

1-1 By: Pacheco, et al. (Senate Sponsor - Hughes) H.B. No. 385  
 1-2 (In the Senate - Received from the House May 3, 2021;  
 1-3 May 14, 2021, read first time and referred to Committee on Criminal  
 1-4 Justice; May 20, 2021, reported favorably by the following vote:  
 1-5 Yeas 4, Nays 3; May 20, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Whitmire	X			
1-8 Huffman		X		
1-9 Bettencourt	X			
1-10 Birdwell		X		
1-11 Hinojosa	X			
1-12 Miles	X			
1-13 Nichols		X		

1-15 A BILL TO BE ENTITLED  
 1-16 AN ACT

1-17 relating to conditions of community supervision and procedures  
 1-18 applicable to the reduction or termination of a defendant's period  
 1-19 of community supervision.

1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-21 SECTION 1. Article 42A.052(a), Code of Criminal Procedure,  
 1-22 is amended to read as follows:

1-23 (a) A judge who places a defendant on community supervision  
 1-24 may authorize the supervision officer supervising the defendant or  
 1-25 a magistrate appointed by the district courts in the county that  
 1-26 give preference to criminal cases to modify the conditions of  
 1-27 community supervision for the limited purposes ~~[purpose]~~ of:

1-28 (1) transferring the defendant to different programs  
 1-29 within the community supervision continuum of programs and  
 1-30 sanctions; or

1-31 (2) prioritizing the conditions ordered by the court  
 1-32 according to:

1-33 (A) the defendant's needs as determined by a risk  
 1-34 and needs assessment; and

1-35 (B) the defendant's progress under supervision.

1-36 SECTION 2. Article 42A.301(b), Code of Criminal Procedure,  
 1-37 is amended to read as follows:

1-38 (b) Conditions of community supervision may include  
 1-39 conditions requiring the defendant to:

1-40 (1) commit no offense against the laws of this state or  
 1-41 of any other state or of the United States;

1-42 (2) avoid injurious or vicious habits;

1-43 (3) ~~avoid persons or places of disreputable or~~  
 1-44 ~~harmful character, including any person, other than a family member~~  
 1-45 ~~of the defendant, who is an active member of a criminal street gang;~~

1-46 ~~[(4)] report to the supervision officer as directed by~~  
 1-47 ~~the judge or supervision officer and obey all rules and regulations~~  
 1-48 ~~of the community supervision and corrections department;~~

1-49 (4) [(5)] permit the supervision officer to visit the  
 1-50 defendant at the defendant's home or elsewhere;

1-51 (5) [(6)] work faithfully at suitable employment to  
 1-52 the extent possible;

1-53 (6) [(7)] remain within a specified place;

1-54 (7) [(8)] pay in one or more amounts:

1-55 (A) the defendant's fine, if one is assessed; and

1-56 (B) all court costs, regardless of whether a fine  
 1-57 is assessed;

1-58 (8) [(9)] support the defendant's dependents;

1-59 (9) [(10)] participate, for a period specified by the  
 1-60 judge, in any community-based program, including a community  
 1-61 service project under Article 42A.304;

2-1                   (10) [~~(11)~~] if the judge determines that the defendant  
2-2 has financial resources that enable the defendant to offset in part  
2-3 or in whole the costs of the legal services provided to the  
2-4 defendant in accordance with Article 1.051(c) or (d), including any  
2-5 expenses and costs, reimburse the county in which the prosecution  
2-6 was instituted for the costs of the legal services in an amount that  
2-7 the judge finds the defendant is able to pay, except that the  
2-8 defendant may not be ordered to pay an amount that exceeds:  
2-9                   (A) the actual costs, including any expenses and  
2-10 costs, paid by the county for the legal services provided by an  
2-11 appointed attorney; or  
2-12                   (B) if the defendant was represented by a public  
2-13 defender's office, the actual amount, including any expenses and  
2-14 costs, that would have otherwise been paid to an appointed attorney  
2-15 had the county not had a public defender's office;  
2-16                   (11) [~~(12)~~] if under custodial supervision in a  
2-17 community corrections facility:  
2-18                   (A) remain under that supervision;  
2-19                   (B) obey all rules and regulations of the  
2-20 facility; and  
2-21                   (C) pay a percentage of the defendant's income to  
2-22 the facility for room and board;  
2-23                   (12) [~~(13)~~] submit to testing for alcohol or  
2-24 controlled substances;  
2-25                   (13) [~~(14)~~] attend counseling sessions for substance  
2-26 abusers or participate in substance abuse treatment services in a  
2-27 program or facility approved or licensed by the Department of State  
2-28 Health Services, provided that, notwithstanding Subsection (a) or  
2-29 any other law, a judge may only require a defendant to attend  
2-30 counseling sessions or participate in treatment if:  
2-31                   (A) the results of an evaluation that is designed  
2-32 to determine the appropriate type and level of treatment necessary  
2-33 to address the defendant's alcohol or drug dependency indicate that  
2-34 counseling or treatment is necessary to protect or restore the  
2-35 community or the victim and to rehabilitate the defendant; or  
2-36                   (B) the defendant's use, manufacture,  
2-37 possession, or delivery of a controlled substance or alcohol was an  
2-38 element of the offense for which the defendant was placed on  
2-39 community supervision;  
2-40                   (14) [~~(15)~~] with the consent of the victim of a  
2-41 misdemeanor offense or of any offense under Title 7, Penal Code,  
2-42 participate in victim-defendant mediation;  
2-43                   (15) [~~(16)~~] submit to electronic monitoring;  
2-44                   (16) [~~(17)~~] reimburse the compensation to victims of  
2-45 crime fund for any amounts paid from that fund to or on behalf of a  
2-46 victim, as defined by Article 56B.003, of the offense or if no  
2-47 reimbursement is required, make one payment to the compensation to  
2-48 victims of crime fund in an amount not to exceed \$50 if the offense  
2-49 is a misdemeanor or not to exceed \$100 if the offense is a felony;  
2-50                   (17) [~~(18)~~] reimburse a law enforcement agency for the  
2-51 analysis, storage, or disposal of raw materials, controlled  
2-52 substances, chemical precursors, drug paraphernalia, or other  
2-53 materials seized in connection with the offense;  
2-54                   (18) [~~(19)~~] reimburse all or part of the reasonable  
2-55 and necessary costs incurred by the victim for psychological  
2-56 counseling made necessary by the offense or for counseling and  
2-57 education relating to acquired immune deficiency syndrome or human  
2-58 immunodeficiency virus made necessary by the offense;  
2-59                   (19) [~~(20)~~] pay a fine in an amount not to exceed \$50  
2-60 to a crime stoppers organization, as defined by Section 414.001,  
2-61 Government Code, and as certified by the Texas Crime Stoppers  
2-62 Council;  
2-63                   (20) [~~(21)~~] submit a DNA sample to the Department of  
2-64 Public Safety under Subchapter G, Chapter 411, Government Code, for  
2-65 the purpose of creating a DNA record of the defendant; and  
2-66                   (21) [~~(22)~~] in any manner required by the judge,  
2-67 provide in the county in which the offense was committed public  
2-68 notice of the offense for which the defendant was placed on  
2-69 community supervision.

3-1 SECTION 3. Article 42A.303(e), Code of Criminal Procedure,  
3-2 is amended to read as follows:

3-3 (e) The Department of State Health Services or the community  
3-4 supervision and corrections department supervising the defendant  
3-5 shall develop the continuum of care treatment plan described by  
3-6 Subsection (d)(1).

3-7 SECTION 4. Articles 42A.403(d-1) and (e), Code of Criminal  
3-8 Procedure, are amended to read as follows:

3-9 (d-1) The judge shall waive the educational program  
3-10 requirement if the defendant successfully completes ~~[equivalent]~~  
3-11 education at a residential treatment facility under Article  
3-12 42A.4045.

3-13 (e) The judge shall set out in the judgment, as applicable:

3-14 (1) the finding of good cause for waiver; or

3-15 (2) the finding that the defendant has successfully  
3-16 completed ~~[equivalent]~~ education as provided by Article 42A.4045.

3-17 SECTION 5. Articles 42A.404(b-1) and (c), Code of Criminal  
3-18 Procedure, are amended to read as follows:

3-19 (b-1) The judge shall waive the educational program  
3-20 requirement if the defendant successfully completes ~~[equivalent]~~  
3-21 education at a residential treatment facility under Article  
3-22 42A.4045.

3-23 (c) The judge shall set out in the judgment, as applicable:

3-24 (1) the finding of good cause for waiver; or

3-25 (2) the finding that the defendant has successfully  
3-26 completed ~~[equivalent]~~ education as provided by Article 42A.4045.

3-27 SECTION 6. Articles 42A.4045(a) and (b), Code of Criminal  
3-28 Procedure, are amended to read as follows:

3-29 (a) A judge shall waive the educational requirement under  
3-30 Article 42A.403 or 42A.404 for a defendant who is required to  
3-31 receive treatment as a resident of a substance abuse treatment  
3-32 facility as a condition of community supervision if the defendant  
3-33 successfully completes ~~[equivalent]~~ education while the defendant  
3-34 is confined to the residential treatment facility.

3-35 (b) The Department of State Health Services shall approve  
3-36 ~~[equivalent]~~ education provided at substance abuse treatment  
3-37 facilities.

3-38 SECTION 7. Articles 42A.406(a) and (b-1), Code of Criminal  
3-39 Procedure, are amended to read as follows:

3-40 (a) If a defendant is required as a condition of community  
3-41 supervision to attend an educational program under Article 42A.403  
3-42 or 42A.404, or if the court waives the educational program  
3-43 requirement under Article 42A.403 or the defendant successfully  
3-44 completes ~~[equivalent]~~ education under Article 42A.4045, the court  
3-45 clerk shall immediately report that fact to the Department of  
3-46 Public Safety, on a form prescribed by the department, for  
3-47 inclusion in the defendant's driving record. If the court grants an  
3-48 extension of time in which the defendant may complete the  
3-49 educational program under Article 42A.403, the court clerk shall  
3-50 immediately report that fact to the Department of Public Safety on a  
3-51 form prescribed by the department. The clerk's report under this  
3-52 subsection must include the beginning date of the defendant's  
3-53 community supervision.

3-54 (b-1) Upon release from a residential treatment facility at  
3-55 which the person successfully completed ~~[equivalent]~~ education  
3-56 under Article 42A.4045, at the request of the court clerk, the  
3-57 director of the residential treatment facility shall give notice to  
3-58 the Department of Public Safety for inclusion in the person's  
3-59 driving record.

3-60 SECTION 8. Article 42A.655, Code of Criminal Procedure, is  
3-61 amended to read as follows:

3-62 Art. 42A.655. ABILITY TO PAY. (a) The court shall consider  
3-63 the defendant's ability to pay before ordering the defendant to  
3-64 make any payments under this chapter.

3-65 (b) Notwithstanding any other law and subject to Subsection  
3-66 (c), the court shall consider whether the defendant has sufficient  
3-67 resources or income to make any payments under this chapter,  
3-68 excluding restitution but including any fee, fine, reimbursement  
3-69 cost, court cost, rehabilitation cost, program cost, service cost,

4-1 counseling cost, ignition interlock cost, assessment cost, testing  
 4-2 cost, education cost, treatment cost, payment required under  
 4-3 Article 42A.652, or any other payment or cost authorized or  
 4-4 required under this chapter. The court shall consider under this  
 4-5 subsection whether a defendant has sufficient resources or income:

4-6 (1) before or immediately after placing the defendant  
 4-7 on community supervision, including deferred adjudication  
 4-8 community supervision; and

4-9 (2) during the period of community supervision, before  
 4-10 or immediately after the court orders or requires the defendant to  
 4-11 make any payments under this chapter.

4-12 (c) Subsection (b) does not apply to consideration of a  
 4-13 defendant's ability to pay restitution.

4-14 (d) Notwithstanding any other law, if a defendant is ordered  
 4-15 to make a payment included under Subsection (b), the court shall  
 4-16 reconsider whether the defendant has sufficient resources or income  
 4-17 to make the payment at any hearing held under Article 42A.751(d).

4-18 (e) A defendant who is ordered to make a payment included  
 4-19 under Subsection (b) may, at any time during the defendant's period  
 4-20 of community supervision, including deferred adjudication  
 4-21 community supervision, but not more than once in any six-month  
 4-22 period unless the defendant shows a substantial and compelling  
 4-23 reason for making an additional request during that period, file a  
 4-24 written statement with the clerk of the court requesting  
 4-25 reconsideration of the defendant's ability to make the payment and  
 4-26 requesting that the payment be satisfied by an alternative method  
 4-27 provided under Subsection (f). On receipt of the statement, the  
 4-28 court shall consider whether the defendant's financial status or  
 4-29 required payments have changed in such a way that the defendant's  
 4-30 ability to make a payment previously ordered by the court is  
 4-31 substantially hindered. If after conducting a review under this  
 4-32 subsection the court finds that the defendant's ability to make a  
 4-33 payment previously ordered by the court is substantially hindered,  
 4-34 the court shall determine whether all or a portion of the payment  
 4-35 should be satisfied by an alternative method provided under  
 4-36 Subsection (f). The court shall notify the defendant and the  
 4-37 attorney representing the state of the court's decision regarding  
 4-38 whether to allow all or a portion of the payment to be satisfied by  
 4-39 an alternative method.

4-40 (f) Notwithstanding any other law, if the court determines  
 4-41 under this article at any time during a defendant's period of  
 4-42 community supervision, including deferred adjudication community  
 4-43 supervision, that the defendant does not have sufficient resources  
 4-44 or income to make a payment included under Subsection (b), the court  
 4-45 shall determine whether all or a portion of the payment should be:

4-46 (1) required to be paid at a later date or in a  
 4-47 specified portion at designated intervals;

4-48 (2) waived completely or partially under Article  
 4-49 43.091 or 45.0491;

4-50 (3) discharged by performing community service under  
 4-51 Article 42A.304 or 45.049, as applicable; or

4-52 (4) satisfied through any combination of methods under  
 4-53 Subdivisions (1)-(3).

4-54 (g) The Office of Court Administration of the Texas Judicial  
 4-55 System shall adopt a standardized form that a defendant may use to  
 4-56 make a request under Subsection (e) for the reconsideration of the  
 4-57 defendant's ability to pay. The form must include:

4-58 (1) detailed and clear instructions for how to fill  
 4-59 out the form and submit a request to the court; and

4-60 (2) the following statement at the top of the form, in  
 4-61 bold type and in any language in which the form is produced:

4-62 "If at any time while you are on community supervision your ability  
 4-63 to pay any fine, fee, program cost, or other payment ordered by the  
 4-64 court, other than restitution, changes and you cannot afford to  
 4-65 pay, you have the right to request that the court review your  
 4-66 payments and consider changing or waiving your payments. You can  
 4-67 use this form to make a request for a change in your payments. You  
 4-68 cannot use this form to request a change in restitution payments."

4-69 (h) A supervision officer or the court shall promptly



5-1 provide a defendant a copy of the form adopted under Subsection (g)  
 5-2 on the defendant's request for the form.

5-3 (i) This subsection applies only to a defendant whose  
 5-4 payments are wholly or partly waived under this article. At any  
 5-5 time during the defendant's period of community supervision,  
 5-6 including deferred adjudication community supervision, the court,  
 5-7 on the court's own motion or by motion of the attorney representing  
 5-8 the state, may reconsider the waiver of the payment. After  
 5-9 providing written notice to the defendant and an opportunity for  
 5-10 the defendant to present information relevant to the defendant's  
 5-11 ability to pay, the court may order the defendant to pay all or part  
 5-12 of the waived amount of the payment only if the court determines  
 5-13 that the defendant has sufficient resources or income to pay the  
 5-14 amount.

5-15 SECTION 9. Article 42A.701, Code of Criminal Procedure, is  
 5-16 amended by amending Subsection (b) and adding Subsections (b-1),  
 5-17 (b-2), and (d-1) to read as follows:

5-18 (b) On completion of one-half of the original community  
 5-19 supervision period or two years of community supervision, whichever  
 5-20 is more, the judge shall review the defendant's record and consider  
 5-21 whether to reduce or terminate the period of community supervision,  
 5-22 unless the defendant:

5-23 (1) is delinquent in paying required [~~costs, fines,~~  
 5-24 ~~fees, or~~] restitution that the defendant has the ability to pay; or

5-25 (2) has not completed court-ordered counseling or  
 5-26 treatment.

5-27 (b-1) The supervision officer shall notify the judge as soon  
 5-28 as practicable after the date a defendant, who at the time of the  
 5-29 review required by Subsection (b) was delinquent in paying  
 5-30 restitution or had not completed court-ordered counseling or  
 5-31 treatment, completes the remaining court-ordered counseling or  
 5-32 treatment and makes the delinquent restitution payments, as  
 5-33 applicable, and is otherwise compliant with the conditions of  
 5-34 community supervision. On receipt of the notice the judge shall  
 5-35 review the defendant's record and consider whether to reduce or  
 5-36 terminate the period of community supervision.

5-37 (b-2) Following a review conducted under Subsection (b) or  
 5-38 (b-1), the judge may reduce or terminate the period of community  
 5-39 supervision or decide not to reduce or terminate the period of  
 5-40 community supervision. In making the determination, the judge may  
 5-41 consider any factors the judge considers relevant, including  
 5-42 whether the defendant is delinquent in paying court-ordered costs,  
 5-43 fines, or fees that the defendant has the ability to pay as provided  
 5-44 by Article 42A.655.

5-45 (d-1) If the judge does not terminate the defendant's period  
 5-46 of community supervision after conducting a review under this  
 5-47 article:

5-48 (1) the judge shall promptly advise the defendant's  
 5-49 supervision officer of the reasons the judge did not terminate the  
 5-50 defendant's period of community supervision; and

5-51 (2) the supervision officer shall promptly advise the  
 5-52 defendant in writing of the reasons provided under Subdivision (1).

5-53 SECTION 10. Articles 42A.702(a) and (d), Code of Criminal  
 5-54 Procedure, are amended to read as follows:

5-55 (a) This article applies only to a defendant who:

5-56 (1) is granted community supervision, including  
 5-57 deferred adjudication community supervision, for an offense  
 5-58 punishable as a state jail felony or a felony of the third degree,  
 5-59 other than an offense:

5-60 (A) included as a "reportable conviction or  
 5-61 adjudication" under Article 62.001(5);

5-62 (B) involving family violence as defined by  
 5-63 Section 71.004, Family Code;

5-64 (C) under Section 20.03 or 28.02, Penal Code; or

5-65 (D) under Chapter 49, Penal Code; and

5-66 (2) [~~is not delinquent in paying required costs,~~  
 5-67 ~~fines, or fees, and~~

5-68 [~~3~~] has fully satisfied any order to pay restitution  
 5-69 to a victim.

6-1 (d) A defendant is entitled to time credits toward the  
6-2 completion of the defendant's period of community supervision for  
6-3 the successful completion of treatment or rehabilitation programs  
6-4 as follows:

- 6-5 (1) parenting class or parental responsibility  
6-6 program: 30 days;
- 6-7 (2) anger management program: 30 days;
- 6-8 (3) life skills training program: 30 days;
- 6-9 (4) vocational, technical, or career education or  
6-10 training program: 60 days; ~~and~~
- 6-11 (5) alcohol or substance abuse counseling or  
6-12 treatment: 90 days; and
- 6-13 (6) any other faith-based, volunteer, or  
6-14 community-based program ordered or approved by the court: 30 days.

6-15 SECTION 11. Not later than January 1, 2022, the Office of  
6-16 Court Administration of the Texas Judicial System shall adopt the  
6-17 form required by Article 42A.655(g), Code of Criminal Procedure, as  
6-18 added by this Act.

6-19 SECTION 12. (a) Except as provided by Subsection (b) of  
6-20 this section, the change in law made by this Act to Chapter 42A,  
6-21 Code of Criminal Procedure, applies to a person on community  
6-22 supervision on or after the effective date of this Act, regardless  
6-23 of whether the person was placed on community supervision before,  
6-24 on, or after the effective date of this Act.

6-25 (b) Article 42A.702(d)(6), Code of Criminal Procedure, as  
6-26 added by this Act, applies only to a person placed on community  
6-27 supervision on or after the effective date of this Act.

6-28 SECTION 13. This Act takes effect September 1, 2021.

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