

By: Uresti

H.B. No. 1859

A BILL TO BE ENTITLED

1 AN ACT

2 relating to a court's continuing jurisdiction to handle the  
3 disposition of a felony case.

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

5 SECTION 1. Section 6, Article 42.12, Code of Criminal  
6 Procedure, is amended to read as follows:

7 Sec. 6. CONTINUING COURT JURISDICTION IN FELONY CASES. (a)  
8 For the purposes of this section, the jurisdiction of a court in  
9 which a sentence requiring imprisonment in the institutional  
10 division of the Texas Department of Criminal Justice is imposed by  
11 the judge of the court shall continue for 180 days from the date the  
12 execution of the sentence actually begins. Before the expiration of  
13 180 days from the date the execution of the sentence actually  
14 begins, the judge of the court that imposed the [~~such~~] sentence may  
15 on the judge's [~~his~~] own motion, on the motion of the attorney  
16 representing the state, or on the written motion of the defendant,  
17 subject to Subsection (a-1):

18 (1) withdraw the adjudication of guilt, defer further  
19 proceedings in the matter, and place the defendant on deferred  
20 adjudication community supervision in accordance with Section 5 of  
21 this article; or

22 (2) suspend further execution of the sentence and  
23 place the defendant on community supervision in accordance with  
24 Section 3 [~~under the terms and conditions~~] of this article.

1        (a-1) A judge may take an action under Subsection (a)(1) or  
2 (2) only [7] if:

3            (1) in the opinion of the judge, the defendant would  
4 not benefit from further imprisonment;

5            (2) [~~and: (1)~~] the defendant is otherwise eligible for  
6 community supervision under this article; and

7            (3) [~~(2)~~] the defendant had never before been  
8 incarcerated in a penitentiary serving a sentence for a felony.

9        (b) When the defendant or the attorney representing the  
10 state files a written motion requesting [~~suspension by~~] the judge  
11 to take an action under Subsection (a)(1) or (2) [~~of further~~  
12 ~~execution of the sentence and placement of the defendant on~~  
13 ~~community supervision~~], and when requested to do so by the judge,  
14 the clerk of the court shall request a copy of the defendant's  
15 record while imprisoned from the institutional division of the  
16 Texas Department of Criminal Justice or, if the defendant is  
17 confined in county jail, from the sheriff. Upon receipt of the  
18 [~~such~~] request, the institutional division of the Texas Department  
19 of Criminal Justice or the sheriff shall forward to the judge, as  
20 soon as possible, a full and complete copy of the defendant's record  
21 while imprisoned or confined. When the defendant files a written  
22 motion requesting the judge to take an action under Subsection  
23 (a)(1) or (2) [~~suspension of further execution of the sentence and~~  
24 ~~placement on community supervision~~], the defendant [~~he~~] shall  
25 immediately deliver or cause to be delivered a true and correct copy  
26 of the motion to the office of the attorney representing the state.

27        (c) The judge may deny the motion without a hearing but may

1 not grant the motion without holding a hearing and providing the  
2 attorney representing the state and the defendant the opportunity  
3 to present evidence on the motion. If the judge denies the motion,  
4 the judge may also reduce the period of incarceration required by  
5 the original sentence imposed.

6 SECTION 2. Section 8, Article 42.12, Code of Criminal  
7 Procedure, is amended to read as follows:

8 Sec. 8. STATE BOOT CAMP PROGRAM. (a) For the purposes of  
9 this section, the jurisdiction of a court in which a sentence  
10 requiring imprisonment in the institutional division of the Texas  
11 Department of Criminal Justice is imposed for conviction of a  
12 felony shall continue for 180 days from the date on which the  
13 defendant [~~convicted person~~] is received into custody by the  
14 institutional division. After the expiration of 75 days but prior  
15 to the expiration of 180 days from the date on which the defendant  
16 [~~convicted person~~] is received into custody by the institutional  
17 division, the judge of the court that imposed the sentence may, if  
18 in the opinion of the judge the defendant would not benefit from  
19 further imprisonment:

20 (1) withdraw the adjudication of guilt, defer further  
21 proceedings in the matter, and place the defendant on deferred  
22 adjudication community supervision in accordance with Section 5 of  
23 this article; or

24 (2) suspend further execution of the sentence  
25 [imposed] and place the defendant [~~person~~] on community supervision  
26 in accordance with Section 3 [~~under the terms and conditions~~] of  
27 this article [~~, if in the opinion of the judge the person would not~~

1 ~~benefit from further imprisonment~~].

2       (a-1) The court shall clearly indicate in its order  
3 recommending the placement of the defendant [~~person~~] in the state  
4 boot camp program that the court is not retaining jurisdiction over  
5 the defendant [~~person~~] for the purposes of Section 6 of this  
6 article. A court may recommend a defendant [~~person~~] for placement  
7 in the state boot camp program only if:

8           (1) the defendant [~~person~~] is otherwise eligible for  
9 community supervision under this article;

10           (2) the defendant [~~person~~] is 17 years of age or older  
11 but younger than 26 years and is physically and mentally capable of  
12 participating in a program that requires strenuous physical  
13 activity; and

14           (3) the defendant [~~person~~] is not convicted of an  
15 offense punishable as a state jail felony.

16       (b) On the 76th day after the day on which the defendant  
17 [~~convicted person~~] is received into custody by the institutional  
18 division, the institutional division shall send the convicting  
19 court the record of the defendant's [~~person's~~] progress, conduct,  
20 and conformity to institutional division rules.

21       (c) The judge's recommendation that a defendant [~~person~~] be  
22 placed in the state boot camp program created under Section  
23 499.052, Government Code, does not give the court the power to hold  
24 the Texas Department of Criminal Justice or any officer or employee  
25 of the department in contempt of court for failure to adhere to that  
26 recommendation.

27       SECTION 3. The change in law made by this Act applies only

1 to a defendant charged with or convicted of an offense committed on  
2 or after the effective date of this Act. A defendant charged with  
3 or convicted of an offense committed before the effective date of  
4 this Act is governed by the law in effect when the offense was  
5 committed, and the former law is continued in effect for that  
6 purpose. For the purposes of this section, an offense is committed  
7 before the effective date of this Act if any element of the offense  
8 is committed before that date.

9 SECTION 4. This Act takes effect September 1, 2005.