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HOUSE OF REPRESENTATIVES

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BY _____

FLOOR AMENDMENT NO. _____

Amend C.S.A.B. ~~229~~ ^{S 213} (house committee printing) as follows:

SECTION 1. Sections 15(a)(1) and (2), Article 42.12, Code of Criminal Procedure, are amended to read as follows:

(1) On conviction of a state jail felony under Section [481.115(b), ~~481.1151(b)(1), 481.116(b),~~] 481.1161(b)(3), 481.121(b)(3), or 481.129(g)(1), Health and Safety Code, that is punished under Section 12.35(a), Penal Code, the judge shall suspend the imposition of the sentence and place the defendant on community supervision, unless the defendant has previously been convicted of a felony, other than a felony punished under Section 12.44(a), Penal Code, or unless the conviction resulted from an adjudication of the guilt of a defendant previously placed on deferred adjudication community supervision for the offense, in which event the judge may suspend the imposition of the sentence and place the defendant on community supervision or may order the sentence to be executed. The provisions of this subdivision requiring the judge to suspend the imposition of the sentence and place the defendant on community supervision do not apply to a defendant who:

(A) [~~under Section 481.1151(b)(1), Health and Safety Code, possessed more than five abuse units of the controlled substance;~~

[~~(B)~~] under Section 481.1161(b)(3), Health and Safety Code, possessed more than one pound, by aggregate weight, including adulterants or dilutants, of the controlled substance; or

(B) [~~(C)~~] under Section 481.121(b)(3), Health and

Safety Code, possessed more than one pound of marihuana.

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

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

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

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

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

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

(1) the offender has been previously convicted of a drug possession offense and 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) a drug possession offense; 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

(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; 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 drug treatment program, and the defendant has previously been:

(A) convicted on two or more occasions of a drug possession offense; or

(B) a preponderance of the evidence indicates the substance was not exclusively for personal use; or

(C) a preponderance of the evidence indicates the offense was committed with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang as defined in Section 71.01 of the Penal Code; or

(D) 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 determines under Subsection (b) that a defendant is a danger to the safety of others or is unlikely to benefit from participation in a drug treatment program shall enter 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 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;

(5) drug education or prevention courses; and

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

(7) confinement under Section 14, Article 42.12, Code of Criminal Procedure, in in a substance abuse treatment facility operated by the Texas Department of Criminal Justice under Section 493.009 of the Government Code.

(g) In referring a defendant to a course of treatment in a program described by Subsection (e)(2) and imposing conditions for participation in the program, the judge shall order the defendant to participate in the level of care that is the least restrictive and most cost-effective to achieve:

(1) the outcome objectives prescribed by the program;

and

(2) the recommendations of a treatment professional.

(h) A court granting community supervision under this section may require as a condition of community supervision, in addition to

the drug treatment program 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 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) a reduced or specialized caseload for the supervision officer and increased home visits and field contacts by

the officer;

(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 supervision 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 participation in a drug treatment program.

(j) A judge who modifies a defendant's conditions of supervision in response to the defendant's commission of another drug possession offense 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, Article 42.12, Code of Criminal Procedure, in an intermediate sanction facility operated by or under contract with the Texas Department of Criminal Justice

for a period not to exceed 180 days.

(8) confinement under Section 14, Article 42.12, Code of Criminal Procedure, in in a substance abuse treatment facility operated by the Texas Department of Criminal Justice under Section 493.009 of the Government Code.

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

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

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

(l) After successful completion of a term of community supervision imposed under this section, including completion of a drug treatment program, 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 the drug treatment program, 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).

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

(d-1) Notwithstanding any other provision of this subchapter, if a person is placed on community supervision under Section 15B, Article 42.12, 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), 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 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), another drug possession offense. A person is not entitled to petition the court under Subsection (d) or (d-1) if the person has been previously convicted or placed on 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 4. Chapter 509, Government Code, is amended by adding Section 509.016 to read as follows:

Sec. 509.016. ANNUAL REPORT ON COMMUNITY SUPERVISION WITH DRUG TREATMENT. (a) Not later than November 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;

(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.

SECTION 5. Subdivision (1), Subsection (a), and Subdivisions (2) and (3), Subsection (c), Section 15, Article 42.12, Code of Criminal Procedure, are repealed.

SECTION 6. (a) In a criminal action under Section 481.115, 481.1151, 481.116, 481.117, 481.118, 481.119(b), 481.121, 483.041(a), or 485.031, 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 7. 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 8. The Texas Department of Criminal Justice shall submit to the legislature the first report required by Section 509.016, Government Code, as added by this Act, not later than November 1, 2008.

SECTION 9. This Act takes effect September 1, 2007.