

By: Hodge

H.B. No. 1714

A BILL TO BE ENTITLED

AN ACT

relating to eligibility for community supervision, the conditions of supervision, and the duration of the period of community supervision.

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

SECTION 1. Section 3g(a), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(a) The provisions of Section 3 of this article do not apply:

(1) to a defendant adjudged guilty of an offense under:

(A) Section 19.02, Penal Code (Murder);

(B) Section 19.03, Penal Code (Capital murder);

(C) Section 21.11(a)(1), Penal Code (Indecency with a child);

(D) Section 20.04, Penal Code (Aggravated kidnapping);

(E) Section 22.021, Penal Code (Aggravated sexual assault);

(F) Section 29.03, Penal Code (Aggravated robbery); or

(G) [~~Chapter 481, Health and Safety Code, for which punishment is increased under:~~

~~[(i) Section 481.140, Health and Safety~~

1 ~~Code, or~~

2 ~~[(ii) Section 481.134(c), (d), (e), or (f),~~
3 ~~Health and Safety Code, if it is shown that the defendant has been~~
4 ~~previously convicted of an offense for which punishment was~~
5 ~~increased under any of those subsections; or~~

6 ~~[(H)]~~ Section 22.011, Penal Code (Sexual
7 assault); or

8 (2) to a defendant when it is shown that a deadly
9 weapon as defined in Section 1.07, Penal Code, was used or
10 exhibited during the commission of a felony offense or during
11 immediate flight therefrom, and that the defendant used or
12 exhibited the deadly weapon or was a party to the offense and knew
13 that a deadly weapon would be used or exhibited. On an affirmative
14 finding under this subdivision, the trial court shall enter the
15 finding in the judgment of the court. On an affirmative finding
16 that the deadly weapon was a firearm, the court shall enter that
17 finding in its judgment.

18 SECTION 2. Section 4(d), Article 42.12, Code of Criminal
19 Procedure, is amended to read as follows:

20 (d) A defendant is not eligible for community supervision
21 under this section if the defendant:

22 (1) is sentenced to a term of imprisonment that
23 exceeds 10 years; or

24 (2) is sentenced to serve a term of confinement under
25 Section 12.35, Penal Code[~~+~~

26 ~~[(3) does not file a sworn motion under Subsection (e)~~
27 ~~of this section or for whom the jury does not enter in the verdict a~~

1 ~~finding that the information contained in the motion is true, or~~
2 ~~[(4) is adjudged guilty of an offense for which~~
3 ~~punishment is increased under Section 481.134(c), (d), (e), or (f),~~
4 ~~Health and Safety Code, if it is shown that the defendant has been~~
5 ~~previously convicted of an offense for which punishment was~~
6 ~~increased under any one of those subsections].~~

7 SECTION 3. Sections 5(c) and (d), Article 42.12, Code of
8 Criminal Procedure, are amended to read as follows:

9 (c) On expiration of a community supervision period imposed
10 under Subsection (a) of this section, if the judge has not proceeded
11 to adjudication of guilt, the judge shall dismiss the proceedings
12 against the defendant and discharge him. The judge may dismiss the
13 proceedings and discharge a defendant, other than a defendant
14 charged with an offense requiring the defendant to register as a sex
15 offender under Chapter 62, ~~[as added by Chapter 668, Acts of the~~
16 ~~75th Legislature, Regular Session, 1997,]~~ prior to the expiration
17 of the term of community supervision if in the judge's opinion the
18 best interest of society and the defendant will be served. At least
19 annually for a defendant who has not violated a condition of
20 community supervision in the preceding year, the judge who placed
21 the defendant on community supervision shall review and consider
22 the defendant for early dismissal and discharge under this
23 subsection. The judge may not dismiss the proceedings and
24 discharge a defendant charged with an offense requiring the
25 defendant to register under Chapter 62~~[, as added by Chapter 668,~~
26 ~~Acts of the 75th Legislature, Regular Session, 1997]~~. Except as
27 provided by Section 12.42(g), Penal Code, a dismissal and discharge

1 under this section may not be deemed a conviction for the purposes
2 of disqualifications or disabilities imposed by law for conviction
3 of an offense. For any defendant who receives a dismissal and
4 discharge under this section:

5 (1) upon conviction of a subsequent offense, the fact
6 that the defendant had previously received community supervision
7 with a deferred adjudication of guilt shall be admissible before
8 the court or jury to be considered on the issue of penalty;

9 (2) if the defendant is an applicant for a license or
10 is a licensee under Chapter 42, Human Resources Code, the Texas
11 Department of Human Services may consider the fact that the
12 defendant previously has received community supervision with a
13 deferred adjudication of guilt under this section in issuing,
14 renewing, denying, or revoking a license under that chapter; and

15 (3) if the defendant is a person who has applied for
16 registration to provide mental health or medical services for the
17 rehabilitation of sex offenders, the Interagency Council on Sex
18 Offender Treatment may consider the fact that the defendant has
19 received community supervision under this section in issuing,
20 renewing, denying, or revoking a license or registration issued by
21 that council.

22 (d) In all other cases the judge may grant deferred
23 adjudication unless:

24 (1) the defendant is charged with an offense[+
25 [~~(A)~~] under Section [~~49.04, 49.05, 49.06,~~]
26 49.07[7] or 49.08, Penal Code; or

27 [~~(B) for which punishment may be increased under~~

~~Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any one of those subsections, or]~~

(2) the defendant:

(A) is charged with an offense under Section 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the victim, or a felony described by Section 13B(b) of this article; and

(B) has previously been placed on community supervision for any offense under Paragraph (A) of this subdivision.

SECTION 4. Section 6(a), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(a) For the purposes of this section, the jurisdiction of a court in which a sentence requiring imprisonment in the institutional division of the Texas Department of Criminal Justice is imposed by the judge of the court shall continue for 180 days from the date the execution of the sentence actually begins. Before the expiration of 180 days from the date the execution of the sentence actually begins, the judge of the court that imposed such sentence may on his own motion, on the motion of the attorney representing the state, or on the written motion of the defendant, suspend further execution of the sentence and place the defendant on community supervision under the terms and conditions of this article, if in the opinion of the judge the defendant would not benefit from further imprisonment and[+

[~~1~~] the defendant is otherwise eligible for

1 community supervision under this article[, and

2 [~~(2) the defendant had never before been incarcerated~~
3 ~~in a penitentiary serving a sentence for a felony~~].

4 SECTION 5. Section 11(a), Article 42.12, Code of Criminal
5 Procedure, is amended to read as follows:

6 (a) The judge of the court having jurisdiction of the case
7 shall determine the conditions of community supervision and may, at
8 any time, during the period of community supervision alter or
9 modify the conditions. The judge may impose any reasonable
10 condition that is designed to protect or restore the community,
11 protect or restore the victim, or punish, rehabilitate, or reform
12 the defendant. Conditions of community supervision may include,
13 but shall not be limited to, the conditions that the defendant
14 shall:

15 (1) Commit no offense against the laws of this State or
16 of any other State or of the United States;

17 (2) [~~Avoid injurious or vicious habits,~~

18 [~~(3) Avoid persons or places of disreputable or~~
19 ~~harmful character,~~

20 [~~(4)~~] Report to the supervision officer as directed by
21 the judge or supervision officer and obey all rules and regulations
22 of the community supervision and corrections department;

23 (3) [~~(5)~~] Permit the supervision officer to visit him
24 at his home or elsewhere;

25 (4) [~~(6)~~] Work faithfully at suitable employment as
26 far as possible;

27 (5) [~~(7)~~] Remain within a specified place;

1 (6) [~~(8)~~] Pay his fine, if one be assessed, and all
2 court costs whether a fine be assessed or not, in one or several
3 sums;

4 (7) [~~(9)~~] Support his dependents;

5 (8) [~~(10)~~] Participate, for a time specified by the
6 judge in any community-based program, including a
7 community-service work program under Section 16 of this article;

8 (9) [~~(11)~~] Reimburse the county in which the
9 prosecution was instituted for compensation paid to appointed
10 counsel for defending him in the case, if counsel was appointed, or
11 if he was represented by a county-paid public defender, in an amount
12 that would have been paid to an appointed attorney had the county
13 not had a public defender;

14 (10) [~~(12)~~] Remain under custodial supervision in a
15 community corrections facility, obey all rules and regulations of
16 such facility, and pay a percentage of his income to the facility
17 for room and board;

18 (11) [~~(13)~~] Pay a percentage of his income to his
19 dependents for their support while under custodial supervision in a
20 community corrections facility;

21 (12) [~~(14)~~] Submit to testing for alcohol or
22 controlled substances;

23 (13) [~~(15)~~] Attend counseling sessions for substance
24 abusers or participate in substance abuse treatment services in a
25 program or facility approved or licensed by the Texas Commission on
26 Alcohol and Drug Abuse;

27 (14) [~~(16)~~] With the consent of the victim of a

1 misdemeanor offense or of any offense under Title 7, Penal Code,
2 participate in victim-defendant mediation;

3 (15) [~~(17)~~] Submit to electronic monitoring;

4 (16) [~~(18)~~] Reimburse the general revenue fund for any
5 amounts paid from that fund to a victim, as defined by Article 56.01
6 of this code, of the defendant's offense or if no reimbursement is
7 required, make one payment to the fund in an amount not to exceed
8 \$50 if the offense is a misdemeanor or not to exceed \$100 if the
9 offense is a felony;

10 (17) [~~(19)~~] Reimburse a law enforcement agency for the
11 analysis, storage, or disposal of raw materials, controlled
12 substances, chemical precursors, drug paraphernalia, or other
13 materials seized in connection with the offense;

14 (18) [~~(20)~~] Pay all or part of the reasonable and
15 necessary costs incurred by the victim for psychological counseling
16 made necessary by the offense or for counseling and education
17 relating to acquired immune deficiency syndrome or human
18 immunodeficiency virus made necessary by the offense;

19 (19) [~~(21)~~] Make one payment in an amount not to
20 exceed \$50 to a crime stoppers organization as defined by Section
21 414.001, Government Code, and as certified by the Crime Stoppers
22 Advisory Council;

23 (20) [~~(22)~~] Submit a blood sample or other specimen to
24 the Department of Public Safety under Subchapter G, Chapter 411,
25 Government Code, for the purpose of creating a DNA record of the
26 defendant; and

27 (21) [~~(23)~~] In any manner required by the judge,

1 provide public notice of the offense for which the defendant was
2 placed on community supervision in the county in which the offense
3 was committed.

4 SECTION 6. Sections 15(a) and (b), Article 42.12, Code of
5 Criminal Procedure, are amended to read as follows:

6 (a) On conviction of a state jail felony punished under
7 Section 12.35(a), Penal Code, the judge may suspend the imposition
8 of the sentence and place the defendant on community supervision or
9 may order the sentence to be executed. The judge may suspend in
10 whole or in part the imposition of any fine imposed on conviction.
11 A jury that imposes confinement as punishment for a state jail
12 felony may recommend to the judge that the judge suspend the
13 imposition of the sentence and place the defendant on community
14 supervision. A judge shall suspend the imposition of the sentence
15 and place the defendant on community supervision if the jury makes
16 that recommendation in the verdict.

17 (b) The minimum period of community supervision a judge may
18 impose under this section is one year [~~two years~~]. The maximum
19 period of community supervision a judge may impose under this
20 section is five years [~~, except that the judge may extend the maximum~~
21 ~~period of community supervision under this section to not more than~~
22 ~~10 years~~]. A judge may extend a period of community supervision
23 under this section at any time during the period of community
24 supervision, or if a motion for revocation of community supervision
25 is filed before the period of community supervision ends, before
26 the first anniversary of the expiration of the period of community
27 supervision.

SECTION 7. Section 15(h)(2), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(2) A judge shall ~~[may]~~ credit against any time a defendant is required to serve in a state jail felony facility time served by the defendant in county jail from the time of the defendant's arrest and confinement until sentencing by the trial court.

SECTION 8. Section 15A, Article 42.12, Code of Criminal Procedure, is amended to read as follows:

Sec. 15A. ENHANCED DISORDERLY CONDUCT AND PUBLIC INTOXICATION OFFENSES. On conviction of an offense for which punishment is enhanced under Section 12.43(c), Penal Code, the court may suspend the imposition of the sentence and place the defendant on community supervision if the court finds that the defendant would benefit from community supervision and enters its finding on the record. The judge may suspend in whole or in part the imposition of any fine imposed on conviction. All provisions of this article applying to a defendant placed on community supervision for a misdemeanor apply to a defendant placed on community supervision under this section, except that the court may ~~[shall]~~ require the defendant as a condition of community supervision to:

(1) submit to diagnostic testing for addiction to alcohol or a controlled substance or drug;

(2) submit to a psychological assessment;

(3) if indicated as necessary by testing and assessment, participate in an alcohol or drug abuse treatment or

1 education program; and

2 (4) pay the costs of testing, assessment, and
3 treatment or education, either directly or as a court cost.

4 SECTION 9. Section 20, Article 42.12, Code of Criminal
5 Procedure, is amended by adding Subsection (c) to read as follows:

6 (c) Not later than the 90th day after the date a defendant
7 becomes eligible under Subsection (a) for reduction or termination
8 of community supervision, the judge who placed the defendant on
9 community supervision shall review and consider the defendant for
10 reduction or termination of community supervision. If supervision
11 is not reduced or terminated following the initial review under
12 this subsection, the judge shall repeat the review immediately
13 following each 12-month period in which the defendant has not
14 violated a condition of community supervision.

15 SECTION 10. Section 22(c), Article 42.12, Code of Criminal
16 Procedure, is amended to read as follows:

17 (c) The judge may extend a period of community supervision
18 under this section as often as the judge determines is necessary,
19 but the period of community supervision in a first, second, or third
20 degree felony case may not exceed 10 years and, except as otherwise
21 provided by this subsection, the period of community supervision in
22 a misdemeanor case may not exceed three years. ~~[The judge may~~
23 ~~extend the period of community supervision in a misdemeanor case~~
24 ~~for any period the judge determines is necessary, not to exceed an~~
25 ~~additional two years beyond the three-year limit, if the defendant~~
26 ~~fails to pay a previously assessed fine, costs, or restitution and~~
27 ~~the judge determines that extending the period of supervision~~

1 ~~increases the likelihood that the defendant will fully pay the~~
2 ~~fine, costs, or restitution.]~~ A court may extend a period of
3 community supervision under this section at any time during the
4 period of supervision or, if a motion for revocation of community
5 supervision is filed before the period of supervision ends, before
6 the first anniversary of the date on which the period of supervision
7 expires.

8 SECTION 11. Section 4(e), Article 42.12, Code of Criminal
9 Procedure, is repealed.

10 SECTION 12. The change in law made by this Act applies only
11 to a defendant placed on community supervision on or after the
12 effective date of this Act. A defendant placed on community
13 supervision before the effective date of this Act is covered by the
14 law in effect when the defendant was placed on community
15 supervision, and the former law is continued in effect for that
16 purpose.

17 SECTION 13. This Act takes effect September 1, 2003.