42A.403(d-1) and (e), Code of Criminal
18 Procedure, are amended to read as follows:

19 (d-1) The judge shall waive the educational program
20 requirement if the defendant successfully completes [~~equivalent~~]
21 education at a residential treatment facility under Article
22 42A.4045.

23 (e) The judge shall set out in the judgment, as applicable:

24 (1) the finding of good cause for waiver; or

25 (2) the finding that the defendant has successfully
26 completed [~~equivalent~~] education as provided by Article 42A.4045.

27 SECTION 5. Articles 42A.404(b-1) and (c), Code of Criminal

1 Procedure, are amended to read as follows:

2 (b-1) The judge shall waive the educational program
3 requirement if the defendant successfully completes ~~[equivalent]~~
4 education at a residential treatment facility under Article
5 42A.4045.

6 (c) The judge shall set out in the judgment, as applicable:

7 (1) the finding of good cause for waiver; or

8 (2) the finding that the defendant has successfully
9 completed ~~[equivalent]~~ education as provided by Article 42A.4045.

10 SECTION 6. Articles 42A.4045(a) and (b), Code of Criminal
11 Procedure, are amended to read as follows:

12 (a) A judge shall waive the educational requirement under
13 Article 42A.403 or 42A.404 for a defendant who is required to
14 receive treatment as a resident of a substance abuse treatment
15 facility as a condition of community supervision if the defendant
16 successfully completes ~~[equivalent]~~ education while the defendant
17 is confined to the residential treatment facility.

18 (b) The Department of State Health Services shall approve
19 ~~[equivalent]~~ education provided at substance abuse treatment
20 facilities.

21 SECTION 7. Articles 42A.406(a) and (b-1), Code of Criminal
22 Procedure, are amended to read as follows:

23 (a) If a defendant is required as a condition of community
24 supervision to attend an educational program under Article 42A.403
25 or 42A.404, or if the court waives the educational program
26 requirement under Article 42A.403 or the defendant successfully
27 completes ~~[equivalent]~~ education under Article 42A.4045, the court

1 clerk shall immediately report that fact to the Department of
2 Public Safety, on a form prescribed by the department, for
3 inclusion in the defendant's driving record. If the court grants an
4 extension of time in which the defendant may complete the
5 educational program under Article 42A.403, the court clerk shall
6 immediately report that fact to the Department of Public Safety on a
7 form prescribed by the department. The clerk's report under this
8 subsection must include the beginning date of the defendant's
9 community supervision.

10 (b-1) Upon release from a residential treatment facility at
11 which the person successfully completed [~~equivalent~~] education
12 under Article 42A.4045, at the request of the court clerk, the
13 director of the residential treatment facility shall give notice to
14 the Department of Public Safety for inclusion in the person's
15 driving record.

16 SECTION 8. Article 42A.655, Code of Criminal Procedure, is
17 amended to read as follows:

18 Art. 42A.655. ABILITY TO PAY. (a) The court shall consider
19 the defendant's ability to pay before ordering the defendant to
20 make any payments under this chapter.

21 (b) Notwithstanding any other law and subject to Subsection
22 (c), the court shall consider whether the defendant has sufficient
23 resources or income to make any payments under this chapter,
24 excluding restitution but including any fee, fine, reimbursement
25 cost, court cost, rehabilitation cost, program cost, service cost,
26 counseling cost, ignition interlock cost, assessment cost, testing
27 cost, education cost, treatment cost, payment required under

1 Article 42A.652, or any other payment or cost authorized or
2 required under this chapter. The court shall consider under this
3 subsection whether a defendant has sufficient resources or income:

4 (1) before or immediately after placing the defendant
5 on community supervision, including deferred adjudication
6 community supervision; and

7 (2) during the period of community supervision, before
8 or immediately after the court orders or requires the defendant to
9 make any payments under this chapter.

10 (c) Subsection (b) does not apply to consideration of a
11 defendant's ability to pay restitution.

12 (d) Notwithstanding any other law, if a defendant is ordered
13 to make a payment included under Subsection (b), the court shall
14 reconsider whether the defendant has sufficient resources or income
15 to make the payment at any hearing held under Article 42A.751(d).

16 (e) A defendant who is ordered to make a payment included
17 under Subsection (b) may, at any time during the defendant's period
18 of community supervision, including deferred adjudication
19 community supervision, but not more than once in any six-month
20 period unless the defendant shows a substantial and compelling
21 reason for making an additional request during that period, file a
22 written statement with the clerk of the court requesting
23 reconsideration of the defendant's ability to make the payment and
24 requesting that the payment be satisfied by an alternative method
25 provided under Subsection (f). On receipt of the statement, the
26 court shall consider whether the defendant's financial status or
27 required payments have changed in such a way that the defendant's

1 ability to make a payment previously ordered by the court is
2 substantially hindered. If after conducting a review under this
3 subsection the court finds that the defendant's ability to make a
4 payment previously ordered by the court is substantially hindered,
5 the court shall determine whether all or a portion of the payment
6 should be satisfied by an alternative method provided under
7 Subsection (f). The court shall notify the defendant and the
8 attorney representing the state of the court's decision regarding
9 whether to allow all or a portion of the payment to be satisfied by
10 an alternative method.

11 (f) Notwithstanding any other law, if the court determines
12 under this article at any time during a defendant's period of
13 community supervision, including deferred adjudication community
14 supervision, that the defendant does not have sufficient resources
15 or income to make a payment included under Subsection (b), the court
16 shall determine whether all or a portion of the payment should be:

17 (1) required to be paid at a later date or in a
18 specified portion at designated intervals;

19 (2) waived completely or partially under Article
20 [43.091](#) or [45.0491](#);

21 (3) discharged by performing community service under
22 Article [42A.304](#) or [45.049](#), as applicable; or

23 (4) satisfied through any combination of methods under
24 Subdivisions (1)-(3).

25 (g) The Office of Court Administration of the Texas Judicial
26 System shall adopt a standardized form that a defendant may use to
27 make a request under Subsection (e) for the reconsideration of the

1 defendant's ability to pay. The form must include:

2 (1) detailed and clear instructions for how to fill
3 out the form and submit a request to the court; and

4 (2) the following statement at the top of the form, in
5 bold type and in any language in which the form is produced:

6 "If at any time while you are on community supervision your ability
7 to pay any fine, fee, program cost, or other payment ordered by the
8 court, other than restitution, changes and you cannot afford to
9 pay, you have the right to request that the court review your
10 payments and consider changing or waiving your payments. You can
11 use this form to make a request for a change in your payments. You
12 cannot use this form to request a change in restitution payments."

13 (h) A supervision officer or the court shall promptly
14 provide a defendant a copy of the form adopted under Subsection (g)
15 on the defendant's request for the form.

16 (i) This subsection applies only to a defendant whose
17 payments are wholly or partly waived under this article. At any
18 time during the defendant's period of community supervision,
19 including deferred adjudication community supervision, the court,
20 on the court's own motion or by motion of the attorney representing
21 the state, may reconsider the waiver of the payment. After
22 providing written notice to the defendant and an opportunity for
23 the defendant to present information relevant to the defendant's
24 ability to pay, the court may order the defendant to pay all or part
25 of the waived amount of the payment only if the court determines
26 that the defendant has sufficient resources or income to pay the
27 amount.

1 SECTION 9. Article 42A.701, Code of Criminal Procedure, is
2 amended by amending Subsection (b) and adding Subsections (b-1),
3 (b-2), and (d-1) to read as follows:

4 (b) On completion of one-half of the original community
5 supervision period or two years of community supervision, whichever
6 is more, the judge shall review the defendant's record and consider
7 whether to reduce or terminate the period of community supervision,
8 unless the defendant:

9 (1) is delinquent in paying required [~~costs, fines,~~
10 ~~fees, or~~] restitution that the defendant has the ability to pay; or

11 (2) has not completed court-ordered counseling or
12 treatment.

13 (b-1) The supervision officer shall notify the judge as soon
14 as practicable after the date a defendant, who at the time of the
15 review required by Subsection (b) was delinquent in paying
16 restitution or had not completed court-ordered counseling or
17 treatment, completes the remaining court-ordered counseling or
18 treatment and makes the delinquent restitution payments, as
19 applicable, and is otherwise compliant with the conditions of
20 community supervision. On receipt of the notice the judge shall
21 review the defendant's record and consider whether to reduce or
22 terminate the period of community supervision.

23 (b-2) Following a review conducted under Subsection (b) or
24 (b-1), the judge may reduce or terminate the period of community
25 supervision or decide not to reduce or terminate the period of
26 community supervision. In making the determination, the judge may
27 consider any factors the judge considers relevant, including

1 whether the defendant is delinquent in paying court-ordered costs,
2 finances, or fees that the defendant has the ability to pay as provided
3 by Article 42A.655.

4 (d-1) If the judge does not terminate the defendant's period
5 of community supervision after conducting a review under this
6 article:

7 (1) the judge shall promptly advise the defendant's
8 supervision officer of the reasons the judge did not terminate the
9 defendant's period of community supervision; and

10 (2) the supervision officer shall promptly advise the
11 defendant in writing of the reasons provided under Subdivision (1).

12 SECTION 10. Articles 42A.702(a) and (d), Code of Criminal
13 Procedure, are amended to read as follows:

14 (a) This article applies only to a defendant who:

15 (1) is granted community supervision, including
16 deferred adjudication community supervision, for an offense
17 punishable as a state jail felony or a felony of the third degree,
18 other than an offense:

19 (A) included as a "reportable conviction or
20 adjudication" under Article 62.001(5);

21 (B) involving family violence as defined by
22 Section 71.004, Family Code;

23 (C) under Section 20.03 or 28.02, Penal Code; or

24 (D) under Chapter 49, Penal Code; and

25 ~~(2) [is not delinquent in paying required costs,~~
26 ~~finances, or fees, and~~

27 ~~[(3)]~~ has fully satisfied any order to pay restitution

1 to a victim.

2 (d) A defendant is entitled to time credits toward the
3 completion of the defendant's period of community supervision for
4 the successful completion of treatment or rehabilitation programs
5 as follows:

6 (1) parenting class or parental responsibility
7 program: 30 days;

8 (2) anger management program: 30 days;

9 (3) life skills training program: 30 days;

10 (4) vocational, technical, or career education or
11 training program: 60 days; ~~and~~

12 (5) alcohol or substance abuse counseling or
13 treatment: 90 days; and

14 (6) any other faith-based, volunteer, or
15 community-based program ordered or approved by the court: 30 days.

16 SECTION 11. Not later than January 1, 2022, the Office of
17 Court Administration of the Texas Judicial System shall adopt the
18 form required by Article 42A.655(g), Code of Criminal Procedure, as
19 added by this Act.

20 SECTION 12. (a) Except as provided by Subsection (b) of
21 this section, the change in law made by this Act to Chapter 42A,
22 Code of Criminal Procedure, applies to a person on community
23 supervision on or after the effective date of this Act, regardless
24 of whether the person was placed on community supervision before,
25 on, or after the effective date of this Act.

26 (b) Article 42A.702(d)(6), Code of Criminal Procedure, as
27 added by this Act, applies only to a person placed on community

1 supervision on or after the effective date of this Act.

2 SECTION 13. This Act takes effect September 1, 2021.