

By: Huffman

S.B. No. 1422

A BILL TO BE ENTITLED

AN ACT

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

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

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

(5) "Illegal alien" means an alien who:

(A) entered the United States without inspection or at any time or any place other than as designated by the United States attorney general; or

(B) was admitted as a nonimmigrant and, before the date of the commission of the offense, had failed to maintain the nonimmigrant status under which the alien was admitted or to which it was changed under Section 248, Immigration and Nationality Act (8 U.S.C. Section 1258), or to comply with the conditions of the alien's status.

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

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

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

(2) is sentenced to serve a term of confinement under

1 Section 12.35, Penal Code; or  
2 (3) is an illegal alien.

3 SECTION 3. Subsection (d), Section 4, Article 42.12, Code  
4 of Criminal Procedure, as amended by Chapters 593 (H.B. 8) and 1205  
5 (H.B. 1678), Acts of the 80th Legislature, Regular Session, 2007,  
6 is reenacted and amended to read as follows:

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

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

11 (2) is convicted of a state jail felony for which  
12 suspension of the imposition of the sentence occurs automatically  
13 under Section 15(a);

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

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

22 (5) is convicted of an offense listed in Section  
23 3g(a)(1)(C), (E), or (H), if the victim of the offense was younger  
24 than 14 years of age at the time the offense was committed;

25 (6) is convicted of an offense listed in Section  
26 3g(a)(1)(D), if the victim of the offense was younger than 14 years  
27 of age at the time the offense was committed and the actor committed

1 the offense with the intent to violate or abuse the victim sexually;  
2 [~~or~~]

3 (7) is convicted of an offense listed in Section  
4 3g(a)(1)(I);

5 (8) is adjudged guilty of an offense under Section  
6 19.02, Penal Code; or

7 (9) is an illegal alien.

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

10 (d) In all other cases the judge may grant deferred  
11 adjudication unless:

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

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

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

19 (2) the defendant:

20 (A) is charged with an offense under Section  
21 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the  
22 victim, or a felony described by Section 13B(b) of this article; and

23 (B) has previously been placed on community  
24 supervision for any offense under Paragraph (A) of this  
25 subdivision; [~~or~~]

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

27 (A) Section 21.02, Penal Code; or

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

4 (4) the defendant is an illegal alien.

5 SECTION 5. Subsection (a), Section 15, Article 42.12, Code  
6 of Criminal Procedure, is amended by adding Subdivision (4) to read  
7 as follows:

8 (4) Notwithstanding any other provision of this  
9 subsection, a defendant is not eligible for community supervision  
10 under this section if the defendant is an illegal alien.

11 SECTION 6. The change in law made by this Act applies only  
12 to an offense committed on or after the effective date of this Act.  
13 An offense committed before the effective date of this Act is  
14 covered by the law in effect when the offense was committed, and the  
15 former law is continued in effect for that purpose. For purposes of  
16 this section, an offense was committed before the effective date of  
17 this Act if any element of the offense occurred before that date.

18 SECTION 7. This Act takes effect September 1, 2009.