

BILL ANALYSIS

C.S.H.B. 3512
By: Pacheco
Corrections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been suggested that the state's community supervision system is overly complicated and that this results in an undue number of probation violations and defendants reentering prisons. Reports indicate that this is costly to the state, damaging to defendants' families, and ineffective in treating and rehabilitating defendants. C.S.H.B. 3512 seeks to help defendants stay on probation and successfully rehabilitate and reenter their communities by revising the probation conditions that may be imposed on defendants and by allowing for greater reductions and early releases based on compliance with probation conditions and participation in treatment and rehabilitation programs.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3512 amends the Code of Criminal Procedure to expand the limited purposes for which a judge who places a defendant on community supervision may authorize the defendant's supervision officer or a magistrate appointed by the district courts in the county that give preference to criminal cases to modify the conditions of community supervision to include prioritizing the conditions ordered by the court according to the defendant's needs as determined by a risk and needs assessment and the defendant's progress under supervision and requiring a defendant who is not otherwise required to submit to testing for a controlled substance as a condition of community supervision to submit to such testing on each occasion on which the supervision officer has a reasonable suspicion that the defendant has used a controlled substance.

C.S.H.B. 3512, with regard to the discretionary conditions of community supervision that may be imposed on a defendant, makes the following changes:

- removes the specification that the condition requiring a defendant to avoid persons of disreputable or harmful character includes any person who is an active member of a criminal street gang other than a family member of the defendant and specifies that a defendant is required instead to avoid persons or places of disreputable or harmful character to the extent indicated by the results of a risk and needs assessment conducted with respect to the defendant;
- revises the condition requiring a defendant to submit to testing for alcohol or controlled substances by limiting the period in which the defendant is subject to the requirement to

the 45-day period after the date of the defendant's placement on community supervision or any time during the period of supervision if:

- the defendant tested positive for a controlled substance in a test conducted during that 45-day period or conducted on an occasion on which the defendant's supervision officer had a reasonable suspicion that the defendant had used a controlled substance;
- the judge determines, based on the results of the assessment or an evaluation conducted to determine the appropriate type and level of treatment necessary to address the defendant's alcohol or drug dependency, if applicable, that testing is necessary to protect or restore the community or the victim or to rehabilitate or reform the defendant; or
- the defendant's offense involved a controlled substance or alcohol; and
- limits the condition requiring a defendant to attend counseling sessions for substance abusers or participate in substance abuse treatment services by requiring the defendant to do so only if:
 - the judge determines, based on the results of the assessment or the evaluation, if applicable, that counseling or treatment is necessary to protect or restore the community or the victim or to rehabilitate or reform the defendant; or
 - the defendant's offense was related to controlled substance or alcohol abuse.

C.S.H.B. 3512 revises the requirement for the Department of State Health Services (DSHS) to develop the continuum of care treatment plan required as a condition of community supervision for a defendant released from a substance abuse felony punishment facility to require either DSHS or the community supervision and corrections department supervising the defendant to develop the plan. The bill removes the specification that the alternative educational program that DSHS is required to approve for purposes of its provision at substance abuse treatment facilities is equivalent to the educational program for certain intoxication offenders or for certain repeat intoxication offenders.

C.S.H.B. 3512 replaces the requirement for a court, before ordering a defendant to make any payments while under community supervision, to consider the defendant's ability to pay with a requirement for the court to inquire as to whether the defendant has sufficient resources or income to pay. The bill requires the court, for a defendant who is ordered to make such payments, to reconsider whether the defendant has sufficient resources or income to pay:

- at any time the defendant's financial status or required payments change in such a way that the defendant's ability to make a payment previously ordered by the court is substantially hindered; and
- at any hearing on motion by a defendant for an alleged violation of a condition of community supervision.

C.S.H.B. 3512 requires the judge of a court that determines that the defendant does not have sufficient resources or income to make any payment ordered by the court, including the monthly community supervision fee, to determine whether all or a portion of the payment should be:

- required to be paid at a later date or in a specified portion at designated intervals;
- waived completely or partially;
- discharged by performing applicable community service; or
- satisfied through any combination of those methods.

C.S.H.B. 3512, with respect to a reduction or termination of a community supervision period:

- removes language excluding a defendant who is delinquent in paying required costs,

finer, or fees from the requirement for a judge to review the defendant's record when the defendant's time served on community supervision equals one-half of the original community supervision period or two years, whichever is more;

- requires a supervision officer to notify the court as soon as practicable after the date a defendant who was delinquent in paying restitution or had not completed court-ordered counseling or treatment at the time of the review of the defendant's record completes the remaining court-ordered counseling or treatment and makes the delinquent restitution payments, as applicable, and requires the court, on receipt of the notice, to review the defendant's record and consider whether to reduce or terminate the period of community supervision; and
- requires a judge who does not reduce or terminate a defendant's period of community supervision after a review required under these provisions, as soon as practicable after the 180th day after the date of the review but not later than the 270th day after that date and unless the judge has already terminated the period of community supervision, to review the defendant's record and again consider whether to reduce or terminate the period of community supervision in accordance with the procedure for the review conducted on completion of one-half of the original community supervision period or two years of community supervision, as applicable.

C.S.H.B. 3512 expands the types of defendants entitled to receive time credits for completion of certain conditions of community supervision by removing language excluding defendants granted community supervision for an offense involving family violence and defendants who are delinquent in paying required costs, fines, or fees and have not fully satisfied any order to pay restitution to a victim. The bill expands the programs the successful completion of which entitles a defendant for time credit to include any other faith-based, volunteer, or community-based program ordered or approved by the court and sets the creditable time at 30 days.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3512 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes among the limited purposes for which a judge who places a defendant on community supervision may authorize an applicable supervision officer to modify the conditions of community supervision the limited purpose of requiring a defendant who is not otherwise required to submit to testing for a controlled substance as a condition of community supervision to submit to such testing under certain conditions.

The substitute, with regard to the discretionary conditions of community supervision that may be imposed on a defendant:

- does not remove any discretionary conditions that may be imposed on a defendant;
- does not include a requirement for a judge to consider the results of an evaluation to determine the type and level of treatment necessary to address the defendant's alcohol or drug dependency before imposing certain conditions; and
- revises the bill's provision limiting the condition that a defendant submit to testing for alcohol and controlled substances.

The substitute does not include a defendant's time credits toward the completion of the

defendant's period of community supervision in the calculation of the defendant's time served on community supervision for purposes of the authorization or requirement for a judge to reduce or terminate the period of community supervision.

The substitute does not include a provision requiring a judge to terminate the period of community supervision and discharge a defendant who has been compliant with the terms of community supervision for a specified period under certain conditions.

The substitute replaces a provision requiring a judge who advises a defendant who has not been compliant with the terms of community supervision to review the defendant's record and again consider whether to reduce or terminate the period of community supervision after a specified time with a provision requiring a judge who does not reduce or terminate the period of community supervision for a defendant who has completed a certain amount of the community supervision or a defendant who was previously delinquent in paying restitution or had not completed court-ordered counseling or treatment to review the defendant's record and again consider whether to reduce or terminate the period of community supervision after a specified time.

The substitute does not increase the amount of time creditable toward the completion of a defendant's period of community supervision for the full payment of certain costs or completion of treatment or rehabilitation programs. The substitute decreases from 90 days to 30 days the creditable time for the completion of any faith-based, volunteer, or community-based program ordered or approved by an applicable court.