

By: Hernandez

H.B. No. 2758

A BILL TO BE ENTITLED

1 AN ACT

2 relating to changing the eligibility of persons charged with
3 certain trafficking and prostitution offenses to receive community
4 supervision, including deferred adjudication community
5 supervision.

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

7 SECTION 1. Article 42A.054, Code of Criminal Procedure, is
8 amended by amending Subsection (a) and adding Subsection (e) to
9 read as follows:

10 (a) Article 42A.053 does not apply to a defendant adjudged
11 guilty of an offense under:

12 (1) Section 15.03, Penal Code, if the offense is
13 punishable as a felony of the first degree;

14 (2) Section 19.02, Penal Code (Murder);

15 (3) Section 19.03, Penal Code (Capital Murder);

16 (4) Section 20.04, Penal Code (Aggravated
17 Kidnapping);

18 (5) Section 20A.02, Penal Code (Trafficking of
19 Persons);

20 (6) Section 20A.03, Penal Code (Continuous
21 Trafficking of Persons);

22 (7) Section 21.11(a)(1), Penal Code (Indecency with a
23 Child);

24 (8) [~~7~~] Section 22.011, Penal Code (Sexual

1 Assault);

2 (9) [~~(8)~~] Section 22.021, Penal Code (Aggravated
3 Sexual Assault);

4 (10) [~~(9)~~] Section 22.04(a)(1), Penal Code (Injury to
5 a Child, Elderly Individual, or Disabled Individual), if:

6 (A) the offense is punishable as a felony of the
7 first degree; and

8 (B) the victim of the offense is a child;

9 (11) [~~(10)~~] Section 29.03, Penal Code (Aggravated
10 Robbery);

11 (12) [~~(11)~~] Section 30.02, Penal Code (Burglary), if:

12 (A) the offense is punishable under Subsection
13 (d) of that section; and

14 (B) the actor committed the offense with the
15 intent to commit a felony under Section 21.02, 21.11, 22.011,
16 22.021, or 25.02, Penal Code;

17 (13) Section 43.03, Penal Code (Promotion of
18 Prostitution);

19 (14) Section 43.04, Penal Code (Aggravated Promotion
20 of Prostitution);

21 (15) [~~(12)~~] Section 43.05, Penal Code (Compelling
22 Prostitution);

23 (16) [~~(13)~~] Section 43.25, Penal Code (Sexual
24 Performance by a Child); or

25 (17) [~~(14)~~] Chapter 481, Health and Safety Code, for
26 which punishment is increased under:

27 (A) Section 481.140 of that code (Use of Child in

1 Commission of Offense); or

2 (B) Section 481.134(c), (d), (e), or (f) of that
3 code (Drug-free Zones) if it is shown that the defendant has been
4 previously convicted of an offense for which punishment was
5 increased under any of those subsections.

6 (e) Notwithstanding Subsection (a), with respect to an
7 offense committed by a defendant under Section 43.03, 43.04, or
8 43.05, Penal Code, a judge may place the defendant on community
9 supervision as permitted by Article 42A.053 if the judge makes a
10 finding that the defendant committed the offense solely as a victim
11 of an offense under Section 20A.02, 20A.03, 43.03, 43.04, or 43.05,
12 Penal Code.

13 SECTION 2. Article 42A.056, Code of Criminal Procedure, is
14 amended to read as follows:

15 Art. 42A.056. LIMITATION ON JURY-RECOMMENDED COMMUNITY
16 SUPERVISION. A defendant is not eligible for community supervision
17 under Article 42A.055 if the defendant:

18 (1) is sentenced to a term of imprisonment that
19 exceeds 10 years;

20 (2) is convicted of a state jail felony for which
21 suspension of the imposition of the sentence occurs automatically
22 under Article 42A.551;

23 (3) is adjudged guilty of an offense under Section
24 19.02, Penal Code;

25 (4) is convicted of an offense under Section
26 21.11(a)(1), 22.011, or 22.021, Penal Code, if the victim of the
27 offense was younger than 14 years of age at the time the offense was

1 committed;

2 (5) is convicted of an offense under Section 20.04,
3 Penal Code, if:

4 (A) the victim of the offense was younger than 14
5 years of age at the time the offense was committed; and

6 (B) the actor committed the offense with the
7 intent to violate or abuse the victim sexually;

8 (6) is convicted of an offense under Section 20A.02,
9 20A.03, 43.03, 43.04, 43.05, or 43.25, Penal Code; or

10 (7) is convicted of an offense for which punishment is
11 increased under Section 481.134(c), (d), (e), or (f), Health and
12 Safety Code, if it is shown that the defendant has been previously
13 convicted of an offense for which punishment was increased under
14 any of those subsections.

15 SECTION 3. Article 42A.102, Code of Criminal Procedure, is
16 amended to read as follows:

17 Art. 42A.102. ELIGIBILITY FOR DEFERRED ADJUDICATION
18 COMMUNITY SUPERVISION. (a) Subject to Subsection (b), a [A] judge
19 may place on deferred adjudication community supervision a
20 defendant charged with an offense under Section 21.11, 22.011, or
21 22.021, Penal Code, regardless of the age of the victim, or a
22 defendant charged with a felony described by Article 42A.453(b)
23 only if the judge makes a finding in open court that placing the
24 defendant on deferred adjudication community supervision is in the
25 best interest of the victim. The failure of the judge to make a
26 finding under this subsection is not grounds for the defendant to
27 set aside the plea, deferred adjudication, or any subsequent

1 conviction or sentence.

2 (b) In all other cases, the judge may grant deferred
3 adjudication community supervision unless:

4 (1) the defendant is charged with an offense:

5 (A) under Sections 49.04-49.08, Penal Code; or

6 (B) for which punishment may be increased under
7 Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it
8 is shown that the defendant has been previously convicted of an
9 offense for which punishment was increased under any one of those
10 subsections;

11 (2) the defendant:

12 (A) is charged with an offense under Section
13 20A.02, 20A.03, 21.11, 22.011, ~~or~~ 22.021, 43.03, 43.04, or 43.05,
14 Penal Code, regardless of the age of the victim, or a felony
15 described by Article 42A.453(b); and

16 (B) has previously been placed on community
17 supervision for an offense under Paragraph (A);

18 (3) the defendant is charged with an offense under:

19 (A) Section 21.02, Penal Code; or

20 (B) Section 22.021, Penal Code, that is
21 punishable under Subsection (f) of that section or under Section
22 12.42(c)(3) or (4), Penal Code; or

23 (4) the defendant is charged with an offense under
24 Section 19.02, Penal Code, except that the judge may grant deferred
25 adjudication community supervision on determining that the
26 defendant did not cause the death of the deceased, did not intend to
27 kill the deceased or another, and did not anticipate that a human

1 life would be taken.

2 SECTION 4. Section 773.0614(c), Health and Safety Code, is
3 amended to read as follows:

4 (c) A certificate holder's certificate shall be revoked if
5 the certificate holder has been convicted of or placed on deferred
6 adjudication community supervision or deferred disposition for:

7 (1) an offense listed in Article 42A.054(a)(2), (3),
8 (4), [~~(6)~~] (7), (8), (9), (11) [~~(10)~~], or (17) [~~(14)~~], Code of
9 Criminal Procedure; or

10 (2) an offense, other than an offense described by
11 Subdivision (1), committed on or after September 1, 2009, for which
12 the person is subject to registration under Chapter 62, Code of
13 Criminal Procedure.

14 SECTION 5. Section 773.06141(a), Health and Safety Code, is
15 amended to read as follows:

16 (a) The department may suspend, revoke, or deny an emergency
17 medical services provider license on the grounds that the
18 provider's administrator of record, employee, or other
19 representative:

20 (1) has been convicted of, or placed on deferred
21 adjudication community supervision or deferred disposition for, an
22 offense that directly relates to the duties and responsibilities of
23 the administrator, employee, or representative, other than an
24 offense for which points are assigned under Section 708.052,
25 Transportation Code;

26 (2) has been convicted of or placed on deferred
27 adjudication community supervision or deferred disposition for an

1 offense, including:

2 (A) an offense listed in Article 42A.054(a)(2),
3 (3), (4), [~~(6)~~] (7), (8), (9), (11) [~~(10)~~], or (17) [~~(14)~~], Code of
4 Criminal Procedure; or

5 (B) an offense, other than an offense described
6 by Subdivision (1), for which the person is subject to registration
7 under Chapter 62, Code of Criminal Procedure; or

8 (3) has been convicted of Medicare or Medicaid fraud,
9 has been excluded from participation in the state Medicaid program,
10 or has a hold on payment for reimbursement under the state Medicaid
11 program under Subchapter C, Chapter 531, Government Code.

12 SECTION 6. The changes in law made by this Act apply only to
13 an offense committed on or after the effective date of this Act. An
14 offense committed before the effective date of this Act is governed
15 by the law in effect on the date the offense was committed, and the
16 former law is continued in effect for that purpose. For purposes of
17 this section, an offense was committed before the effective date of
18 this Act if any element of the offense occurred before that date.

19 SECTION 7. This Act takes effect September 1, 2019.