

BILL ANALYSIS

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S.B. 1076
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas is over-reliant on incarceration as a means of addressing the serious problem of substance abuse. There are treatment diversion alternatives that could effectively reduce recidivism among drug offenders, aid in alleviating prison overcrowding, and save taxpayers millions of dollars over time.

S.B. 1076 expands many of these alternatives in the Texas criminal justice system. S.B. 1076 requires nonviolent drug offenders with no previous convictions other than a drug possession offense or certain offenses under the Transportation Code to be placed on community supervision and given personalized treatment, rather than incarcerated, unless a judge finds that the individual is a danger to the community or not fit for treatment. S.B. 1076 authorizes a court to require an individual to comply with a range of conditions of community supervision in addition to requiring treatment, including vocational training, family counseling, literacy training, and community service, thereby giving judges the ability to select a mix of programs and monitoring conditions appropriate to each individual offender. The bill also authorizes certain individuals who successfully complete the assigned treatment program and successfully complete the term of community supervision to petition the court for nondisclosure of the offense.

As proposed, S.B. 1076 amends current law 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.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 15(a)(2), Article 42.12, Code of Criminal Procedure, as follows:

(2) Authorizes the judge, on conviction of a state jail felony punished under Section 12.35(a) (relating to discharging a firearm in certain municipalities), Penal Code, to suspend the imposition of the sentence and place the defendant on community supervision or may order the sentence to be executed. Deletes existing text relating to a state jail felony punished under Section 12.35(a), other than a state jail felony listed in Subdivision (1).

SECTION 2. Amends Article 42.12, Code of Criminal Procedure, by adding Section 15B, as follows:

Sec. 15B. COMMUNITY SUPERVISION FOR POSSESSION OF CONTROLLED SUBSTANCE (a) Defines "drug possession offense" in this section.

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

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

(4) 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 previously been convicted on two or more occasions of a drug possession offense; or discharged from a drug court program established under Chapter 469 (Drug Court Programs), Health and Safety Code, after failing to successfully complete the program.

(c) Requires 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 course of treatment in a drug treatment program or facility to enter reasons for making that determination in the record of the proceeding.

(d) Authorizes a judge to 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) Requires a court granting community supervision under this section to 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 (TDCJ), including a procedure developed under Section 509.003(d) (relating to developing screening and evaluation procedures), 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 licensed or approved by the Department of State Health Services; or that complies with standards established by the community justice assistance division of TDCJ; and

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

(f) Authorizes a course treatment under Subsection (e)(2) to 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) Requires the judge, in referring a defendant to a course of treatment under Subsection (e)(2) and imposing conditions for participation in the course of treatment, to order the defendant to participate in the course of treatment that is the least restrictive and most cost-effective to achieve:

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

(2) the recommendations of a drug treatment professional.

(h) Authorizes a court granting community supervision under this section to 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) Authorizes the judge, 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 treatment-related condition of supervision, to:

(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 global positioning or another form of electronic monitoring; mental health treatment or cognitive and behavioral programs; alcohol or substance abuse monitoring and testing; faith-based community programs and resources, including mentoring programs; 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; strategies to reduce the number of technical violations committed by the defendant; and increased coordination between the court and the community supervision and corrections department supervising the defendant; and

(2) revoke supervision if the judge determines by a preponderance of the evidence that the defendant poses a danger to the safety of others; or is unlikely to benefit from a course of treatment in a drug treatment program or facility.

(j) Requires a judge who modifies a defendant's conditions of supervision in response to the defendant's commission of another drug offense or violation of a treatment-related condition of supervision to 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 (Community Corrections Facilities) in an intermediate sanction facility operated by or under contract with TDCJ for a period not to exceed 120 days.

(k) Requires the judge, 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, to 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) Authorizes a defendant, 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, to petition the court for dismissal of the charges. Requires the judge, 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, to 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) (relating to the reduction or termination of community supervision).

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

(d-1) Authorizes a person, notwithstanding any other provision of this subchapter, if a person is placed on community supervision under Section 15B, Article 42.12 (Community Supervision), 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), to petition the court that placed the defendant on community supervision for an order of nondisclosure under this subsection. Requires the court, 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, to 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. Authorizes a criminal justice agency to 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) (relating to the disclosure of a criminal history record to certain entities), or the person who is the subject of the order. Authorizes a person to 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. Authorizes that the payment 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 was for which the person was placed on community supervision was a felony.

(e) Entitles a person 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) (relating to the date for payment of certain court fees for certain misdemeanors), (2) (relating to the date for payment of certain court fees for certain misdemeanors), or (3) (relating to the date for payment of certain court fees for a felony) 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, as defined by Section 15B(a), Article 42.12, Code of Criminal Procedure. Provides that a person is not entitled to petition the court under Subsection (d) or (d-1) if the person was placed on community supervision, including deferred adjudication community supervision, for, or has been previously convicted of or placed on any other deferred adjudication for various offenses. Makes a nonsubstantive change.

SECTION 4. Amends Chapter 509, Government Code, by adding Section 509.013, as follows:

Sec. 509.013. ANNUAL REPORT ON COMMUNITY SUPERVISION WITH DRUG TREATMENT. (a) Requires TDCJ, not later than December 1 of each year, to 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) Requires that the study and report 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 incarceration costs incurred by the state and local governments, including the cost of constructing prisons and jails; the recidivism rate among defendants placed on community supervision under Section 15B, Article 42.12, Code of Criminal Procedure, compared with other defendants; and 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 TDCJ.

SECTION 5. Repealers: Sections 15(a)(1) (relating to requiring a judge to place a defendant on community supervision), (c)(2) (relating to requiring a defendant to comply with substance abuse treatment conditions), and (c)(3) (relating to an exemption of Subdivision (2) by the judge), Article 42.12, Code of Criminal Procedure.

SECTION 6. (a) Requires a defendant, if adjudged guilty, in a criminal action under Section 481.115 (Offense: Possession of Substance in Penalty Group 1), 481.1151 (Offense: Possession of Substance in Penalty Group (1-a)), 481.116 (Offense: Possession of Substance in Penalty Group 2), 481.117 (Offense: Possession of Substance in Penalty Group 3), 481.118 (Offense: Possession of Substance in Penalty Group 4), 481.119(b) (relating to control substance not listed in the penalty group), 481.121 (Offense: Possession of Marihuana), 483.041(a) (relating to the offense of a dangerous drug), or 485.031 (Possession and Use), 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, to 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) Provides that if the defendant does not make the election under Subsection (a) of this section, punishment is covered by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose.

SECTION 7. Provides that the change in law made by Section 411.081(d-1), 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 8. Requires TDCJ to submit to the legislature the first report required by Section 509.013, Government Code, as added by this Act, not later than December 1, 2012.

SECTION 9. Effective date: September 1, 2011.