

By: Ellis

S.B. No. 1686

A BILL TO BE ENTITLED

AN ACT

1  
2 Relating to revocation of community supervision for use or  
3 possession of small amounts of marihuana.

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

5 SECTION 1. Sections 21 Article 42.12, Code of Criminal  
6 Procedure, are amended to read as follows:

7 (a) At any time during the period of community supervision  
8 the judge may issue a warrant for violation of any of the conditions  
9 of the community supervision and cause a defendant convicted under  
10 Section 43.02, Penal Code, or under Chapter 481, Health and Safety  
11 Code, or Sections 485.031 through 485.035, Health and Safety Code,  
12 or placed on deferred adjudication after being charged with one of  
13 those offenses, to be subject to the control measures of Section  
14 81.083, Health and Safety Code, and to the court-ordered-management  
15 provisions of Subchapter G, Chapter 81, Health and Safety Code.

16 (b) At any time during the period of community supervision  
17 the judge may issue a warrant for violation of any of the conditions  
18 of the community supervision and cause the defendant to be  
19 arrested. Any supervision officer, police officer or other officer  
20 with power of arrest may arrest such defendant with or without a  
21 warrant upon the order of the judge to be noted on the docket of the  
22 court. Subject to Subsection (b-1), a defendant arrested under  
23 this subsection may be detained in the county jail or other  
24 appropriate place of confinement until he can be taken before the

1 judge for a determination regarding the alleged violation. The  
2 arresting officer shall immediately report the arrest and detention  
3 to the judge.

4 (b-1) Without any unnecessary delay, but not later than 48  
5 hours after the person is arrested, the arresting officer or the  
6 person with custody of the arrested person shall take the arrested  
7 person before the judge who ordered the arrest for the alleged  
8 violation of a condition of community supervision or, if the judge  
9 is unavailable, before a magistrate of the county in which the  
10 person was arrested. The judge or magistrate shall perform all  
11 appropriate duties and may exercise all appropriate powers as  
12 provided by Article 15.17 with respect to an arrest for a new  
13 criminal offense, except that only the judge who ordered the arrest  
14 for the alleged violation may authorize the person's release on  
15 bail. The arrested person may be taken before the judge or  
16 magistrate under this subsection by means of an electronic  
17 broadcast system as provided by and subject to the requirements of  
18 Article 15.17.

19 (b-2) If the defendant has not been released on bail as  
20 permitted under Subsection (b-1), on motion by the defendant the  
21 judge who ordered the arrest for the alleged violation of a  
22 condition of community supervision shall cause the defendant to be  
23 brought before the judge for a hearing on the alleged violation  
24 within 20 days of filing of said motion, and after a hearing without  
25 a jury, may either continue, extend, modify, or revoke the  
26 community supervision. A judge may revoke the community  
27 supervision of a defendant who is imprisoned in a penal institution

1 without a hearing if the defendant in writing before a court of  
2 record in the jurisdiction where imprisoned waives his right to a  
3 hearing and to counsel, affirms that he has nothing to say as to why  
4 sentence should not be pronounced against him, and requests the  
5 judge to revoke community supervision and to pronounce sentence.  
6 In a felony case, the state may amend the motion to revoke community  
7 supervision any time up to seven days before the date of the  
8 revocation hearing, after which time the motion may not be amended  
9 except for good cause shown, and in no event may the state amend the  
10 motion after the commencement of taking evidence at the hearing.  
11 The judge may continue the hearing for good cause shown by either  
12 the defendant or the state.

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

1 (d) A defendant has a right to counsel at a hearing under  
2 this section. The court shall appoint counsel for an indigent  
3 defendant in accordance with the procedures adopted under Article  
4 [26.04](#).

5 (e) A court retains jurisdiction to hold a hearing under  
6 Subsection (b-2) and to revoke, continue, or modify community  
7 supervision, regardless of whether the period of community  
8 supervision imposed on the defendant has expired, if before the  
9 expiration the attorney representing the state files a motion to  
10 revoke, continue, or modify community supervision and a capias is  
11 issued for the arrest of the defendant.

12 (f) A court may not revoke the community supervision of a  
13 defendant if, at the community supervision revocation hearing, the  
14 court finds that the only evidence supporting the alleged violation  
15 of a condition of community supervision involves conduct that would  
16 constitute a misdemeanor under Sec. [481.121](#) of the Health & Safety  
17 Code, unless there is sufficient evidence of an additional  
18 violation other than failing to pay compensation paid to appointed  
19 counsel, community supervision fees, or court costs when the state  
20 has proven by a preponderance of the evidence that the defendant was  
21 able to pay and did not pay as ordered by the judge.