

By: Ellis, et al. S.B. No. 1909
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COMMITTEE SUBSTITUTE FOR S.B. No. 1909 By: Whitmire

A BILL TO BE ENTITLED
AN ACT

relating 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.

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, 481.1151, 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

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

(b) On conviction of a drug possession offense, the judge shall suspend the imposition of the sentence and place a defendant on community supervision unless:

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

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

(A) a drug possession offense; or

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

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

(A) a drug possession offense; or

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

(4) the following three criteria are met:

(A) the defendant has previously been convicted on two or more occasions of a drug possession offense;

(B) the defendant has participated in two different courses of treatment described by Subsection (e)(2); and

(C) the judge determines by clear and convincing evidence that the defendant is unlikely to benefit from participation in a drug treatment program; or

(5) 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 this section.

(c) 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 shall enter reasons for making that determination in the record of the proceeding.

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

(e) A court granting community supervision under this section shall 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, 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:

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

(B) that complies with standards established by the community justice assistance division of the Texas Department of Criminal Justice; 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) A course of treatment under Subsection (e)(2) may include:

(1) treatment in a faith-based program;

(2) outpatient treatment;

(3) halfway house treatment;

(4) narcotic replacement therapy;

(5) drug education or prevention courses; and

(6) inpatient or residential drug treatment to address special detoxification, relapse, or severe dependence issues.

(g) 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, the judge shall order the defendant to participate in the level of care that is the least restrictive and most cost-effective to achieve:

(1) the outcome objectives prescribed by the program; and

(2) the recommendations of a treatment professional.

(h) A court granting community supervision under this section 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.

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

(1) for a first 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;

(2) for a second violation, revoke supervision only if the judge determines by a preponderance of the evidence that the defendant:

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

(B) is unlikely to benefit from participation in a drug treatment program; and

(3) for a third violation, revoke supervision.

(j) 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 drug-related condition of supervision shall consider imposing one or more of the following additional conditions of supervision:

- (1) intensified drug treatment;
- (2) vocational training;
- (3) family counseling;
- (4) literacy education;
- (5) community service;
- (6) intensive supervision;
- (7) a period of confinement in a county jail for a period authorized by Section 12;
- (8) confinement in a community corrections facility for a period authorized by Section 18; and
- (9) 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.

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

- (1) committed a serious violation of the rules of a drug treatment program; or
- (2) repeatedly committed violations of the rules of a drug treatment program to an extent that inhibited the defendant's ability to function in the program.

(l) After successful completion of a term of community supervision imposed under this section, including completion of a drug treatment program, a defendant may petition the court for dismissal of the charges. 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, the judge shall 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).

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

(d-1) Notwithstanding any other provision of this subchapter, if a person is placed on community supervision under Section 15B, Article 42.12, Code of Criminal Procedure, and subsequently receives a discharge and dismissal under Section 15B(1), Article 42.12, Code of Criminal Procedure, and satisfies the requirements of Subsection (e), the person may petition the court that placed the defendant on community supervision for an order of nondisclosure under this subsection. 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, the court shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the community supervision. A criminal justice agency may disclose criminal history record information that is the subject of the order 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. A person may petition the court that placed the person on community supervision for an order of nondisclosure on payment of a \$28 fee to the clerk of the court in addition to any other fee that generally applies to the filing of a civil petition. The payment may be made only on or after the discharge and dismissal.

(e) A person is entitled to petition the court under Subsection (d) or (d-1) only if prior to discharge and dismissal or during the applicable period described by Subsection (d)(2) or (3) [~~(d)(1), (2), or (3)~~], as appropriate, the person is not convicted of or placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, for any offense other than an offense under the Transportation Code

punishable by fine only or, for purposes of Subsection (d-1), another drug possession offense. A person is not entitled to petition the court under Subsection (d) or (d-1) if the person has 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. Subsection (a), Section 508.283, Government Code, is amended to read as follows:

(a) After a parole panel or designated agent of the board has held a hearing under Section 508.281, in any manner warranted by the evidence:

(1) the board may recommend to the governor to continue, revoke, or modify the conditional pardon; and

(2) a parole panel may continue, ~~[revoke, or]~~ modify, or, except as provided by Section 508.2835, revoke the parole or mandatory supervision.

SECTION 5. Subchapter I, Chapter 508, Government Code, is amended by adding Section 508.2835 to read as follows:

Sec. 508.2835. CERTAIN DRUG-RELATED CHARGES: LIMITATIONS ON REVOCATION AND CONDITIONS ON MODIFICATION. (a) In this section, "drug possession offense" has the meaning assigned by Section 15B, Article 42.12, Code of Criminal Procedure.

(b) A parole panel may not revoke the parole or mandatory supervision of a releasee based on the commission of a drug possession offense or a violation of a drug-related condition of release unless:

(1) the releasee commits or has previously been convicted of an offense other than:

(A) a drug possession offense; or
 (B) an offense under the Transportation Code punishable by fine only or an offense related to a pedestrian or the parking of a motor vehicle punishable by fine only;

(2) the parole panel determines that the releasee is a danger to the safety of others; or

(3) the releasee has previously committed a violation of a drug-related condition of release on two or more occasions.

(c) A parole panel that determines that a releasee is a danger to the safety of others shall enter reasons for making that determination in the record of the parole revocation hearing.

(d) A parole panel that modifies a releasee's conditions of release in response to the releasee's commission of a new drug possession offense or a violation of a drug-related condition of release shall modify the conditions as necessary to require that the releasee:

(1) participate in a prescribed course of treatment in a drug treatment program licensed or approved by the Department of State Health Services, which may include:

(A) treatment in a faith-based program;
 (B) outpatient treatment;
 (C) halfway house treatment;
 (D) narcotic replacement therapy;
 (E) drug education or prevention courses; and
 (F) inpatient or residential drug treatment to address special detoxification, relapse, or severe dependence issues; and

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

(e) A parole panel that modifies a releasee's conditions of release under Subsection (d) shall consider imposing one or more of the following additional conditions of release:

(1) intensified drug treatment;

(2) vocational training;
 (3) family counseling;
 (4) literacy education;
 (5) community service;
 (6) intensive supervision; and
 (7) a period of custodial supervision in a county jail
for a period authorized by Section 508.283.

SECTION 6. Subchapter J, Chapter 508, Government Code, is amended by adding Section 508.325 to read as follows:

Sec. 508.325. ANNUAL REPORT ON PAROLE AND MANDATORY SUPERVISION WITH DRUG TREATMENT. (a) Not later than November 1 of each year, the department shall study and report to the legislature on the effectiveness and financial impact to the state during the preceding state fiscal year of implementing Section 508.2835.

(b) The study and report must include an analysis of:
(1) the implementation of Section 508.2835;
(2) the adequacy of funding available for operation of the programs described by Section 508.2835;
(3) the effect of implementing Section 508.2835 with respect to:

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

(B) the rate of recidivism among releasees whose conditions of release have been affected by Section 508.2835, compared with other releasees; and

(C) the number of releasees whose conditions of release have been affected by Section 508.2835 and who utilize state welfare benefits, compared with other releasees; and

(4) other effects of or issues with implementing Section 508.2835 that are identified by the department.

SECTION 7. 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 42.12, Code of Criminal Procedure, with respect to:

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

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

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

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

SECTION 8. Subdivision (1), Subsection (a), and Subdivisions (2) and (3), Subsection (c), Section 15, Article 42.12, Code of Criminal Procedure, are repealed.

SECTION 9. (a) In a criminal action under Section 481.115, 481.1151, 481.116, 481.117, 481.118, Subsection (b), Section 481.119, Section 481.121, Subsection (a), Section 483.041, or Section 485.031, Health and Safety Code, pending on or commenced

on or after the effective date of this Act, 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) 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 the former law is continued in effect for that purpose.

SECTION 10. The change in law made by Subsection (d-1), Section 411.081, 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 effective date of this Act regardless of when the person committed the offense for which the person is placed on community supervision.

SECTION 11. The changes in law made by this Act to Chapter 508, Government Code, apply to a person who is released on parole or mandatory supervision before, on, or after the effective date of this Act.

SECTION 12. The Texas Department of Criminal Justice shall submit to the legislature the first reports required by Sections 508.325 and 509.016, Government Code, as added by this Act, not later than November 1, 2008.

SECTION 13. This Act takes effect September 1, 2007.

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