86R16623 JSC-F

By:  González of Dallas H.B. No. 4594

A BILL TO BE ENTITLED

AN ACT

relating to the punishment for certain possession offenses under the Texas Controlled Substances Act; changing eligibility for and conditions of community supervision.

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

SECTION 1.  Articles 42A.551(a) and (d), Code of Criminal Procedure, are amended to read as follows:

(a)  Except as otherwise provided by Subsection (b) [~~or (c)~~], on conviction of a state jail felony under Section [~~481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.121(b)(3), or~~] 481.129(g)(1), Health and Safety Code, that is punished under Section 12.35(a), Penal Code, the judge shall suspend the imposition of the sentence and place the defendant on community supervision.

(d)  On conviction of a state jail felony punished under Section 12.35(a), Penal Code, other than a state jail felony listed in Subsection (a) or defined as a possession offense under Subchapter L-1, and subject to Subsection (e), the judge may:

(1)  suspend the imposition of the sentence and place the defendant on community supervision; or

(2)  order the sentence to be executed:

(A)  in whole; or

(B)  in part, with a period of community supervision to begin immediately on release of the defendant from confinement.

SECTION 2.  Chapter 42A, Code of Criminal Procedure, is amended by adding Subchapter L-1 to read as follows:

SUBCHAPTER L-1. COMMUNITY SUPERVISION FOR CERTAIN POSSESSION OFFENSES

Art. 42A.581.  DEFINITION. In this subchapter, "possession offense" means an offense under Section 481.115, 481.1151, 481.116, 481.1161, 481.117, 481.118, 481.119(b), 481.121, 483.041(a), or 485.031, Health and Safety Code, that is punishable as a felony of the third degree or state jail felony.

Art. 42A.582.  PLACEMENT ON COMMUNITY SUPERVISION; EXECUTION OF SENTENCE. (a) On conviction of a possession offense, the judge shall suspend the imposition of the sentence and place the defendant on community supervision, except that the judge may order the sentence to be executed if:

(1)  for a state jail felony, the defendant has been previously convicted of a possession offense; or

(2)  for a felony of the third degree:

(A)  the judge determines by a preponderance of the evidence that the defendant:

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

(ii)  possessed the substance with the intent to deliver the substance;

(B)  the defendant has been previously convicted of a felony offense other than:

(i)  a possession offense; or

(ii)  a felony offense punished under Section 12.44, Penal Code;

(C)  the defendant is convicted in the same proceeding of an additional felony offense, other than:

(i)  a possession offense; or

(ii)  a felony offense punished under Section 12.44, Penal Code; or

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

(i)  convicted on two or more occasions of a possession offense; or

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

(b)  A judge who makes a determination described by Subsection (a)(2)(A) or (D) shall enter the reasons for making that determination in the record of the proceeding.

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

Art. 42A.583.  CONDITIONS OF COMMUNITY SUPERVISION. (a) A court granting community supervision under this subchapter shall require as a condition of community supervision that the defendant:

(1)  submit to an evidence-based risks and needs screening and evaluation procedure approved by the community justice assistance division of the Texas Department of Criminal Justice, including a procedure developed under Section 509.003(d), Government Code;

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

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

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

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

(b)  A course of treatment under Subsection (a)(2) may include:

(1)  treatment in a faith-based program;

(2)  outpatient treatment;

(3)  halfway house treatment;

(4)  narcotic replacement therapy prescribed by a physician;

(5)  drug education or prevention courses; and

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

(c)  In referring a defendant to a course of treatment under Subsection (a)(2) and imposing conditions for participation in the course of treatment, the judge shall order the defendant to participate in the level of treatment that the evaluation indicates is appropriate for the defendant to achieve:

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

(2)  the recommendations of a drug treatment professional.

(d)  A court granting community supervision under this subchapter may require as a condition of that community supervision, in addition to any required participation in a course of treatment under Subsection (a)(2) and other appropriate conditions, that the defendant participate in:

(1)  vocational training;

(2)  family counseling;

(3)  literacy training; or

(4)  community service.

Art. 42A.584.  VIOLATION OF CONDITIONS OF COMMUNITY SUPERVISION. (a) Notwithstanding Article 42A.751(b), if a defendant placed on community supervision under this subchapter violates the terms of that supervision by committing another possession offense or a misdemeanor offense involving the possession of a controlled substance or by violating any drug treatment-related condition of community supervision, the judge may:

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

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

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

(C)  alcohol or substance abuse monitoring and testing;

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

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

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

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

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

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

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

(b)  A judge who modifies a defendant's conditions of community supervision in response to the defendant's commission of an offense or violation of a treatment-related condition of community supervision under Subsection (a) shall consider imposing one or more of the following additional conditions of community supervision:

(1)  intensified drug treatment;

(2)  vocational training;

(3)  family counseling;

(4)  literacy education;

(5)  community service;

(6)  intensive supervision; and

(7)  confinement under Subchapter M in an intermediate sanction facility operated by or under contract with the Texas Department of Criminal Justice for a period not to exceed 120 days.

Art. 42A.585.  DETERMINATION OF BENEFIT OF TREATMENT. In making a determination under this subchapter as to whether a defendant is unlikely to benefit from participation in a course of treatment in a drug treatment program or facility, the judge shall consider whether the defendant has previously:

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

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

Art. 42A.586.  DISMISSAL. (a) After successful completion of a term of community supervision imposed under this subchapter, including completion of any required course of treatment in a drug treatment program or facility, a defendant may petition the court for dismissal of the charges.

(b)  If the judge, after providing notice and giving attorneys for the defendant and the state an opportunity to be heard, determines that the defendant substantially complied with the conditions of community supervision and successfully completed any required course of treatment, the judge shall discharge the defendant, set aside the verdict or permit the defendant to withdraw the plea, and dismiss the accusation, complaint, information, or indictment in the manner provided by Article 42A.701.

SECTION 3.  Subchapter E-1, Chapter 411, Government Code, is amended by adding Section 411.0732 to read as follows:

Sec. 411.0732.  PROCEDURE FOR COMMUNITY SUPERVISION FOLLOWING CONVICTION; SET-ASIDE CONVICTIONS FOR CERTAIN FELONY POSSESSION OFFENSES. (a) This section applies only to a person who, on conviction of a possession offense, is placed on community supervision under Subchapter L-1, Chapter 42A, Code of Criminal Procedure, and with respect to whom the conviction is subsequently set aside by the court under Article 42A.701(f) of that chapter.

(b)  Notwithstanding any other provision of this subchapter or Subchapter F, a person described by Subsection (a) who satisfies the requirements of Section 411.074 may petition the court that placed the person on community supervision for an order of nondisclosure of criminal history record information under this section.

(c)  After notice to the state, an opportunity for a hearing, and a determination that the person is entitled to file the petition and that issuance of the order is in the best interest of justice, the court shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the community supervision.

(d)  A person may petition the court that placed the person on community supervision for an order of nondisclosure of criminal history record information under this section only after the fifth anniversary of the date the conviction is set aside.

SECTION 4.  Chapter 509, Government Code, is amended by adding Section 509.018 to read as follows:

Sec. 509.018.  ANNUAL REPORT ON COMMUNITY SUPERVISION WITH DRUG TREATMENT. (a) Not later than December 1 of each year, the Texas Department of Criminal Justice shall study and report to the legislature on the effectiveness and financial impact to the state during the preceding state fiscal year of placing defendants on community supervision with drug treatment for a felony possession offense under Subchapter L-1, Chapter 42A, Code of Criminal Procedure.

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

(1)  the implementation of Subchapter L-1, Chapter 42A, Code of Criminal Procedure, including the amount of cost savings the state realizes through that implementation;

(2)  the adequacy of funding available for operation of the programs described by Subchapter L-1, Chapter 42A, Code of Criminal Procedure;

(3)  the effect of implementing Subchapter L-1, Chapter 42A, Code of Criminal Procedure, with respect to:

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

(B)  the recidivism rate among defendants placed on community supervision under Subchapter L-1, Chapter 42A, Code of Criminal Procedure, compared with other defendants; and

(C)  the number of defendants placed on community supervision under Subchapter L-1, Chapter 42A, Code of Criminal Procedure, who utilize state welfare benefits, compared with other defendants; and

(4)  other effects of or issues with implementing Subchapter L-1, Chapter 42A, Code of Criminal Procedure, that are identified by the Texas Department of Criminal Justice.

SECTION 5.  Article 42A.551(c), Code of Criminal Procedure, is repealed.

SECTION 6.  (a) In a criminal action under Section 481.115, 481.1151, 481.116, 481.1161, 481.117, 481.118, 481.119(b), 481.121, 483.041(a), or 485.031, Health and Safety Code, pending on or commenced on or after the effective date of this Act, for an offense committed before the effective date of this Act, the defendant, if adjudged guilty, shall be assessed the punishment under Subchapter L-1, Chapter 42A, Code of Criminal Procedure, as added by this Act, if the offense is a possession offense described by Article 42A.581, Code of Criminal Procedure, as added by this Act, and the defendant meets the eligibility requirements under that subchapter and other law and so elects by written motion filed with the trial court before the sentencing hearing begins.

(b)  If the defendant does not make the election under Subsection (a) of this section, punishment 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.

SECTION 7.  The change in law made by Section 411.0732, Government Code, as added by this Act, applies to a person whose conviction for a possession offense is set aside under Article 42A.701(f), Code of Criminal Procedure, on or after the effective date of this Act, regardless of whether the offense for which the person was convicted was committed before, on, or after the effective date of this Act.

SECTION 8.  The Texas Department of Criminal Justice shall submit to the legislature the initial report required by Section 509.018, Government Code, as added by this Act, not later than December 1, 2020.

SECTION 9.  This Act takes effect September 1, 2019.