

By: Ellis

S.B. No. 82

A BILL TO BE ENTITLED

1 AN ACT
2 relating to community supervision for certain drug possession
3 offenses.

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

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

7 (a)(1) On conviction of a state jail felony under Section
8 [~~481.115(b), 481.1151(b)(1), 481.116(b),~~] 481.1161(b)(3),
9 481.121(b)(3), or 481.129(g)(1), Health and Safety Code, that is
10 punished under Section 12.35(a), Penal Code, the judge shall
11 suspend the imposition of the sentence and place the defendant on
12 community supervision, unless the defendant has previously been
13 convicted of a felony, other than a felony punished under Section
14 12.44(a), Penal Code, or unless the conviction resulted from an
15 adjudication of the guilt of a defendant previously placed on
16 deferred adjudication community supervision for the offense, in
17 which event the judge may suspend the imposition of the sentence and
18 place the defendant on community supervision or may order the
19 sentence to be executed. The provisions of this subdivision
20 requiring the judge to suspend the imposition of the sentence and
21 place the defendant on community supervision do not apply to a
22 defendant who:

23 (A) [~~under Section 481.1151(b)(1), Health and~~
24 ~~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 defined as a drug possession offense
10 under Section 15B, and subject to Subdivision (2-a), the judge may:

11 (A) suspend the imposition of the sentence and
12 place the defendant on community supervision; or

13 (B) order the sentence to be executed:

14 (i) in whole; or

15 (ii) in part, with a term of community
16 supervision to commence immediately on release of the defendant
17 from confinement.

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

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

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

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

27 (3) Section 481.1161 or 481.121, Health and Safety

1 Code, that is punishable as a Class A or B misdemeanor.

2 (b) On conviction of a drug possession offense, the judge
3 shall suspend the imposition of the sentence and place the
4 defendant on community supervision, except that the judge may order
5 the sentence to be executed in whole, or executed in part with a
6 term of community supervision to commence immediately on release of
7 the defendant from confinement, if:

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

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

11 (B) possessed the controlled substance with the
12 intent to deliver the substance in violation of Section 481.112,
13 481.1121, 481.113, or 481.120, Health and Safety Code, as
14 applicable;

15 (2) the defendant has been previously convicted of an
16 offense other than:

17 (A) a drug possession offense or a state jail
18 felony listed in Section 15(a)(1); 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 (3) the defendant is convicted in the same proceeding
23 of an additional offense, other than:

24 (A) a drug possession offense or a state jail
25 felony listed in Section 15(a)(1); or

26 (B) an offense under the Transportation Code
27 punishable by fine only or an offense related to a pedestrian or the

1 parking of a motor vehicle punishable by fine only;

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

5 (5) the judge determines by clear and convincing
6 evidence, based on an evidence-based drug and alcohol assessment,
7 that the defendant is unlikely to benefit from participation in a
8 course of treatment in a drug treatment program or facility, and the
9 defendant has been previously:

10 (A) convicted on two or more occasions of a drug
11 possession offense or state jail felony listed in Section 15(a)(1);
12 or

13 (B) discharged from a drug court program
14 established under Chapter 123, Government Code, after failing to
15 successfully complete the program.

16 (c) A judge who makes a determination described by
17 Subsection (b)(1), (4), or (5) to execute the defendant's sentence
18 in whole or in part shall enter the reasons for making that
19 determination in the record of the proceeding.

20 (d) The judge may suspend in whole or in part the imposition
21 of any fine imposed on a conviction if a defendant is placed on
22 community supervision under this section.

23 (e) A court granting community supervision under this
24 section shall require as a condition of community supervision that
25 the defendant:

26 (1) submit to an evidence-based risks and needs
27 screening and evaluation procedure approved by the community

1 justice assistance division of the Texas Department of Criminal
2 Justice, including a procedure developed under Section 509.003(d),
3 Government Code;

4 (2) if the evaluation indicates a need for treatment,
5 participate in a prescribed course of treatment in a drug treatment
6 program or facility:

7 (A) licensed or approved by the Department of
8 State Health Services; or

9 (B) that complies with standards established by
10 the community justice assistance division of the Texas Department
11 of Criminal Justice; and

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

14 (f) A course of treatment under Subsection (e)(2) may
15 include:

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

17 (2) outpatient treatment;

18 (3) halfway house treatment;

19 (4) narcotic replacement therapy prescribed by a
20 physician;

21 (5) drug education or prevention courses; and

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

24 (g) In referring a defendant to a course of treatment under
25 Subsection (e)(2) and imposing conditions for participation in the
26 course of treatment, the judge shall order the defendant to
27 participate in the level of treatment that the evaluation indicates

1 is appropriate for the defendant to achieve:

2 (1) the outcome objectives prescribed by the drug
3 treatment program or facility; and

4 (2) the recommendations of a drug treatment
5 professional.

6 (h) A court granting community supervision under this
7 section may require as a condition of community supervision, in
8 addition to any required participation in a course of treatment
9 under Subsection (e)(2) and other appropriate conditions, that the
10 defendant participate in:

11 (1) vocational training;

12 (2) family counseling;

13 (3) literacy training; or

14 (4) community service.

15 (i) Notwithstanding Section 21(b), if a defendant placed on
16 community supervision under this section violates the terms of that
17 supervision by committing another drug possession offense or state
18 jail felony listed in Section 15(a)(1) or by violating any
19 treatment-related condition of supervision, the judge may:

20 (1) use graduated sanctions and incentives offered to
21 a defendant by the community supervision and corrections department
22 supervising the defendant or the courts served by that department,
23 including:

24 (A) global positioning or another form of
25 electronic monitoring;

26 (B) mental health treatment or cognitive and
27 behavioral programs;

1 (C) alcohol or substance abuse monitoring and
2 testing;

3 (D) faith-based community programs and
4 resources, including mentoring programs;

5 (E) placing the defendant under the supervision
6 of a supervision officer with a reduced or specialized caseload and
7 subjecting the defendant to increased home visits and field
8 contacts, if sufficient resources are available;

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

11 (G) increased coordination between the court and
12 the community supervision and corrections department supervising
13 the defendant; and

14 (2) revoke the community supervision of the defendant
15 if the judge determines by a preponderance of the evidence that the
16 defendant:

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

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

20 (j) A judge who modifies a defendant's conditions of
21 supervision in response to the defendant's commission of another
22 drug possession offense or state jail felony listed in Section
23 15(a)(1) or violation of a treatment-related condition of
24 supervision shall consider imposing one or more of the following
25 additional conditions of supervision:

26 (1) intensified drug treatment;

27 (2) vocational training;

- 1 (3) family counseling;
2 (4) literacy education;
3 (5) community service;
4 (6) intensive supervision; and
5 (7) confinement under Section 18 in an intermediate
6 sanction facility operated by or under contract with the Texas
7 Department of Criminal Justice for a period not to exceed 120 days.

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

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

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

17 (l) After successful completion of a term of community
18 supervision imposed under this section, including completion of any
19 required course of treatment in a drug treatment program or
20 facility, a defendant may petition the court for dismissal of the
21 charges. If the judge, after providing notice and giving attorneys
22 for the defendant and the state an opportunity to be heard,
23 determines that the defendant substantially complied with the
24 conditions of supervision and successfully completed any required
25 course of treatment, the judge shall discharge the defendant, set
26 aside the verdict or permit the defendant to withdraw the plea, and
27 dismiss the accusation, complaint, information, or indictment in

1 the manner provided by Section 20(a).

2 (m) The drug treatment program account is created as a
3 dedicated account in the general revenue fund of the state
4 treasury. Money in the account may be appropriated only to the
5 Texas Department of Criminal Justice for distribution to drug
6 treatment programs or facilities that provide a course of treatment
7 to defendants under this section and that apply for the money.
8 Funds collected and distributed under this subsection are subject
9 to audit by the comptroller.

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

13 Art. 102.0179. ADDITIONAL COSTS ATTENDANT TO CERTAIN
14 INTOXICATION AND DRUG CONVICTIONS. (a) In addition to other costs
15 on conviction imposed by this chapter, including costs described by
16 Article 102.0178, a person shall pay \$50 as a court cost on
17 conviction of any offense under Chapter 49, Penal Code, or Chapter
18 481, Health and Safety Code.

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

- 21 (1) a sentence is imposed;
22 (2) the person is placed on community supervision,
23 including deferred adjudication community supervision; or
24 (3) the court defers final disposition of the person's
25 case.

26 (c) Court costs under this article are collected in the same
27 manner as other fines or costs. An officer collecting the costs

1 shall send to the comptroller costs collected under this article
2 for deposit to the credit of the drug treatment program account
3 established under Section 15B, Article 42.12.

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

6 Sec. 102.021. COURT COSTS ON CONVICTION: CODE OF CRIMINAL
7 PROCEDURE. A person convicted of an offense shall pay the
8 following under the Code of Criminal Procedure, in addition to all
9 other costs:

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

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

16 (3) fees for services of peace officer:

17 (A) issuing a written notice to appear in court
18 for certain violations (Art. 102.011, Code of Criminal Procedure) .
19 . . \$5;

20 (B) executing or processing an issued arrest
21 warrant, capias, or capias pro fine (Art. 102.011, Code of Criminal
22 Procedure) . . . \$50;

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

25 (D) serving a writ not otherwise listed (Art.
26 102.011, Code of Criminal Procedure) . . . \$35;

27 (E) taking and approving a bond and, if

1 necessary, returning the bond to courthouse (Art. 102.011, Code of
2 Criminal Procedure) . . . \$10;

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

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

7 (H) attendance of a prisoner in habeas corpus
8 case if prisoner has been remanded to custody or held to bail (Art.
9 102.011, Code of Criminal Procedure) . . . \$8 each day;

10 (I) mileage for certain services performed (Art.
11 102.011, Code of Criminal Procedure) . . . \$0.29 per mile; and

12 (J) services of a sheriff or constable who serves
13 process and attends examining trial in certain cases (Art. 102.011,
14 Code of Criminal Procedure) . . . not to exceed \$5;

15 (4) services of a peace officer in conveying a witness
16 outside the county (Art. 102.011, Code of Criminal Procedure) . . .
17 \$10 per day or part of a day, plus actual necessary travel expenses;

18 (5) overtime of peace officer for time spent
19 testifying in the trial or traveling to or from testifying in the
20 trial (Art. 102.011, Code of Criminal Procedure) . . . actual cost;

21 (6) court costs on an offense relating to rules of the
22 road, when offense occurs within a school crossing zone (Art.
23 102.014, Code of Criminal Procedure) . . . \$25;

24 (7) court costs on an offense of passing a school bus
25 (Art. 102.014, Code of Criminal Procedure) . . . \$25;

26 (8) court costs on an offense of truancy or
27 contributing to truancy (Art. 102.014, Code of Criminal Procedure)

- 1 . . . \$20;
- 2 (9) cost for visual recording of intoxication arrest
3 before conviction (Art. 102.018, Code of Criminal Procedure) . . .
4 \$15;
- 5 (10) cost of certain evaluations (Art. 102.018, Code
6 of Criminal Procedure) . . . actual cost;
- 7 (11) additional costs attendant to certain
8 intoxication convictions under Chapter 49, Penal Code, for
9 emergency medical services, trauma facilities, and trauma care
10 systems (Art. 102.0185, Code of Criminal Procedure) . . . \$100;
- 11 (12) additional costs attendant to certain child
12 sexual assault and related convictions, for child abuse prevention
13 programs (Art. 102.0186, Code of Criminal Procedure) . . . \$100;
- 14 (13) court cost for DNA testing for certain felonies
15 (Art. 102.020(a)(1), Code of Criminal Procedure) . . . \$250;
- 16 (14) court cost for DNA testing for the offense of
17 public lewdness or indecent exposure (Art. 102.020(a)(2), Code of
18 Criminal Procedure) . . . \$50;
- 19 (15) court cost for DNA testing for certain felonies
20 (Art. 102.020(a)(3), Code of Criminal Procedure) . . . \$34;
- 21 (16) if required by the court, a restitution fee for
22 costs incurred in collecting restitution installments and for the
23 compensation to victims of crime fund (Art. 42.037, Code of
24 Criminal Procedure) . . . \$12;
- 25 (17) if directed by the justice of the peace or
26 municipal court judge hearing the case, court costs on conviction
27 in a criminal action (Art. 45.041, Code of Criminal Procedure) . . .

1 part or all of the costs as directed by the judge; ~~and~~

2 (18) costs attendant to convictions under Chapter 49,
3 Penal Code, and under Chapter 481, Health and Safety Code, to help
4 fund drug court programs established under Chapter 122, 123, 124,
5 or 125, Government Code, or former law (Art. 102.0178, Code of
6 Criminal Procedure) . . . \$60; and

7 (19) costs attendant to convictions under Chapter 49,
8 Penal Code, and under Chapter 481, Health and Safety Code, for
9 certain drug treatment programs and facilities (Art. 102.0179, Code
10 of Criminal Procedure) . . . \$50.

11 SECTION 5. Chapter 509, Government Code, is amended by
12 adding Section 509.018 to read as follows:

13 Sec. 509.018. ANNUAL REPORT ON COMMUNITY SUPERVISION WITH
14 DRUG TREATMENT. (a) Not later than December 1 of each year, the
15 Texas Department of Criminal Justice shall study and report to the
16 legislature on the effectiveness and financial impact to the state
17 during the preceding state fiscal year of placing defendants on
18 community supervision with drug treatment for a drug possession
19 offense under Section 15B, Article 42.12, Code of Criminal
20 Procedure.

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

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

25 (2) the adequacy of funding available for operation of
26 the programs described by Section 15B, Article 42.12, Code of
27 Criminal Procedure;

1 (3) the effect of implementing Section 15B, Article
2 42.12, Code of Criminal Procedure, with respect to:

3 (A) incarceration costs incurred by the state and
4 local governments, including the cost of constructing prisons and
5 jails;

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

9 (C) the number of defendants placed on community
10 supervision under Section 15B, Article 42.12, Code of Criminal
11 Procedure, who utilize state welfare benefits, compared with other
12 defendants; and

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

16 (c) The comptroller shall verify the findings of the Texas
17 Department of Criminal Justice in analyzing the cost savings
18 realized by the state through the implementation of Section 15B,
19 Article 42.12, Code of Criminal Procedure. The Texas Department of
20 Criminal Justice may retain the amount of the actual savings
21 attributable to implementation of that section, to the extent that
22 the savings come from funds appropriated to the department and to
23 the extent the department distributed that amount to drug treatment
24 programs or facilities that provide a course of treatment to
25 defendants under that section. The Texas Department of Criminal
26 Justice may transfer savings attributable to implementation of that
27 section from the first year of the fiscal biennium to the second

1 year of the fiscal biennium, provided that the department uses the
2 full amount transferred for distribution to drug treatment programs
3 or facilities as described by this subsection.

4 SECTION 6. (a) In a criminal action under Section
5 481.115, 481.1151, 481.116, 481.1161, or 481.121, Health and Safety
6 Code, pending on or commenced on or after the effective date of this
7 Act, for an offense committed before the effective date of this Act,
8 the defendant, if adjudged guilty, shall be assessed the punishment
9 under Section 15B, Article 42.12, Code of Criminal Procedure, as
10 added by this Act, if the offense is described by Section 15B(a) of
11 that article and the defendant meets the eligibility requirements
12 under that section and other law and so elects by written motion
13 filed with the trial court before the sentencing hearing begins.

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

18 SECTION 7. Article 102.0179, Code of Criminal Procedure, as
19 added by this Act, applies only to a cost on conviction for an
20 offense committed on or after the effective date of this Act. An
21 offense committed before the effective date of this Act is covered
22 by the law in effect when the offense was committed, and the former
23 law is continued in effect for that purpose. For purposes of this
24 section, an offense was committed before the effective date of this
25 Act if any element of the offense occurred before that date.

26 SECTION 8. The Texas Department of Criminal Justice shall
27 submit to the legislature the first report required by Section

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1 509.018, Government Code, as added by this Act, not later than
2 December 1, 2016.

3 SECTION 9. This Act takes effect September 1, 2015.