

House Bill 1790
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Section 15, Article 42.12, Code of Criminal Procedure, is amended by adding Subsections (l), (m), and (n) to read as follows:

(l) A judge who places a defendant on community supervision following conviction of a state jail felony, on agreement of the attorney representing the state and the defendant, shall inform the defendant of the procedure provided for an amendment of the order of conviction under this subsection. In any case in which the defendant is informed under this subsection, on written motion of the defendant after completion of two-thirds of the original community supervision period, the judge shall review the defendant's record and consider whether to amend the record of conviction to reflect a conviction for a Class A misdemeanor in lieu of a state jail felony. On disposition of the case in a manner provided by Section 20, the judge, on discharge of the defendant, may amend the record of conviction to reflect a conviction for a Class A misdemeanor in lieu of a state jail felony, subject to Subsection (m), if:

(1) the offense for which the defendant was placed on community supervision was not an offense:

(A) under Section 30.04, Section 39.04(a)(2), Section 49.045, or Title 5, Penal Code;

(B) under Article 62.102 of this code; or

(C) involving family violence, as defined by Section 71.004, Family Code;

(2) the defendant has fulfilled to the judge's satisfaction all the conditions of community supervision, including the payment of all required restitution, and is not delinquent on the payment of any fines, costs, and fees that the defendant

SENATE VERSION (IE)

SECTION 1. Section 15, Article 42.12, Code of Criminal Procedure, is amended by adding Subsections (l), (m), and (n) to read as follows:

(l) On written motion of the defendant after completion of two-thirds of the original community supervision period for a state jail felony with respect to which written consent was obtained under Section 12.44(c), Penal Code, the judge may review the defendant's record and consider whether to amend the record of conviction to reflect a conviction for a Class A misdemeanor in lieu of a state jail felony. On disposition of the community supervision in a manner provided by Section 20, the judge, on discharge of the defendant, may amend the record of conviction to reflect a conviction for a Class A misdemeanor in lieu of a state jail felony, subject to Subsection (m), if: [FA1(1)-(2)]

(1) the offense for which the defendant was placed on community supervision was not an offense:

(A) under Section 30.02, Section 30.04, Section 39.04(a)(2), Section 49.045, or Title 5, Penal Code; [FA1(3)]

(B) under Article 62.102; or [FA1(4)]

(C) involving family violence, as defined by Section 71.004, Family Code;

(2) the defendant has fulfilled to the judge's satisfaction all the conditions of community supervision, including the payment of all required restitution, and is not delinquent on the payment of any fines, costs, and fees that the defendant

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has the ability to pay;

(3) the defendant files with the written motion for the hearing a statement that:

(A) contains a summary of the defendant's performance during community supervision, including compliance with the conditions of community supervision; and

(B) asserts that the defendant meets the conditions for an amendment of the record of conviction under this subsection;

(4) the defendant at the time of filing the statement with the court also provides a copy of the motion and statement to the attorney representing the state; and

(5) at the hearing held on the motion, the judge finds that an amendment of the record of conviction is in the best interest of justice.

(m) A judge who amends a record of conviction under Subsection (l) may not modify the name of the state jail felony offense for which the judge placed the defendant on community supervision. A defendant whose record of conviction is amended under Subsection (l) is not considered to have been convicted of a felony with respect to the modified offense for any purpose other than the purpose described by Section 20(a)(1).

(n) A record of conviction that is amended under Subsection (l) supersedes and takes the place of the record of conviction as it existed on the original date of conviction. A judge retains jurisdiction for the purposes of Subsection (l) only until the expiration of the term of community supervision.

No equivalent provision.

SENATE VERSION (IE)

has the ability to pay;

(3) the defendant files with the written motion for the hearing a statement that:

(A) contains a summary of the defendant's performance during community supervision, including compliance with the conditions of community supervision; and

(B) asserts that the defendant meets the conditions for an amendment of the record of conviction under this subsection;

(4) the defendant at the time of filing the statement with the court also provides a copy of the motion and statement to the attorney representing the state; and

(5) at the hearing held on the motion, the judge finds that an amendment of the record of conviction is in the best interest of justice.

(m) A judge who amends a record of conviction under Subsection (l) may not modify the name of the state jail felony offense for which the judge placed the defendant on community supervision. A defendant whose record of conviction is amended under Subsection (l) is not considered to have been convicted of a felony with respect to the modified offense. [FA1(5)]

(n) A record of conviction that is amended under Subsection (l) supersedes and takes the place of the record of conviction as it existed on the original date of conviction. A judge retains jurisdiction for the purposes of Subsection (l) only until the expiration of the term of community supervision.

SECTION 2. Section 12.44, Penal Code, is amended by adding Subsection (c) to read as follows:

(c) With the written consent of the prosecuting attorney prior

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SENATE VERSION (IE)

CONFERENCE

to sentencing, the court may amend the record of conviction to reflect a conviction for a Class A misdemeanor in lieu of a state jail felony as provided by Section 15(1), Article 42.12, Code of Criminal Procedure.

SECTION 2. The change in law made by this Act applies only to a defendant who is placed on community supervision on or after the effective date of this Act, regardless of whether the offense for which the defendant is placed on community supervision is committed before, on, or after that date.

SECTION 3. The change in law made by this Act applies only to a defendant who is placed on community supervision for an offense committed on or after the effective date of this Act. A defendant who is placed on community supervision for an offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date. [FA1(6)]

SECTION 3. This Act takes effect September 1, 2013.

SECTION 4. This Act takes effect September 1, 2013. [FA1(7)]