

By: Shelton

H.B. No. 1294

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 alien" means an alien who:

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

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

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

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

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

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

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

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

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

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

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

20 (5) is convicted of an offense listed in Section
21 3g(a)(1)(C), (E), or (H), if the victim of the offense was younger
22 than 14 years of age at the time the offense was committed;

23 (6) is convicted of an offense listed in Section
24 3g(a)(1)(D), if the victim of the offense was younger than 14 years
25 of age at the time the offense was committed and the actor committed
26 the offense with the intent to violate or abuse the victim sexually;

27 (7) is convicted of an offense listed in Section

1 3g(a)(1)(J); ~~[or]~~

2 (8) is adjudged guilty of an offense under Section
3 19.02, Penal Code; or

4 (9) is an illegal alien.

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

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

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

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

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

16 (2) the defendant:

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

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

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

24 (A) Section 21.02, Penal Code; or

25 (B) Section 22.021, Penal Code, that is
26 punishable under Subsection (f) of that section or under Section
27 12.42(c)(3), Penal Code; or

1 (4) the defendant is an illegal alien.

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

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

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

14 SECTION 7. This Act takes effect September 1, 2011.