

## **BILL ANALYSIS**

C.S.S.B. 1909  
By: Ellis  
Corrections  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Texas is over-reliant on incarceration as a means of addressing the serious problem of substance abuse. There are treatment diversion alternatives that could effectively reduce recidivism among drug offenders, aid in alleviating prison overcrowding, and save taxpayers millions of dollars over time.

C.S.S.B. 1909 expands many of these alternatives in the Texas criminal justice system. The bill requires nonviolent drug offenders with no previous convictions other than a drug possession offense or certain offenses under the Transportation Code to be placed on community supervision and given personalized treatment, rather than incarcerated, unless a judge finds that the individual is a danger to the community or not fit for treatment. The bill authorizes a court to require an individual to comply with a range of conditions of community supervision in addition to requiring treatment, including vocational training, family counseling, literacy training, and community service, thereby giving judges the ability to select a mix of programs and monitoring conditions appropriate to each individual offender. The bill also authorizes certain individuals who successfully complete the assigned treatment program and successfully complete the term of community supervision to petition the court for nondisclosure of the offense.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

SECTION 1. Amends Section 15(a)(2), Article 42.12, Code of Criminal Procedure, to authorize the judge to suspend the imposition of the sentence and place the defendant on community supervision or order the sentence to be executed on conviction of state jail felony punished under Section 12.35(a) (imprisonment in a state jail for 180 days to two years), Penal Code. Deletes existing text excepting a state jail felony listed in Subdivision (1) (drug-related felonies and fraud regarding prescriptions for controlled substances).

SECTION 2. Amends Article 42.12, Code of Criminal Procedure, by adding Section 15B, as follows:

Sec. 15B. COMMUNITY SUPERVISION FOR POSSESSION OF CONTROLLED SUBSTANCE. (a) Defines "drug possession offense." In this section, "drug possession offense" means an offense under: Section 481.115, 481.116, 481.117, 481.118, 481.119(b), 483.041(a), or 485.031, Health and Safety Code, that is punishable as a felony of the third degree or as any lower category of offense; or Section 481.1151, Health and Safety Code, that is punishable as a state jail felony; or Section 481.121, Health and Safety Code, that is punishable as a Class A misdemeanor or as any lower category of offense.

(b) Requires the judge to suspend the imposition of a sentence and place a defendant convicted of a drug possession offense on community supervision (supervised defendant), providing exceptions set forth in this subsection.

(c) Requires a judge who determines under Subsection (b) that a defendant is a danger to the safety of others or is unlikely to benefit from participation in a drug

treatment program to enter reasons for making that determination in the record of the proceeding.

(d) Authorizes the judge to suspend in whole or in part the imposition of any fine imposed on a conviction if a defendant is placed on community supervision under this section.

(e) Requires a court granting community supervision under this section to require as a condition of community supervision that the defendant: (1) submit to an evidence-based risks and needs screening and evaluation procedure approved by the community justice assistance division of the Texas Department of Criminal Justice (CJAD), including a procedure developed under Section 509.003(d), Government Code; (2) if the evaluation indicates a need for treatment, participate in a prescribed course of treatment in a program or facility licensed or approved by the Department of State Health Services or that complies with standards established by CJAD; and (3) pay a fee to cover all or part of the cost of the course of treatment based on the defendant's ability to pay.

(f) Provides a list of options that a course of treatment under Subsection (e)(2) may include.

(g) Requires the judge, in referring a defendant to a course of treatment in a program described by Subsection (e)(2) and imposing conditions for participation in the program, to order the defendant to participate in the level of care that is the least restrictive and most cost-effective to achieve the outcome objectives prescribed by the program and the recommendations of a treatment professional.

(h) Authorizes a court granting community supervision under this section to require as a condition of community supervision, in addition to the drug treatment program and other appropriate conditions, that the supervised defendant participate in other activities set forth in this subsection.

(i) Authorizes the judge, if a supervised defendant violates the terms of that supervision by committing another drug possession offense or by violating any treatment-related condition of supervision, to take certain actions set forth in this subsection, notwithstanding Section 21(b), Article 42.12, Code of Criminal Procedure.

(j) Requires a judge who modifies a defendant's conditions of supervision in response to the defendant's commission of another drug possession offense or violation of a treatment-related condition of supervision to consider imposing one or more additional conditions of supervision as set forth in this subsection.

(k) Requires a judge, in making a determination under this section as to whether a defendant is unlikely to benefit from participation in a drug treatment program, to consider certain previous actions of the defendant as set forth in this subsection.

(l) Authorizes a supervised defendant to petition the court for dismissal of the charges after successful completion of a term of community supervision imposed under this section, including completion of a drug treatment program. Requires the judge to discharge the defendant, set aside the verdict or permit the defendant to withdraw the plea, and dismiss the accusation, complaint, information, or indictment in the manner provided by Section 20(a), Article 42.12, Code of Criminal Procedure, if the judge, after providing notice and giving attorneys for the defendant and the state an opportunity to be heard, determines that the defendant substantially complied with the conditions of supervision and successfully completed the drug treatment program.

SECTION 3. Amends Section 411.081, Government Code, by adding Subsection (d-1) and amending Subsection (e), as follows:

(d-1) Authorizes a supervised defendant who subsequently receives a discharge and dismissal under Section 15B(1), Article 42.12, Code of Criminal Procedure, and satisfies the requirements of Subsection (e), on payment of a \$28 fee to the clerk of the court that placed the defendant on community supervision in addition to any other fee that generally applies to the filing of a civil petition, to petition the sentencing court for an order of nondisclosure under this subsection, notwithstanding any other provision of Subchapter F (Criminal History Record Information). Requires the court, after notice to the state and a hearing on whether the person is entitled to file the petition and issuance of the order is in the best interest of justice, to issue the order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the community supervision. Authorizes a criminal justice agency to disclose such information only to other criminal justice agencies, for criminal justice purposes, an agency or entity listed in Subsection (i), or the person who is the subject of the order. Provides that the payment may be made only after the discharge and dismissal, if the offense for which the person was placed on community supervision was a misdemeanor; or the fifth anniversary of the discharge and dismissal, if the offense for which the person was placed on community supervision was a felony.

(e) In addition to current provisions regarding petitioning the court, as described by Section 411.081 (e), this bill entitles a person to petition the court under subsection (d-1) only if during the applicable period described by Subsection (d-1) (1) or (2), as appropriate, the person is not convicted of or placed on deferred adjudication community supervision under Section 5 (Deferred Adjudication; Community Supervision), Article 42.12, Code of Criminal Procedure, for any offense other than an offense under the Transportation Code punishable by fine only or another drug possession offense. Provides that a person is not entitled to petition the court under subsection (d-1) if the person has been previously convicted or placed on deferred adjudication for certain offenses set forth in this subsection.

SECTION 4. Amends Chapter 509, Government Code, by adding Section 509.016, as follows:

Sec. 509.016. ANNUAL REPORT ON COMMUNITY SUPERVISION WITH DRUG TREATMENT. Requires the Texas Department of Criminal Justice (TDCJ) to study and report to the legislature on the effectiveness and financial impact to the state during the preceding state fiscal year of placing defendants on community supervision with drug treatment for a drug possession offense under Section 15B, Article 42.12, Code of Criminal Procedure not later than November 1 of each year. Requires the study and report to include an analysis of certain items set forth in this subsection.

SECTION 5. Sections 15(a)(1), (c)(2), and (c)(3), Article 42.12, Code of Criminal Procedure are repealed.

SECTION 6. (a) Provides that in a criminal action under Section 481.115, 481.1151, 481.116, 481.117, 481.118, 481.119(b), 481.121, 483.041(a), or 485.031, Health and Safety Code, pending on or commenced on or after this Act's effective date, for an offense committed before the effective date, the defendant, if adjudged guilty, shall be assessed the punishment under Section 15B, Article 42.12, Code of Criminal Procedure, as added by this Act, if the defendant meets the eligibility requirements under that section and other law and so elects by written motion filed with the trial court before the sentencing hearing begins.

(b) Provides that if the defendant does not make the election under Subsection (a) of this section, punishment is covered by the law in effect when the offense was committed, and that the former law is continued in effect for that purpose.

SECTION 7. Provides that the change in law made by Section 411.081(d-1), Government Code, as added by this Act, applies to a person placed on community supervision under Section 15B, Article 42.12, Code of Criminal Procedure, as added by this Act, on or after the Act's effective date regardless of when the person committed the offense for which the person is placed on community supervision.

SECTION 8. Requires TDCJ to submit the first report required by Section 509.016, Government Code, as added by this Act, to the legislature not later than November 1, 2008.

SECTION 9. Stipulates the effective date.

### **EFFECTIVE DATE**

September 1, 2007.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

Both SB 1909 and CSSB 1909 define "drug possession offense" for the purposes of Section 15B, Article 42.12, Code of Criminal Procedure. CSSB 1909 deletes an offense under Section 481.1151, Health and Safety Code, that is punishable as a third degree felony or lower from this definition and adds an offense under Section 481.1151, Health and Safety Code, that is punishable as a state jail felony.

Both SB 1909 and CSSB 1909 require the judge, on conviction of a drug possession offense, to suspend the imposition of a sentence and place a defendant convicted of a drug possession offense on community supervision (supervised defendant), providing exceptions. The original bill states that the judge shall suspend the imposition of the sentence and place a defendant on community supervision "unless" the set forth exceptions are met; whereas the substitute states that the judge shall suspend the imposition of the sentence and place a defendant on community supervision, "except that the judge may order the sentence to be executed if" the set forth exceptions are met.

Regarding the set forth exceptions mentioned above (Article 42.12, Section 15B (b), Code of Criminal Procedure), the substitute removes Subdivision (5) and makes changes to Subdivision (4) as follows: SB 1909 requires the judge, on convicting a defendant of a drug possession offense, to suspend the imposition of the sentence and place the defendant on community supervision unless the following three criteria are met: the defendant has previously been convicted on two or more occasions of a drug possession offense, the defendant has participated in two different courses of treatment described by Subsection (e)(2), and the judge determines by clear and convincing evidence that the defendant is unlikely to benefit from participation in a drug treatment program. CSSB 1909 changes Subdivision (4) to require the judge, on convicting a defendant of a drug possession offense, to suspend the imposition of the sentence and place the defendant on community supervision, except that the judge may order the sentence to be executed if the judge determines by clear and convincing evidence, based on an evidence-based drug and alcohol assessment, that the defendant is unlikely to benefit from participation in a drug treatment program, and the defendant has previously been: convicted on two or more occasions of a drug possession offense; or discharged from a drug court program established under Chapter 469, Health and Safety Code, after failing to successfully complete the program.

The original bill requires the judge, on convicting a defendant of a drug possession offense, to suspend the imposition of the sentence and place the defendant on community supervision unless the defendant has previously been discharged from a drug court program established under Chapter 469, Health and Safety Code, after failing to successfully complete the program and the judge determines by clear and convincing evidence that the defendant is unlikely to benefit from participation in a drug treatment program under Section 15B, Article 42.12, Code of Criminal Procedure. The substitute allows the judge to order the sentence to be executed if the defendant has previously been discharged from a drug court program established under Chapter 469, Health and Safety Code, after failing to successfully complete the program and the judge determines by clear and convincing evidence that the defendant is unlikely to benefit from participation in a drug treatment program and adds that in making the determination by clear and convincing evidence that the defendant is unlikely to benefit from participation in a drug treatment program, the judge uses an evidence-based drug and alcohol assessment.

SB 1909 provides that a court granting community supervision under Section 15B, Article 42.12, Code of Criminal Procedure, may require as a condition of community supervision, in addition to the drug treatment program and other appropriate conditions, that the defendant

participate in: (1) vocational training; (2) family counseling; (3) literacy training; *and* (4) community service. The substitute also contains this language, but changes "and" to "or".

SB 1909 provides that, notwithstanding Section 21(b), Article 42.12, Code of Criminal Procedure, if a defendant placed on community supervision under Section 15B, Article 42.12, Code of Criminal Procedure, violates the terms of that supervision by committing another drug possession offense or by violating any *drug*-related condition of supervision, the judge may: for a first violation, revoke supervision only if the judge determines by a preponderance of evidence that the defendant poses a danger to the safety of others; for a second violation, revoke supervision only if the judge determines by a preponderance of the evidence that the defendant poses a danger to the safety of others or is unlikely to benefit from participation in a drug treatment program; and for a third violation, revoke supervision. CSSB 1909 provides that, notwithstanding Section 21(b), if a defendant placed on community supervision under Section 15B, Article 42.12, Code of Criminal Procedure, violates the terms of that supervision by committing another drug possession offense or by violating any *treatment*-related condition of supervision, the judge may: use graduated sanctions and incentives offered to a defendant by the community supervision and corrections department supervising the defendant or the courts served by that department (CSSB 1909 provides a list of these sanctions and incentives) and revoke supervision if the judge determines by a preponderance of the evidence that the defendant poses a danger to the safety of others or is unlikely to benefit from participation in a drug treatment program.

Both SB 1909 and CSSB 1909 require a judge who modifies a defendant's conditions of supervision in response to the commission of another drug possession offense or, in SB 1909 a violation of a *drug-related* condition of supervision and in CSSB 1909 a violation of a *treatment-related* condition of supervision, to consider imposing one or more additional conditions of supervision. Both bills list six identical examples of additional conditions of community supervision: (1) intensified drug treatment, (2) vocational training, (3) family counseling, (4) literacy education, (5) community service, and (6) intensive supervision. However, the substitute adds a seventh condition not provided in the original bill: confinement under Section 18, Article 42.12, Code of Criminal Procedure, in an intermediate sanction facility operated by or under contract with the Texas Department of Criminal Justice (TDCJ) for a period not to exceed 120 days. Additionally the substitute does not include three conditions that are provided in the original bill: a period of confinement in a county jail for a period authorized by Section 12, Article 42.12, Code of Criminal Procedure; confinement in a community corrections facility for a period authorized by Section 18, Article 42.12, Code of Criminal Procedure; and if an evaluation of the defendant's drug usage indicates that no other program will benefit the defendant, a program offered in a prison or jail.

Both SB 1909 and CSSB 1909 authorize a supervised defendant who subsequently receives a discharge and dismissal under Section 15B(l), Article 42.12, Code of Criminal Procedure, and satisfies the requirements of Subsection (e), Section 411.081, Government Code, on payment of a \$28 fee to the clerk of the court that placed the defendant on community supervision in addition to any other fee that generally applies to the filing of a civil petition, to petition the court for an order of nondisclosure under Section 411.081 (d-1), Government Code, notwithstanding any other provision of Subchapter F (Criminal History Record Information). SB 1909 requires the payment to be made only on or after the discharge and dismissal. CSSB 1909 requires the payment be made only after: the discharge and dismissal, if the offense for which the person was placed on community supervision was a misdemeanor; or the fifth anniversary of the discharge and dismissal, if the offense for which the person was placed on community supervision was a felony. CSSB 1909 also makes conforming changes to reflect this difference in Subsection (e), Section 411.081, Government Code.

SB 1909 amends Subchapter I, Chapter 508, Government Code, by adding Section 508.2835 (Certain Drug-Related Charges: Limitations on Revocation and Conditions on Modification) and makes appropriate conforming changes by amending Section 508.283(a), Government Code; CSSB 1909 does not.

SB 1909 amends Subchapter J, Chapter 508, Government Code, by adding Section 508.325 (Annual Report on Parole and Mandatory Supervision With Drug Treatment); CSSB 1909 does not. The substitute, accordingly, does not include certain transition provisions or reporting

requirements in the original bill regarding changes in law made by this Act to Chapter 508, Government Code. Additionally, to reflect these changes, the substitute amends the caption to read, "relating to community supervision for certain drug possession offenses and to a person's eligibility for an order of nondisclosure following a term of community supervision for any of those offenses" rather than the original bill's caption which reads "relating to community supervision to community supervision, parole, or mandatory supervision for certain drug possession offenses and to a person's eligibility for an order of nondisclosure following a term of community supervision for any of those offenses."