

By: Ellis

S.B. No. 1076

A BILL TO BE ENTITLED

AN ACT

1
2 relating to community supervision for certain drug possession
3 offenses and to a person's eligibility for an order of
4 nondisclosure following a term of community supervision for any of
5 those offenses.

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

7 SECTION 1. Section 15(a)(2), Article 42.12, Code of
8 Criminal Procedure, is amended to read as follows:

9 (2) On conviction of a state jail felony punished
10 under Section 12.35(a), Penal Code, [~~other than a state jail felony~~
11 ~~listed in Subdivision (1),~~] the judge may suspend the imposition of
12 the sentence and place the defendant on community supervision or
13 may order the sentence to be executed.

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

16 Sec. 15B. COMMUNITY SUPERVISION FOR POSSESSION OF
17 CONTROLLED SUBSTANCE. (a) In this section, "drug possession
18 offense" means an offense under:

19 (1) Section 481.115, 481.116, 481.117, 481.118,
20 481.119(b), 483.041(a), or 485.031, Health and Safety Code, that is
21 punishable as a felony of the third degree or as any lower category
22 of offense;

23 (2) Section 481.1151, Health and Safety Code, that is
24 punishable as a state jail felony; or

1 (3) Section 481.121, Health and Safety Code, that is
2 punishable as a Class A misdemeanor or as any lower category of
3 offense.

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

8 (1) the judge determines by a preponderance of the
9 evidence that the defendant is a danger to the safety of others;

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

12 (A) a drug possession offense; or

13 (B) an offense under the Transportation Code
14 punishable by fine only or an offense related to a pedestrian or the
15 parking of a motor vehicle punishable by fine only;

16 (3) the defendant is convicted in the same proceeding
17 of an additional offense, other than:

18 (A) a drug possession offense; or

19 (B) an offense under the Transportation Code
20 punishable by fine only or an offense related to a pedestrian or the
21 parking of a motor vehicle punishable by fine only; or

22 (4) the judge determines by clear and convincing
23 evidence, based on an evidence-based drug and alcohol assessment,
24 that the defendant is unlikely to benefit from participation in a
25 course of treatment in a drug treatment program or facility, and the
26 defendant has previously been:

27 (A) convicted on two or more occasions of a drug

1 possession offense; or

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

5 (c) A judge who determines under Subsection (b) that a
6 defendant is a danger to the safety of others or is unlikely to
7 benefit from participation in a course of treatment in a drug
8 treatment program or facility shall enter reasons for making that
9 determination in the record of the proceeding.

10 (d) The judge may suspend wholly or partly the imposition of
11 any fine imposed on a conviction if a defendant is placed on
12 community supervision under this section.

13 (e) A court granting community supervision under this
14 section shall require as a condition of community supervision that
15 the defendant:

16 (1) submit to an evidence-based risks and needs
17 screening and evaluation procedure approved by the community
18 justice assistance division of the Texas Department of Criminal
19 Justice, including a procedure developed under Section 509.003(d),
20 Government Code;

21 (2) if the evaluation indicates a need for treatment,
22 participate in a prescribed course of treatment in a drug treatment
23 program or facility:

24 (A) licensed or approved by the Department of
25 State Health Services; or

26 (B) that complies with standards established by
27 the community justice assistance division of the Texas Department

1 of Criminal Justice; and

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

4 (f) A course of treatment under Subsection (e)(2) may
5 include:

6 (1) treatment in a faith-based program;

7 (2) outpatient treatment;

8 (3) halfway house treatment;

9 (4) narcotic replacement therapy prescribed by a
10 physician;

11 (5) drug education or prevention courses; and

12 (6) inpatient or residential drug treatment to address
13 special detoxification, relapse, or severe dependence issues.

14 (g) In referring a defendant to a course of treatment under
15 Subsection (e)(2) and imposing conditions for participation in the
16 course of treatment, the judge shall order the defendant to
17 participate in the course of treatment that is the least
18 restrictive and most cost-effective to achieve:

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

21 (2) the recommendations of a drug treatment
22 professional.

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

1 (1) vocational training;

2 (2) family counseling;

3 (3) literacy training; or

4 (4) community service.

5 (i) Notwithstanding Section 21(b), if a defendant placed on
6 community supervision under this section violates the terms of that
7 supervision by committing another drug possession offense or by
8 violating any treatment-related condition of supervision, the
9 judge may:

10 (1) use graduated sanctions and incentives offered to
11 a defendant by the community supervision and corrections department
12 supervising the defendant or the courts served by that department,
13 including:

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

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

18 (C) alcohol or substance abuse monitoring and
19 testing;

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

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

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

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

4 (2) revoke supervision if the judge determines by a
5 preponderance of the evidence that the defendant:

6 (A) poses a danger to the safety of others; or

7 (B) is unlikely to benefit from a course of
8 treatment in a drug treatment program or facility.

9 (j) A judge who modifies a defendant's conditions of
10 supervision in response to the defendant's commission of another
11 drug possession offense or violation of a treatment-related
12 condition of supervision shall consider imposing one or more of the
13 following additional conditions of supervision:

14 (1) intensified drug treatment;

15 (2) vocational training;

16 (3) family counseling;

17 (4) literacy education;

18 (5) community service;

19 (6) intensive supervision; and

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

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

27 (1) committed a serious violation of the rules of a

1 drug treatment program or facility; or

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

5 (1) After successful completion of a term of community
6 supervision imposed under this section, including completion of any
7 required course of treatment in a drug treatment program or
8 facility, a defendant may petition the court for dismissal of the
9 charges. If the judge, after providing notice and giving attorneys
10 for the defendant and the state an opportunity to be heard,
11 determines that the defendant substantially complied with the
12 conditions of supervision and successfully completed any required
13 course of treatment, the judge shall discharge the defendant, set
14 aside the verdict or permit the defendant to withdraw the plea, and
15 dismiss the accusation, complaint, information, or indictment in
16 the manner provided by Section 20(a).

17 SECTION 3. Section 411.081, Government Code, is amended by
18 adding Subsection (d-1) and amending Subsection (e) to read as
19 follows:

20 (d-1) Notwithstanding any other provision of this
21 subchapter, if a person is placed on community supervision under
22 Section 15B, Article 42.12, Code of Criminal Procedure, and
23 subsequently receives a discharge and dismissal under Section
24 15B(1), Article 42.12, Code of Criminal Procedure, and satisfies
25 the requirements of Subsection (e), the person may petition the
26 court that placed the defendant on community supervision for an
27 order of nondisclosure under this subsection. After notice to the

1 state and a hearing on whether the person is entitled to file the
2 petition and issuance of the order is in the best interest of
3 justice, the court shall issue an order prohibiting criminal
4 justice agencies from disclosing to the public criminal history
5 record information related to the offense giving rise to the
6 community supervision. A criminal justice agency may disclose
7 criminal history record information that is the subject of the
8 order only to other criminal justice agencies, for criminal justice
9 purposes, an agency or entity listed in Subsection (i), or the
10 person who is the subject of the order. A person may petition the
11 court that placed the person on community supervision for an order
12 of nondisclosure on payment of a \$28 fee to the clerk of the court in
13 addition to any other fee that generally applies to the filing of a
14 civil petition. The payment may be made only after:

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

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

21 (e) A person is entitled to petition the court under
22 Subsection (d) or (d-1) only if during the period of the community
23 supervision, including deferred adjudication community
24 supervision, for which the order of nondisclosure is requested and
25 during the applicable period described by Subsection (d)(1), (2),
26 or (3) or by Subsection (d-1)(1) or (2), as appropriate, the person
27 is not convicted of or placed on deferred adjudication community

1 supervision under Section 5, Article 42.12, Code of Criminal
2 Procedure, for any offense other than an offense under the
3 Transportation Code punishable by fine only or, for purposes of
4 Subsection (d-1), the person is not convicted of or placed on
5 community supervision, including deferred adjudication community
6 supervision, for another drug possession offense, as defined by
7 Section 15B(a), Article 42.12, Code of Criminal Procedure. A
8 person is not entitled to petition the court under Subsection (d) or
9 (d-1) if the person was placed on community supervision, including
10 [the] deferred adjudication community supervision, for, or has been
11 previously convicted of or placed on any other deferred
12 adjudication for:

13 (1) an offense requiring registration as a sex
14 offender under Chapter 62, Code of Criminal Procedure;

15 (2) an offense under Section 20.04, Penal Code,
16 regardless of whether the offense is a reportable conviction or
17 adjudication for purposes of Chapter 62, Code of Criminal
18 Procedure;

19 (3) an offense under Section 19.02, 19.03, 22.04,
20 22.041, 25.07, or 42.072, Penal Code; or

21 (4) any other offense involving family violence, as
22 defined by Section 71.004, Family Code.

23 SECTION 4. Chapter 509, Government Code, is amended by
24 adding Section 509.013 to read as follows:

25 Sec. 509.013. ANNUAL REPORT ON COMMUNITY SUPERVISION WITH
26 DRUG TREATMENT. (a) Not later than December 1 of each year, the
27 Texas Department of Criminal Justice shall study and report to the

1 legislature on the effectiveness and financial impact to the state
2 during the preceding state fiscal year of placing defendants on
3 community supervision with drug treatment for a drug possession
4 offense under Section 15B, Article 42.12, Code of Criminal
5 Procedure.

6 (b) The study and report must include an analysis of:

7 (1) the implementation of Section 15B, Article 42.12,
8 Code of Criminal Procedure;

9 (2) the adequacy of funding available for operation of
10 the programs described by Section 15B, Article 42.12, Code of
11 Criminal Procedure;

12 (3) the effect of implementing Section 15B, Article
13 42.12, Code of Criminal Procedure, with respect to:

14 (A) incarceration costs incurred by the state and
15 local governments, including the cost of constructing prisons and
16 jails;

17 (B) the recidivism rate among defendants placed
18 on community supervision under Section 15B, Article 42.12, Code of
19 Criminal Procedure, compared with other defendants; and

20 (C) the number of defendants placed on community
21 supervision under Section 15B, Article 42.12, Code of Criminal
22 Procedure, who utilize state welfare benefits, compared with other
23 defendants; and

24 (4) other effects of or issues with implementing
25 Section 15B, Article 42.12, Code of Criminal Procedure, that are
26 identified by the Texas Department of Criminal Justice.

27 SECTION 5. Sections 15(a)(1), (c)(2), and (c)(3), Article

1 42.12, Code of Criminal Procedure, are repealed.

2 SECTION 6. (a) In a criminal action under Section 481.115,
3 481.1151, 481.116, 481.117, 481.118, 481.119(b), 481.121,
4 483.041(a), or 485.031, Health and Safety Code, pending on or
5 commenced on or after the effective date of this Act, for an offense
6 committed before the effective date, the defendant, if adjudged
7 guilty, shall be assessed the punishment under Section 15B, Article
8 42.12, Code of Criminal Procedure, as added by this Act, if the
9 defendant meets the eligibility requirements under that section and
10 other law and so elects by written motion filed with the trial court
11 before the sentencing hearing begins.

12 (b) If the defendant does not make the election under
13 Subsection (a) of this section, punishment is covered by the law in
14 effect on the date the offense was committed, and the former law is
15 continued in effect for that purpose.

16 SECTION 7. The change in law made by Section 411.081(d-1),
17 Government Code, as added by this Act, applies to a person placed on
18 community supervision under Section 15B, Article 42.12, Code of
19 Criminal Procedure, as added by this Act, on or after the effective
20 date of this Act regardless of when the person committed the offense
21 for which the person is placed on community supervision.

22 SECTION 8. The Texas Department of Criminal Justice shall
23 submit to the legislature the first report required by Section
24 509.013, Government Code, as added by this Act, not later than
25 December 1, 2012.

26 SECTION 9. This Act takes effect September 1, 2011.