

By: Ellis, Carona, Deuell, et al.

S.B. No. 1909

Substitute the following for S.B. No. 1909:

By: Madden

C.S.S.B. No. 1909

A BILL TO BE ENTITLED

AN ACT

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.

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

SECTION 1. Subdivision (2), Subsection (a), Section 15, Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(2) On conviction of a state jail felony punished under Section 12.35(a), Penal Code, ~~[other than a state jail felony listed in Subdivision (1),]~~ the judge may suspend the imposition of the sentence and place the defendant on community supervision or may order the sentence to be executed.

SECTION 2. Article 42.12, Code of Criminal Procedure, is amended by adding Section 15B to read as follows:

Sec. 15B. COMMUNITY SUPERVISION FOR POSSESSION OF CONTROLLED SUBSTANCE. (a) In this section, "drug possession offense" means an offense under:

(1) 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;

(2) Section 481.1151, Health and Safety Code, that is

1 punishable as a state jail felony; or

2 (3) Section 481.121, Health and Safety Code, that is
3 punishable as a Class A misdemeanor or as any lower category of
4 offense.

5 (b) On conviction of a drug possession offense, the judge
6 shall suspend the imposition of the sentence and place a defendant
7 on community supervision, except that the judge may order the
8 sentence to be executed if:

9 (1) the judge determines by a preponderance of the
10 evidence that the defendant is a danger to the safety of others;

11 (2) the defendant has been previously convicted of an
12 offense other than:

13 (A) a drug possession offense; or

14 (B) an offense under the Transportation Code
15 punishable by fine only or an offense related to a pedestrian or the
16 parking of a motor vehicle punishable by fine only;

17 (3) the defendant is convicted in the same proceeding
18 of an additional offense, other than:

19 (A) a drug possession offense; or

20 (B) an offense under the Transportation Code
21 punishable by fine only or an offense related to a pedestrian or the
22 parking of a motor vehicle punishable by fine only; or

23 (4) the judge determines by clear and convincing
24 evidence, based on an evidence-based drug and alcohol assessment,
25 that the defendant is unlikely to benefit from participation in a
26 drug treatment program, and the defendant has previously been:

27 (A) convicted on two or more occasions of a drug

1 possession offense; or

2 (B) discharged from a drug court program
3 established under Chapter 469, Health and Safety Code, after
4 failing to successfully complete the program.

5 (c) A judge who determines under Subsection (b) that a
6 defendant is a danger to the safety of others or is unlikely to
7 benefit from participation in a drug treatment program shall enter
8 reasons for making that determination in the record of the
9 proceeding.

10 (d) The judge may suspend wholly or partly the imposition of
11 any fine imposed on a conviction if a defendant is placed on
12 community supervision under this section.

13 (e) A court granting community supervision under this
14 section shall require as a condition of community supervision that
15 the defendant:

16 (1) submit to an evidence-based risks and needs
17 screening and evaluation procedure approved by the community
18 justice assistance division of the Texas Department of Criminal
19 Justice, including a procedure developed under Section 509.003(d),
20 Government Code;

21 (2) if the evaluation indicates a need for treatment,
22 participate in a prescribed course of treatment in a program or
23 facility:

24 (A) licensed or approved by the Department of
25 State Health Services; or

26 (B) that complies with standards established by
27 the community justice assistance division of the Texas Department

1 of Criminal Justice; and

2 (3) pay a fee to cover all or part of the cost of the
3 course of treatment based on the defendant's ability to pay.

4 (f) A course of treatment under Subsection (e)(2) may
5 include:

6 (1) treatment in a faith-based program;
7 (2) outpatient treatment;
8 (3) halfway house treatment;
9 (4) narcotic replacement therapy;
10 (5) drug education or prevention courses; and
11 (6) inpatient or residential drug treatment to address
12 special detoxification, relapse, or severe dependence issues.

13 (g) In referring a defendant to a course of treatment in a
14 program described by Subsection (e)(2) and imposing conditions for
15 participation in the program, the judge shall order the defendant
16 to participate in the level of care that is the least restrictive
17 and most cost-effective to achieve:

18 (1) the outcome objectives prescribed by the program;
19 and
20 (2) the recommendations of a treatment professional.

21 (h) A court granting community supervision under this
22 section may require as a condition of community supervision, in
23 addition to the drug treatment program and other appropriate
24 conditions, that the defendant participate in:

25 (1) vocational training;
26 (2) family counseling;
27 (3) literacy training; or

1 (4) community service.

2 (i) Notwithstanding Section 21(b), if a defendant placed on
3 community supervision under this section violates the terms of that
4 supervision by committing another drug possession offense or by
5 violating any treatment-related condition of supervision, the
6 judge may:

7 (1) use graduated sanctions and incentives offered to
8 a defendant by the community supervision and corrections department
9 supervising the defendant or the courts served by that department,
10 including:

11 (A) global positioning or another form of
12 electronic monitoring;

13 (B) mental health treatment or cognitive and
14 behavioral programs;

15 (C) alcohol or substance abuse monitoring and
16 testing;

17 (D) faith-based community programs and
18 resources, including mentoring programs;

19 (E) a reduced or specialized caseload for the
20 supervision officer and increased home visits and field contacts by
21 the officer;

22 (F) strategies to reduce the number of technical
23 violations committed by the defendant; and

24 (G) increased coordination between the court and
25 the community supervision and corrections department supervising
26 the defendant; and

27 (2) revoke supervision if the judge determines by a

1 preponderance of the evidence that the defendant:

2 (A) poses a danger to the safety of others; or

3 (B) is unlikely to benefit from participation in
4 a drug treatment program.

5 (j) A judge who modifies a defendant's conditions of
6 supervision in response to the defendant's commission of another
7 drug possession offense or violation of a treatment-related
8 condition of supervision shall consider imposing one or more of the
9 following additional conditions of supervision:

10 (1) intensified drug treatment;

11 (2) vocational training;

12 (3) family counseling;

13 (4) literacy education;

14 (5) community service;

15 (6) intensive supervision; and

16 (7) confinement under Section 18, Article 42.12, Code
17 of Criminal Procedure, in an intermediate sanction facility
18 operated by or under contract with the Texas Department of Criminal
19 Justice for a period not to exceed 120 days.

20 (k) In making a determination under this section as to
21 whether a defendant is unlikely to benefit from participation in a
22 drug treatment program, the judge shall consider whether the
23 defendant has previously:

24 (1) committed a serious violation of the rules of a
25 drug treatment program; or

26 (2) repeatedly committed violations of the rules of a
27 drug treatment program to an extent that inhibited the defendant's

1 ability to function in the program.

2 (1) After successful completion of a term of community
3 supervision imposed under this section, including completion of a
4 drug treatment program, a defendant may petition the court for
5 dismissal of the charges. If the judge, after providing notice and
6 giving attorneys for the defendant and the state an opportunity to
7 be heard, determines that the defendant substantially complied with
8 the conditions of supervision and successfully completed the drug
9 treatment program, the judge shall discharge the defendant, set
10 aside the verdict or permit the defendant to withdraw the plea, and
11 dismiss the accusation, complaint, information, or indictment in
12 the manner provided by Section 20(a).

13 SECTION 3. Section 411.081, Government Code, is amended by
14 adding Subsection (d-1) and amending Subsection (e) to read as
15 follows:

16 (d-1) Notwithstanding any other provision of this
17 subchapter, if a person is placed on community supervision under
18 Section 15B, Article 42.12, Code of Criminal Procedure, and
19 subsequently receives a discharge and dismissal under Section
20 15B(1), Article 42.12, Code of Criminal Procedure, and satisfies
21 the requirements of Subsection (e), the person may petition the
22 court that placed the defendant on community supervision for an
23 order of nondisclosure under this subsection. After notice to the
24 state and a hearing on whether the person is entitled to file the
25 petition and issuance of the order is in the best interest of
26 justice, the court shall issue an order prohibiting criminal
27 justice agencies from disclosing to the public criminal history

1 record information related to the offense giving rise to the
2 community supervision. A criminal justice agency may disclose
3 criminal history record information that is the subject of the
4 order only to other criminal justice agencies, for criminal justice
5 purposes, an agency or entity listed in Subsection (i), or the
6 person who is the subject of the order. A person may petition the
7 court that placed the person on community supervision for an order
8 of nondisclosure on payment of a \$28 fee to the clerk of the court in
9 addition to any other fee that generally applies to the filing of a
10 civil petition. The payment may be made only after:

11 (1) the discharge and dismissal, if the offense for
12 which the person was placed on community supervision was a
13 misdemeanor; or

14 (2) the fifth anniversary of the discharge and
15 dismissal, if the offense for which the person was placed on
16 community supervision was a felony.

17 (e) A person is entitled to petition the court under
18 Subsection (d) or (d-1) only if during the applicable period
19 described by Subsection (d)(1), (2), or (3) or by Subsection
20 (d-1)(1) or (2), as appropriate, the person is not convicted of or
21 placed on deferred adjudication community supervision under
22 Section 5, Article 42.12, Code of Criminal Procedure, for any
23 offense other than an offense under the Transportation Code
24 punishable by fine only or, for purposes of Subsection (d-1),
25 another drug possession offense. A person is not entitled to
26 petition the court under Subsection (d) or (d-1) if the person has
27 been previously convicted or placed on deferred adjudication for:

(1) an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure;

(2) an offense under Section 20.04, Penal Code, regardless of whether the offense is a reportable conviction or adjudication for purposes of Chapter 62, Code of Criminal Procedure;

(3) an offense under Section 19.02, 19.03, 22.04, 22.041, 25.07, or 42.072, Penal Code; or

(4) any other offense involving family violence, as defined by Section 71.004, Family Code.

SECTION 4. Chapter 509, Government Code, is amended by adding Section 509.016 to read as follows:

Sec. 509.016. ANNUAL REPORT ON COMMUNITY SUPERVISION WITH DRUG TREATMENT. (a) Not later than November 1 of each year, the Texas Department of Criminal Justice shall 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.

(b) The study and report must include an analysis of:

(1) the implementation of Section 15B, Article 42.12, Code of Criminal Procedure;

(2) the adequacy of funding available for operation of the programs described by Section 15B, Article 42.12, Code of Criminal Procedure;

(3) the effect of implementing Section 15B, Article

1 42.12, Code of Criminal Procedure, with respect to:

2 (A) incarceration costs incurred by the state and
3 local governments, including the cost of constructing prisons and
4 jails;

5 (B) the recidivism rate among defendants placed
6 on community supervision under Section 15B, Article 42.12, Code of
7 Criminal Procedure, compared with other defendants; and

8 (C) the number of defendants placed on community
9 supervision under Section 15B, Article 42.12, Code of Criminal
10 Procedure, who utilize state welfare benefits, compared with other
11 defendants; and

12 (4) other effects of or issues with implementing
13 Section 15B, Article 42.12, Code of Criminal Procedure, that are
14 identified by the Texas Department of Criminal Justice.

15 SECTION 5. Subdivision (1), Subsection (a), and
16 Subdivisions (2) and (3), Subsection (c), Section 15, Article
17 42.12, Code of Criminal Procedure, are repealed.

18 SECTION 6. (a) In a criminal action under Section
19 481.115, 481.1151, 481.116, 481.117, 481.118, 481.119(b), 481.121,
20 483.041(a), or 485.031, Health and Safety Code, pending on or
21 commenced on or after the effective date of this Act, for an offense
22 committed before the effective date, the defendant, if adjudged
23 guilty, shall be assessed the punishment under Section 15B, Article
24 42.12, Code of Criminal Procedure, as added by this Act, if the
25 defendant meets the eligibility requirements under that section and
26 other law and so elects by written motion filed with the trial court
27 before the sentencing hearing begins.

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

5 SECTION 7. The change in law made by Subsection (d-1),
6 Section 411.081, Government Code, as added by this Act, applies to a
7 person placed on community supervision under Section 15B, Article
8 42.12, Code of Criminal Procedure, as added by this Act, on or after
9 the effective date of this Act regardless of when the person
10 committed the offense for which the person is placed on community
11 supervision.

12 SECTION 8. The Texas Department of Criminal Justice shall
13 submit to the legislature the first report required by Section
14 509.016, Government Code, as added by this Act, not later than
15 November 1, 2008.

16 SECTION 9. This Act takes effect September 1, 2007.