

By: Thompson

H.B. No. 2576

A BILL TO BE ENTITLED

AN ACT

relating to certain determinations made by a judge before granting deferred adjudication in a criminal case.

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

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

(a) Except as provided by Subsection (d) of this section, on a motion made by the defendant before entering a plea of guilty or nolo contendere, the judge shall conduct a hearing to determine whether ~~[when in the judge's opinion]~~ the best interest of society and the defendant will be served~~[7]~~ by deferring further proceedings without entering an adjudication of guilt and placing the defendant on community supervision ~~[the judge may, after receiving a plea of guilty or plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt, and place the defendant on community supervision]~~. A judge may place on community supervision under this section a defendant charged with an offense under Section 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the victim, or a defendant charged with a felony described by Section 13B(b) of this article, only if the judge makes a finding in open court that placing the defendant on community supervision is in the best interest of the victim. ~~[The failure of the judge to find that deferred~~

~~adjudication is in the best interest of the victim is not grounds for the defendant to set aside the plea, deferred adjudication, or any subsequent conviction or sentence.]~~ After placing the defendant on community supervision under this section, the judge shall inform the defendant orally or in writing of the possible consequences under Subsection (b) of this section of a violation of community supervision. If the information is provided orally, the judge must record and maintain the judge's statement to the defendant. The failure of a judge to inform a defendant of possible consequences under Subsection (b) of this section is not a ground for reversal unless the defendant shows that he was harmed by the failure of the judge to provide the information. In a felony case, the period of community supervision may not exceed 10 years. For a defendant charged with a felony under Section 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the victim, and for a defendant charged with a felony described by Section 13B(b) of this article, the period of community supervision may not be less than five years. In a misdemeanor case, the period of community supervision may not exceed two years. A judge may increase the maximum period of community supervision in the manner provided by Section 22(c) or 22A of this article. The judge may impose a fine applicable to the offense and require any reasonable conditions of community supervision, including mental health treatment under Section 11(d) of this article, that a judge could impose on a defendant placed on community supervision for a conviction that was probated and suspended, including confinement. The provisions of Section 15 of this article specifying whether a defendant convicted

1 of a state jail felony is to be confined in a county jail or state
2 jail felony facility and establishing the minimum and maximum terms
3 of confinement as a condition of community supervision apply in the
4 same manner to a defendant placed on community supervision after
5 pleading guilty or nolo contendere to a state jail felony. However,
6 upon written motion of the defendant requesting final adjudication
7 filed within 30 days after entering such plea and the deferment of
8 adjudication, the judge shall proceed to final adjudication as in
9 all other cases.

10 SECTION 2. The change in law made by this Act applies only
11 to an offense committed on or after the effective date of this Act.
12 An offense committed before the effective date of this Act is
13 covered by the law in effect immediately before the effective date
14 of this Act, and the former law is continued in effect for that
15 purpose. For purposes of this section, an offense was committed
16 before the effective date of this Act if any element of the offense
17 was committed before that date.

18 SECTION 3. This Act takes effect September 1, 2007.