

By: Hinojosa

S.B. No. 358

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the use of a polygraph statement as evidence that a
3 defendant or releasee from the Texas Department of Criminal Justice
4 has violated a condition of release.

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

6 SECTION 1. Subsection (b), Section 5, Article 42.12, Code
7 of Criminal Procedure, is amended to read as follows:

8 (b) On violation of a condition of community supervision
9 imposed under Subsection (a) [~~of this section~~], the defendant may
10 be arrested and detained as provided in Section 21 [~~of this~~
11 ~~article~~]. The defendant is entitled to a hearing limited to the
12 determination by the court of whether it proceeds with an
13 adjudication of guilt on the original charge. The court may not
14 proceed with an adjudication of guilt on the original charge if the
15 court finds that the only evidence supporting the alleged violation
16 of a condition of community supervision is an uncorroborated
17 polygraph statement. The [This] determination to proceed with an
18 adjudication of guilt on the original charge is reviewable in the
19 same manner as a revocation hearing conducted under Section 21 [~~of~~
20 ~~this article~~] in a case in which an adjudication of guilt had not
21 been deferred. After an adjudication of guilt, all proceedings,
22 including assessment of punishment, pronouncement of sentence,
23 granting of community supervision, and defendant's appeal continue
24 as if the adjudication of guilt had not been deferred. A court

1 assessing punishment after an adjudication of guilt of a defendant
2 charged with a state jail felony may suspend the imposition of the
3 sentence and place the defendant on community supervision or may
4 order the sentence to be executed, regardless of whether the
5 defendant has previously been convicted of a felony.

6 SECTION 2. Subsection (c), Section 21, Article 42.12, Code
7 of Criminal Procedure, is amended to read as follows:

8 (c) The court may not revoke the community supervision of a
9 defendant if, at the community supervision revocation hearing, the
10 court finds that the only evidence supporting the alleged violation
11 of a condition of community supervision is an uncorroborated
12 polygraph statement. In a community supervision revocation hearing
13 at which it is alleged only that the defendant violated the
14 conditions of community supervision by failing to pay compensation
15 paid to appointed counsel, community supervision fees, or court
16 costs, the state must prove by a preponderance of the evidence that
17 the defendant was able to pay and did not pay as ordered by the
18 judge. The court may order a community supervision and corrections
19 department to obtain information pertaining to the factors listed
20 under Article 42.037(h) [~~of this code~~] and include that information
21 in the report required under Section 9(a) [~~of this article~~] or a
22 separate report, as the court directs.

23 SECTION 3. Section 508.281, Government Code, is amended by
24 adding Subsection (e) to read as follows:

25 (e) A parole panel or designated agent of the board may not
26 revoke the parole or mandatory supervision of a releasee if the
27 parole panel or designated agent finds that the only evidence

1 supporting the alleged violation of a condition of release is an
2 uncorroborated polygraph statement.

3 SECTION 4. The change in law made by this Act applies to a
4 hearing held under Section 5 or 21, Article 42.12, Code of Criminal
5 Procedure, or Section 508.281, Government Code, on or after the
6 effective date of this Act.

7 SECTION 5. This Act takes effect immediately if it receives
8 a vote of two-thirds of all the members elected to each house, as
9 provided by Section 39, Article III, Texas Constitution. If this
10 Act does not receive the vote necessary for immediate effect, this
11 Act takes effect September 1, 2013.