

By: Ellis

S.B. No. 90

A BILL TO BE ENTITLED

AN ACT

relating to community supervision for certain drug possession offenses.

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

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~~

1 ~~substance,~~

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

5 (B) [~~(C)~~] under Section 481.121(b)(3), Health
6 and Safety Code, possessed more than one pound of marihuana.

7 (2) On conviction of a state jail felony punished
8 under Section 12.35(a), Penal Code, other than a state jail felony
9 listed in Subdivision (1) or a state jail felony that is a drug
10 possession offense under Section 15B, the judge may suspend the
11 imposition of the sentence and place the defendant on community
12 supervision or may order the sentence to be executed.

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

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

18 (1) Section 481.115, Health and Safety Code, that is
19 punishable as a state jail felony or felony of the third degree;

20 (2) Section 481.1151 or 481.116, Health and Safety
21 Code, that is punishable as a state jail felony; or

22 (3) Section 481.1161 or 481.121, Health and Safety
23 Code, that is punishable as a Class A or B misdemeanor.

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

1 (1) the judge determines by a preponderance of the
2 evidence that the defendant:

3 (A) is a danger to the safety of others; or

4 (B) possessed the controlled substance with the
5 intent to deliver the substance in violation of Section 481.112,
6 481.1121, 481.113, or 481.120, Health and Safety Code, as
7 applicable;

8 (2) the defendant has been previously convicted of an
9 offense other than:

10 (A) a drug possession offense or a state jail
11 felony listed in Section 15(a); or

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

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

17 (A) a drug possession offense or a state jail
18 felony listed in Section 15(a); 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;

22 (4) the judge determines that a drug treatment program
23 or other treatment services that are appropriate for the defendant
24 are not available in the area in which the defendant resides; or

25 (5) the judge determines by clear and convincing
26 evidence, based on an evidence-based drug and alcohol assessment,
27 that the defendant is unlikely to benefit from participation in a

1 course of treatment in a drug treatment program or facility, and the
2 defendant has been previously:

3 (A) convicted on two or more occasions of a drug
4 possession offense or state jail felony listed in Section 15(a); or

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

8 (c) A judge who makes a determination described by
9 Subsection (b)(1), (4), or (5) to execute the defendant's sentence
10 shall enter the reasons for making that determination in the record
11 of the proceeding.

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

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

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

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

26 (A) licensed or approved by the Department of
27 State Health Services; or

1 (B) that complies with standards established by
2 the community justice assistance division of the Texas Department
3 of Criminal Justice; and

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

6 (f) A course of treatment under Subsection (e)(2) may
7 include:

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

9 (2) outpatient treatment;

10 (3) halfway house treatment;

11 (4) narcotic replacement therapy prescribed by a
12 physician;

13 (5) drug education or prevention courses; and

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

16 (g) In referring a defendant to a course of treatment under
17 Subsection (e)(2) and imposing conditions for participation in the
18 course of treatment, the judge shall order the defendant to
19 participate in the level of treatment that the evaluation indicates
20 is appropriate for the defendant to achieve:

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

23 (2) the recommendations of a drug treatment
24 professional.

25 (h) A court granting community supervision under this
26 section may require as a condition of community supervision, in
27 addition to any required participation in a course of treatment

1 under Subsection (e)(2) and other appropriate conditions, that the
2 defendant participate in:

- 3 (1) vocational training;
- 4 (2) family counseling;
- 5 (3) literacy training; or
- 6 (4) community service.

7 (i) Notwithstanding Section 21(b), if a defendant placed on
8 community supervision under this section violates the terms of that
9 supervision by committing another drug possession offense or state
10 jail felony listed in Section 15(a) or by violating any
11 treatment-related condition of supervision, the judge may:

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

16 (A) global positioning or another form of
17 electronic monitoring;

18 (B) mental health treatment or cognitive and
19 behavioral programs;

20 (C) alcohol or substance abuse monitoring and
21 testing;

22 (D) faith-based community programs and
23 resources, including mentoring programs;

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

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

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

6 (2) revoke the community supervision of the defendant
7 if the judge determines by a preponderance of the evidence that the
8 defendant:

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

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

12 (j) A judge who modifies a defendant's conditions of
13 supervision in response to the defendant's commission of another
14 drug possession offense or state jail felony listed in Section
15 15(a) or violation of a treatment-related condition of supervision
16 shall consider imposing one or more of the following additional
17 conditions of supervision:

18 (1) intensified drug treatment;

19 (2) vocational training;

20 (3) family counseling;

21 (4) literacy education;

22 (5) community service;

23 (6) intensive supervision; and

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

27 (k) In making a determination under this section as to

1 whether a defendant is unlikely to benefit from participation in a
2 course of treatment in a drug treatment program or facility, the
3 judge shall consider whether the defendant has previously:

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

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

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

21 (m) The drug treatment program account is created as a
22 dedicated account in the general revenue fund of the state
23 treasury. Money in the account may be appropriated only to the
24 Texas Department of Criminal Justice for distribution to drug
25 treatment programs or facilities that provide a course of treatment
26 to defendants under this section and that apply for the money.
27 Funds collected and distributed under this subsection are subject

1 to audit by the comptroller.

2 SECTION 3. Subchapter A, Chapter 102, Code of Criminal
3 Procedure, is amended by adding Article 102.0179 to read as
4 follows:

5 Art. 102.0179. ADDITIONAL COSTS ATTENDANT TO CERTAIN
6 INTOXICATION AND DRUG CONVICTIONS. (a) In addition to other costs
7 on conviction imposed by this chapter, including costs described by
8 Article 102.0178, a person shall pay \$50 as a court cost on
9 conviction of any offense under Chapter 49, Penal Code, or Chapter
10 481, Health and Safety Code.

11 (b) In this article, a person is considered to have been
12 convicted if:

13 (1) a sentence is imposed;

14 (2) the person is placed on community supervision,
15 including deferred adjudication community supervision; or

16 (3) the court defers final disposition of the person's
17 case.

18 (c) Court costs under this article are collected in the same
19 manner as other fines or costs. An officer collecting the costs
20 shall send to the comptroller costs collected under this article
21 for deposit to the credit of the drug treatment program account
22 established under Section 15B, Article 42.12.

23 SECTION 4. Section 102.021, Government Code, is amended to
24 read as follows:

25 Sec. 102.021. COURT COSTS ON CONVICTION: CODE OF CRIMINAL
26 PROCEDURE. A person convicted of an offense shall pay the
27 following under the Code of Criminal Procedure, in addition to all

1 other costs:

2 (1) court cost on conviction of any offense, other
3 than a conviction of an offense relating to a pedestrian or the
4 parking of a motor vehicle (Art. 102.0045, Code of Criminal
5 Procedure) . . . \$4;

6 (2) a fee for services of prosecutor (Art. 102.008,
7 Code of Criminal Procedure) . . . \$25;

8 (3) fees for services of peace officer:

9 (A) issuing a written notice to appear in court
10 for certain violations (Art. 102.011, Code of Criminal Procedure)
11 . . . \$5;

12 (B) executing or processing an issued arrest
13 warrant, *capias*, or *capias pro fine* (Art. 102.011, Code of Criminal
14 Procedure) . . . \$50;

15 (C) summoning a witness (Art. 102.011, Code of
16 Criminal Procedure) . . . \$5;

17 (D) serving a writ not otherwise listed (Art.
18 102.011, Code of Criminal Procedure) . . . \$35;

19 (E) taking and approving a bond and, if
20 necessary, returning the bond to courthouse (Art. 102.011, Code of
21 Criminal Procedure) . . . \$10;

22 (F) commitment or release (Art. 102.011, Code of
23 Criminal Procedure) . . . \$5;

24 (G) summoning a jury (Art. 102.011, Code of
25 Criminal Procedure) . . . \$5;

26 (H) attendance of a prisoner in habeas corpus
27 case if prisoner has been remanded to custody or held to bail (Art.

- 1 102.011, Code of Criminal Procedure) . . . \$8 each day;
- 2 (I) mileage for certain services performed (Art.
- 3 102.011, Code of Criminal Procedure) . . . \$0.29 per mile; and
- 4 (J) services of a sheriff or constable who serves
- 5 process and attends examining trial in certain cases (Art. 102.011,
- 6 Code of Criminal Procedure) . . . not to exceed \$5;
- 7 (4) services of a peace officer in conveying a witness
- 8 outside the county (Art. 102.011, Code of Criminal Procedure) . . .
- 9 \$10 per day or part of a day, plus actual necessary travel expenses;
- 10 (5) overtime of peace officer for time spent
- 11 testifying in the trial or traveling to or from testifying in the
- 12 trial (Art. 102.011, Code of Criminal Procedure) . . . actual cost;
- 13 (6) court costs on an offense relating to rules of the
- 14 road, when offense occurs within a school crossing zone (Art.
- 15 102.014, Code of Criminal Procedure) . . . \$25;
- 16 (7) court costs on an offense of passing a school bus
- 17 (Art. 102.014, Code of Criminal Procedure) . . . \$25;
- 18 (8) court costs on an offense of truancy or
- 19 contributing to truancy (Art. 102.014, Code of Criminal Procedure)
- 20 . . . \$20;
- 21 (9) cost for visual recording of intoxication arrest
- 22 before conviction (Art. 102.018, Code of Criminal Procedure) . . .
- 23 \$15;
- 24 (10) cost of certain evaluations (Art. 102.018, Code
- 25 of Criminal Procedure) . . . actual cost;
- 26 (11) additional costs attendant to certain
- 27 intoxication convictions under Chapter 49, Penal Code, for

1 emergency medical services, trauma facilities, and trauma care
2 systems (Art. 102.0185, Code of Criminal Procedure) . . . \$100;

3 (12) additional costs attendant to certain child
4 sexual assault and related convictions, for child abuse prevention
5 programs (Art. 102.0186, Code of Criminal Procedure) . . . \$100;

6 (13) court cost for DNA testing for certain felonies
7 (Art. 102.020(a)(1), Code of Criminal Procedure) . . . \$250;

8 (14) court cost for DNA testing for the offense of
9 public lewdness or indecent exposure (Art. 102.020(a)(2), Code of
10 Criminal Procedure) . . . \$50;

11 (15) court cost for DNA testing for certain felonies
12 (Art. 102.020(a)(3), Code of Criminal Procedure) . . . \$34;

13 (16) if required by the court, a restitution fee for
14 costs incurred in collecting restitution installments and for the
15 compensation to victims of crime fund (Art. 42.037, Code of
16 Criminal Procedure) . . . \$12;

17 (17) if directed by the justice of the peace or
18 municipal court judge hearing the case, court costs on conviction
19 in a criminal action (Art. 45.041, Code of Criminal Procedure)
20 . . . part or all of the costs as directed by the judge; ~~and~~

21 (18) costs attendant to convictions under Chapter 49,
22 Penal Code, and under Chapter 481, Health and Safety Code, to help
23 fund drug court programs established under Chapter 469, Health and
24 Safety Code (Art. 102.0178, Code of Criminal Procedure) . . . \$60;
25 and

26 (19) costs attendant to convictions under Chapter 49,
27 Penal Code, and under Chapter 481, Health and Safety Code, for

1 certain drug treatment programs and facilities (Art. 102.0179, Code
2 of Criminal Procedure) . . . \$50.

3 SECTION 5. Chapter 509, Government Code, is amended by
4 adding Section 509.013 to read as follows:

5 Sec. 509.013. ANNUAL REPORT ON COMMUNITY SUPERVISION WITH
6 DRUG TREATMENT. (a) Not later than December 1 of each year, the
7 Texas Department of Criminal Justice shall study and report to the
8 legislature on the effectiveness and financial impact to the state
9 during the preceding state fiscal year of placing defendants on
10 community supervision with drug treatment for a drug possession
11 offense under Section 15B, Article 42.12, Code of Criminal
12 Procedure.

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

14 (1) the implementation of Section 15B, Article 42.12,
15 Code of Criminal Procedure, including the amount of cost savings
16 the state realizes through that implementation;

17 (2) the adequacy of funding available for operation of
18 the programs described by Section 15B, Article 42.12, Code of
19 Criminal Procedure;

20 (3) the effect of implementing Section 15B, Article
21 42.12, Code of Criminal Procedure, with respect to:

22 (A) incarceration costs incurred by the state and
23 local governments, including the cost of constructing prisons and
24 jails;

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

1 (C) the number of defendants placed on community
2 supervision under Section 15B, Article 42.12, Code of Criminal
3 Procedure, who utilize state welfare benefits, compared with other
4 defendants; and

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

8 (c) The comptroller shall verify the findings of the
9 department in analyzing the cost savings realized by the state
10 through the implementation of Section 15B, Article 42.12, Code of
11 Criminal Procedure. The department may retain the amount of the
12 actual savings attributable to implementation of that section, to
13 the extent that the savings come from funds appropriated to the
14 department and to the extent the department distributed that amount
15 to drug treatment programs or facilities that provide a course of
16 treatment to defendants under that section. The department may
17 transfer savings attributable to implementation of that section
18 from the first year of the fiscal biennium to the second year of the
19 fiscal biennium, provided that the department uses the full amount
20 transferred for distribution to drug treatment programs or
21 facilities as described by this subsection.

22 SECTION 6. (a) In a criminal action under Section
23 481.115, 481.1151, 481.116, 481.1161, or 481.121, Health and Safety
24 Code, pending on or commenced on or after the effective date of this
25 Act, for an offense committed before the effective date of this Act,
26 the defendant, if adjudged guilty, shall be assessed the punishment
27 under Section 15B, Article 42.12, Code of Criminal Procedure, as

1 added by this Act, if the offense is described by Section 15B(a) of
2 that article and the defendant meets the eligibility requirements
3 under that section and other law and so elects by written motion
4 filed with the trial court before the sentencing hearing begins.

5 (b) If the defendant does not make the election under
6 Subsection (a) of this section, punishment is covered by the law in
7 effect when the offense was committed, and the former law is
8 continued in effect for that purpose.

9 SECTION 7. Article 102.0179, Code of Criminal Procedure, as
10 added by this Act, applies only to a cost on conviction for an
11 offense committed on or after the effective date of this Act. An
12 offense committed before the effective date of this Act is covered
13 by the law in effect when the offense was committed, and the former
14 law is continued in effect for that purpose. For purposes of this
15 section, an offense was committed before the effective date of this
16 Act if any element of the offense occurred before that date.

17 SECTION 8. The Texas Department of Criminal Justice shall
18 submit to the legislature the first report required by Section
19 509.013, Government Code, as added by this Act, not later than
20 December 1, 2014.

21 SECTION 9. This Act takes effect September 1, 2013.