

By: Berman

H.B. No. 260

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the eligibility of certain persons to receive a
3 sentence of community supervision, including deferred adjudication
4 community supervision.

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

6 SECTION 1. Section 2, Article 42.12, Code of Criminal
7 Procedure, is amended by adding Subdivision (5) to read as follows:

8 (5) "Illegal immigrant" means an individual who is not
9 a citizen or national of the United States and who has entered the
10 United States without inspection and authorization by an
11 immigration officer.

12 SECTION 2. Section 3(e), Article 42.12, Code of Criminal
13 Procedure, is amended to read as follows:

14 (e) A defendant is not eligible for community supervision
15 under this section if the defendant:

16 (1) is sentenced to a term of imprisonment that
17 exceeds 10 years; ~~or~~

18 (2) is sentenced to serve a term of confinement under
19 Section 12.35, Penal Code; or

20 (3) is an illegal immigrant and has previously been
21 convicted of an offense in this state.

22 SECTION 3. Section 4(d), Article 42.12, Code of Criminal
23 Procedure, as amended by Chapters 593 (H.B. 8) and 1205 (H.B. 1678),
24 Acts of the 80th Legislature, Regular Session, 2007, is reenacted

1 and amended to read as follows:

2 (d) A defendant is not eligible for community supervision
3 under this section if the defendant:

4 (1) is sentenced to a term of imprisonment that
5 exceeds 10 years;

6 (2) is convicted of a state jail felony for which
7 suspension of the imposition of the sentence occurs automatically
8 under Section 15(a);

9 (3) does not file a sworn motion under Subsection (e)
10 of this section or for whom the jury does not enter in the verdict a
11 finding that the information contained in the motion is true;

12 (4) is convicted of an offense for which punishment is
13 increased under Section 481.134(c), (d), (e), or (f), Health and
14 Safety Code, if it is shown that the defendant has been previously
15 convicted of an offense for which punishment was increased under
16 any one of those subsections;

17 (5) is convicted of an offense listed in Section
18 3g(a)(1)(C), (E), or (H), if the victim of the offense was younger
19 than 14 years of age at the time the offense was committed;

20 (6) is convicted of an offense listed in Section
21 3g(a)(1)(D), if the victim of the offense was younger than 14 years
22 of age at the time the offense was committed and the actor committed
23 the offense with the intent to violate or abuse the victim sexually;

24 [~~or~~]

25 (7) is convicted of an offense listed in Section
26 3g(a)(1)(J);

27 (8) [~~3g(a)(1)(I)~~] is adjudged guilty of an offense

1 under Section 19.02, Penal Code; or

2 (9) is an illegal immigrant and has previously been
3 convicted of an offense in this state.

4 SECTION 4. Section 5(d), Article 42.12, Code of Criminal
5 Procedure, is amended to read as follows:

6 (d) In all other cases the judge may grant deferred
7 adjudication unless:

8 (1) the defendant is charged with an offense:

9 (A) under Sections 49.04-49.08, Penal Code; or

10 (B) for which punishment may be increased under
11 Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it
12 is shown that the defendant has been previously convicted of an
13 offense for which punishment was increased under any one of those
14 subsections;

15 (2) the defendant:

16 (A) is charged with an offense under Section
17 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the
18 victim, or a felony described by Section 13B(b) of this article; and

19 (B) has previously been placed on community
20 supervision for any offense under Paragraph (A) of this
21 subdivision; ~~or~~

22 (3) the defendant is charged with an offense under:

23 (A) Section 21.02, Penal Code; or

24 (B) Section 22.021, Penal Code, that is
25 punishable under Subsection (f) of that section or under Section
26 12.42(c)(3), Penal Code; or

27 (4) the defendant is an illegal immigrant and has

1 previously been convicted of an offense in this state.

2 SECTION 5. The change in law made by this Act applies only
3 to an offense committed on or after the effective date of this Act.
4 An offense committed before the effective date of this Act is
5 covered by the law in effect when the offense was committed, and the
6 former law is continued in effect for that purpose. For purposes of
7 this section, an offense was committed before the effective date of
8 this Act if any element of the offense occurred before that date.

9 SECTION 6. This Act takes effect September 1, 2009.