

1-1 By: Ellis, Carona, Whitmire S.B. No. 1118  
1-2 (In the Senate - Filed February 24, 2009; March 13, 2009,  
1-3 read first time and referred to Committee on Criminal Justice;  
1-4 April 21, 2009, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 5, Nays 1; April 21, 2009,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1118 By: Whitmire

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to community supervision for certain drug possession  
1-11 offenses and to a person's eligibility for an order of  
1-12 nondisclosure following a term of community supervision for any of  
1-13 those offenses.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Subdivisions (1) and (2), Subsection (a),  
1-16 Section 15, Article 42.12, Code of Criminal Procedure, are amended  
1-17 to read as follows:

1-18 (1) On conviction of a state jail felony under Section  
1-19 ~~[481.115(b)]~~ 481.1151(b)(1), 481.116(b), 481.121(b)(3), or  
1-20 481.129(g)(1), Health and Safety Code, that is punished under  
1-21 Section 12.35(a), Penal Code, the judge shall suspend the  
1-22 imposition of the sentence and place the defendant on community  
1-23 supervision, unless the defendant has previously been convicted of  
1-24 a felony, other than a felony punished under Section 12.44(a),  
1-25 Penal Code, or unless the conviction resulted from an adjudication  
1-26 of the guilt of a defendant previously placed on deferred  
1-27 adjudication community supervision for the offense, in which event  
1-28 the judge may suspend the imposition of the sentence and place the  
1-29 defendant on community supervision or may order the sentence to be  
1-30 executed. The provisions of this subdivision requiring the judge  
1-31 to suspend the imposition of the sentence and place the defendant on  
1-32 community supervision do not apply to a defendant who under Section  
1-33 481.1151(b)(1), Health and Safety Code, possessed more than five  
1-34 abuse units of the controlled substance or under Section  
1-35 481.121(b)(3), Health and Safety Code, possessed more than one  
1-36 pound of marihuana.

1-37 (2) On conviction of a state jail felony punished  
1-38 under Section 12.35(a), Penal Code, other than a state jail felony  
1-39 listed in Subdivision (1) or a state jail felony under Section  
1-40 481.115(b), Health and Safety Code, the judge may suspend the  
1-41 imposition of the sentence and place the defendant on community  
1-42 supervision or may order the sentence to be executed.

1-43 SECTION 2. Article 42.12, Code of Criminal Procedure, is  
1-44 amended by adding Section 15B to read as follows:

1-45 Sec. 15B. COMMUNITY SUPERVISION FOR POSSESSION OF  
1-46 CONTROLLED SUBSTANCE. (a) In this section, "drug possession  
1-47 offense" means an offense under:

1-48 (1) Section 481.115, Health and Safety Code, that is  
1-49 punishable as:

1-50 (A) a state jail felony; or

1-51 (B) a felony of the third degree, if the offense  
1-52 involves the possession of two grams or less of the controlled  
1-53 substance; or

1-54 (2) Section 481.121, Health and Safety Code, that is  
1-55 punishable as a Class A or B misdemeanor.

1-56 (b) On conviction of a drug possession offense, the judge  
1-57 shall suspend the imposition of the sentence and place the  
1-58 defendant on community supervision, except that the judge may order  
1-59 the sentence to be executed if:

1-60 (1) the judge determines by a preponderance of the  
1-61 evidence that the defendant:

1-62 (A) is a danger to the safety of others; or

1-63 (B) possessed the controlled substance with the

intent to deliver the substance in violation of Section 481.112 or 481.120, Health and Safety Code, as applicable;

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

(A) a drug possession offense or a state jail felony listed in Section 15(a); 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 a state jail felony listed in Section 15(a); 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 judge determines that a drug treatment program or other treatment services that are appropriate for the defendant are not available in the area in which the defendant resides; or

(5) 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 course of treatment in a drug treatment program or facility, and the defendant has been previously:

(A) convicted on two or more occasions of a drug possession offense or state jail felony listed in Section 15(a); or

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

(c) A judge who makes a determination described by Subsection (b)(1), (4), or (5) to execute the defendant's sentence shall enter the 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 drug treatment 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 prescribed by a physician;

(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 under Subsection (e)(2) and imposing conditions for participation in the course of treatment, the judge shall order the defendant to participate in the level of treatment that the evaluation indicates is appropriate for the defendant to achieve:

(1) the outcome objectives prescribed by the drug treatment program or facility; and

(2) the recommendations of a drug treatment professional.

(h) A court granting community supervision under this section may require as a condition of community supervision, in addition to any required participation in a course of treatment under Subsection (e)(2) and other appropriate conditions, that the defendant participate in:

(1) vocational training;

(2) family counseling;

(3) literacy training; or

(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 state jail felony listed in Section 15(a) or by violating any treatment-related condition of supervision, the judge may:

(1) 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, including:

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

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

(C) alcohol or substance abuse monitoring and testing;

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

(E) placing the defendant under the supervision of a supervision officer with a reduced or specialized caseload and subjecting the defendant to increased home visits and field contacts, if sufficient resources are available;

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

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

(2) revoke the community supervision of the defendant 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 a course of treatment in a drug treatment program or facility.

(j) A judge who modifies a defendant's conditions of supervision in response to the defendant's commission of another drug possession offense or state jail felony listed in Section 15(a) or violation of a treatment-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; and

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

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

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

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

(1) After successful completion of a term of community supervision imposed under this section, including completion of any required course of treatment in a drug treatment program or facility, 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 any required course of treatment, 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).

(m) The drug treatment program account is created as a dedicated account in the general revenue fund of the state treasury. Money in the account may be appropriated only to the Texas Department of Criminal Justice for distribution to drug treatment programs or facilities that provide a course of treatment to defendants under this section and that apply for the money. Funds collected and distributed under this subsection are subject to audit by the comptroller.

SECTION 3. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.0179 to read as follows:

Art. 102.0179. ADDITIONAL COSTS ATTENDANT TO CERTAIN INTOXICATION AND DRUG CONVICTIONS. (a) In addition to other costs on conviction imposed by this chapter, including costs described by Article 102.0178, a person shall pay \$50 as a court cost on conviction of any offense under Chapter 49, Penal Code, or Chapter 481, Health and Safety Code.

(b) In this article, a person is considered to have been convicted if:

- (1) a sentence is imposed;
- (2) the person is placed on community supervision, including deferred adjudication community supervision; or
- (3) the court defers final disposition of the person's case.

(c) Court costs under this article are collected in the same manner as other fines or costs. An officer collecting the costs shall send to the comptroller costs collected under this article for deposit to the credit of the drug treatment program account established under Section 15B, Article 42.12.

SECTION 4. (a) Section 102.021, Government Code, is amended to conform to Chapter 1263 (H.B. 3060), Acts of the 80th Legislature, Regular Session, 2007, and is further amended to read as follows:

Sec. 102.021. COURT COSTS ON CONVICTION: CODE OF CRIMINAL PROCEDURE. A person convicted of an offense shall pay the following under the Code of Criminal Procedure, in addition to all other costs:

- (1) court cost on conviction of any offense, other than a conviction of an offense relating to a pedestrian or the parking of a motor vehicle (Art. 102.0045, Code of Criminal Procedure) . . . \$4;
- (2) a fee for services of prosecutor (Art. 102.008, Code of Criminal Procedure) . . . \$25;
- (3) fees for services of peace officer:
  - (A) issuing a written notice to appear in court for certain violations (Art. 102.011, Code of Criminal Procedure) . . . \$5;
  - (B) executing or processing an issued arrest warrant, ~~or~~ capias, or capias pro fine (Art. 102.011, Code of Criminal Procedure) . . . \$50;
  - (C) summoning a witness (Art. 102.011, Code of Criminal Procedure) . . . \$5;
  - (D) serving a writ not otherwise listed (Art. 102.011, Code of Criminal Procedure) . . . \$35;
  - (E) taking and approving a bond and, if necessary, returning the bond to courthouse (Art. 102.011, Code of Criminal Procedure) . . . \$10;

5-1 (F) commitment or release (Art. 102.011, Code of  
 5-2 Criminal Procedure) . . . \$5;  
 5-3 (G) summoning a jury (Art. 102.011, Code of  
 5-4 Criminal Procedure) . . . \$5;  
 5-5 (H) attendance of a prisoner in habeas corpus  
 5-6 case if prisoner has been remanded to custody or held to bail (Art.  
 5-7 102.011, Code of Criminal Procedure) . . . \$8 each day;  
 5-8 (I) mileage for certain services performed (Art.  
 5-9 102.011, Code of Criminal Procedure) . . . \$0.29 per mile; and  
 5-10 (J) services of a sheriff or constable who serves  
 5-11 process and attends examining trial in certain cases (Art. 102.011,  
 5-12 Code of Criminal Procedure) . . . not to exceed \$5;  
 5-13 (4) services of a peace officer in conveying a witness  
 5-14 outside the county (Art. 102.011, Code of Criminal Procedure) . . .  
 5-15 \$10 per day or part of a day, plus actual necessary travel expenses;  
 5-16 (5) overtime of peace officer for time spent  
 5-17 testifying in the trial or traveling to or from testifying in the  
 5-18 trial (Art. 102.011, Code of Criminal Procedure) . . . actual cost;  
 5-19 (6) court costs on an offense relating to rules of the  
 5-20 road, when offense occurs within a school crossing zone (Art.  
 5-21 102.014, Code of Criminal Procedure) . . . \$25;  
 5-22 (7) court costs on an offense of passing a school bus  
 5-23 (Art. 102.014, Code of Criminal Procedure) . . . \$25;  
 5-24 (8) court costs on an offense of truancy or  
 5-25 contributing to truancy (Art. 102.014, Code of Criminal Procedure)  
 5-26 . . . \$20;  
 5-27 (9) cost for visual recording of intoxication arrest  
 5-28 before conviction (Art. 102.018, Code of Criminal Procedure) . . .  
 5-29 \$15;  
 5-30 (10) cost of certain evaluations (Art. 102.018, Code  
 5-31 of Criminal Procedure) . . . actual cost;  
 5-32 (11) additional costs attendant to certain  
 5-33 intoxication convictions under Chapter 49, Penal Code, for  
 5-34 emergency medical services, trauma facilities, and trauma care  
 5-35 systems (Art. 102.0185, Code of Criminal Procedure) . . . \$100;  
 5-36 (12) additional costs attendant to certain child  
 5-37 sexual assault and related convictions, for child abuse prevention  
 5-38 programs (Art. 102.0186, Code of Criminal Procedure) . . . \$100;  
 5-39 (13) cost for DNA testing for certain felonies (Art.  
 5-40 102.020, Code of Criminal Procedure) . . . \$250;  
 5-41 (14) court cost on an offense of public lewdness or  
 5-42 indecent exposure (Art. 102.020, Code of Criminal Procedure) . . .  
 5-43 \$50;  
 5-44 (15) if required by the court, a restitution fee for  
 5-45 costs incurred in collecting restitution installments and for the  
 5-46 compensation to victims of crime fund (Art. 42.037, Code of  
 5-47 Criminal Procedure) . . . \$12; ~~and~~  
 5-48 (16) if directed by the justice of the peace or  
 5-49 municipal court judge hearing the case, court costs on conviction  
 5-50 in a criminal action (Art. 45.041, Code of Criminal Procedure)  
 5-51 . . . part or all of the costs as directed by the judge;  
 5-52 (17) costs attendant to convictions under Chapter 49,  
 5-53 Penal Code, and under Chapter 481, Health and Safety Code, to help  
 5-54 fund drug court programs established under Chapter 469, Health and  
 5-55 Safety Code (Art. 102.0178, Code of Criminal Procedure) . . . \$50;  
 5-56 and  
 5-57 (18) costs attendant to convictions under Chapter 49,  
 5-58 Penal Code, and under Chapter 481, Health and Safety Code, for  
 5-59 certain drug treatment programs and facilities (Art. 102.0179, Code  
 5-60 of Criminal Procedure) . . . \$50.  
 5-61 (b) Section 102.0215, Government Code, is repealed.  
 5-62 SECTION 5. Section 411.081, Government Code, is amended by  
 5-63 adding Subsection (d-1) and amending Subsection (e) to read as  
 5-64 follows:  
 5-65 (d-1) Notwithstanding any other provision of this  
 5-66 subchapter, if a person is placed on community supervision under  
 5-67 Section 15B, Article 42.12, Code of Criminal Procedure, and  
 5-68 subsequently receives a discharge and dismissal under Section  
 5-69 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 after:

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

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

(e) A person is entitled to petition the court under Subsection (d) or (d-1) only if during the period of the community supervision, including deferred adjudication community supervision, for which the order of nondisclosure is requested and during the applicable period described by Subsection (d)(1), (2), or (3) or 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, 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), the person is not convicted of or placed on community supervision, including deferred adjudication community supervision, for another drug possession offense described by Section 15B, Article 42.12, Code of Criminal Procedure. A person is not entitled to petition the court under Subsection (d) or (d-1) if the person was placed on community supervision, including [the] deferred adjudication community supervision, for, or has been previously convicted of or placed on any other 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 6. Chapter 509, Government Code, is amended by adding Section 509.013 to read as follows:

Sec. 509.013. ANNUAL REPORT ON COMMUNITY SUPERVISION WITH DRUG TREATMENT. (a) Not later than December 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, including the amount of cost savings the state realizes through that implementation;

(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.

(c) The comptroller shall verify the findings of the department in analyzing the cost savings realized by the state through the implementation of Section 15B, Article 42.12, Code of Criminal Procedure. The department may retain an amount not to exceed 20 percent of the amount of the actual savings attributable to implementation of that section, to the extent that the savings come from funds appropriated to the department and to the extent the department distributed that amount to drug treatment programs or facilities that provide a course of treatment to defendants under that section. The department may transfer savings attributable to implementation of that section from the first year of the fiscal biennium to the second year of the fiscal biennium, provided that the department uses the full amount transferred for distribution to drug treatment programs or facilities as described by this subsection.

SECTION 7. (a) In a criminal action under Section 481.115 or 481.121, 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 8. Article 102.0179, Code of Criminal Procedure, as added by this Act, applies only to a cost on conviction for an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 9. 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 10. The Texas Department of Criminal Justice shall submit to the legislature the first report required by Section 509.013, Government Code, as added by this Act, not later than December 1, 2010.

SECTION 11. This Act takes effect September 1, 2009.

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