

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(a), Code of Criminal Procedure,  
8 is amended to read as follows:

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

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

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

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

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

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

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

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

23 (8) [~~7~~] Section 22.011, Penal Code (Sexual  
24 Assault);

1           (9) [~~(8)~~] Section 22.021, Penal Code (Aggravated  
2 Sexual Assault);

3           (10) [~~(9)~~] Section 22.04(a)(1), Penal Code (Injury to  
4 a Child, Elderly Individual, or Disabled Individual), if:

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

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

8           (11) [~~(10)~~] Section 29.03, Penal Code (Aggravated  
9 Robbery);

10          (12) [~~(11)~~] Section 30.02, Penal Code (Burglary), if:

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

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

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

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

20          (15) [~~(12)~~] Section 43.05, Penal Code (Compelling  
21 Prostitution);

22          (16) [~~(13)~~] Section 43.25, Penal Code (Sexual  
23 Performance by a Child); or

24          (17) [~~(14)~~] Chapter 481, Health and Safety Code, for  
25 which punishment is increased under:

26                   (A) Section 481.140 of that code (Use of Child in  
27 Commission of Offense); or

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

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

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

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

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

15                   (3) is adjudged guilty of an offense under Section  
16 19.02, Penal Code;

17                   (4) is convicted of an offense under Section  
18 21.11(a)(1), 22.011, or 22.021, Penal Code, if the victim of the  
19 offense was younger than 14 years of age at the time the offense was  
20 committed;

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

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

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

27                   (6) is convicted of an offense under Section 20A.02,

1 20A.03, 43.03, 43.04, 43.05, or 43.25, Penal Code; or

2 (7) is convicted of an offense for which punishment is  
3 increased under Section 481.134(c), (d), (e), or (f), Health and  
4 Safety Code, if it is shown that the defendant has been previously  
5 convicted of an offense for which punishment was increased under  
6 any of those subsections.

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

9 Art. 42A.102. ELIGIBILITY FOR DEFERRED ADJUDICATION  
10 COMMUNITY SUPERVISION. (a) A judge may place on deferred  
11 adjudication community supervision a defendant charged with an  
12 offense under Section 21.11, 22.011, or 22.021, Penal Code,  
13 regardless of the age of the victim, or a defendant charged with a  
14 felony described by Article 42A.453(b), other than a felony  
15 described by Subsection (b)(3)(A) of this article, only if the  
16 judge makes a finding in open court that placing the defendant on  
17 deferred adjudication community supervision is in the best interest  
18 of the victim. The failure of the judge to make a finding under  
19 this subsection is not grounds for the defendant to set aside the  
20 plea, deferred adjudication, or any subsequent conviction or  
21 sentence.

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

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

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

26 (B) for which punishment may be increased under  
27 Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it

1 is shown that the defendant has been previously convicted of an  
2 offense for which punishment was increased under any one of those  
3 subsections;

4 (2) the defendant:

5 (A) is charged with an offense under Section  
6 [21.11](#), [22.011](#), or [22.021](#), Penal Code, regardless of the age of the  
7 victim, or a felony described by Article [42A.453\(b\)](#), other than a  
8 felony described by Subdivision (3)(A) of this subsection; and

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

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

12 (A) Section [20A.02](#), [20A.03](#), [21.02](#), [43.03](#), [43.04](#),  
13 or [43.05](#), Penal Code; or

14 (B) Section [22.021](#), Penal Code, that is  
15 punishable under Subsection (f) of that section or under Section  
16 [12.42\(c\)\(3\)](#) or (4), Penal Code; or

17 (4) the defendant is charged with an offense under  
18 Section [19.02](#), Penal Code, except that the judge may grant deferred  
19 adjudication community supervision on determining that the  
20 defendant did not cause the death of the deceased, did not intend to  
21 kill the deceased or another, and did not anticipate that a human  
22 life would be taken.

23 SECTION 4. Section [773.0614\(c\)](#), Health and Safety Code, is  
24 amended to read as follows:

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

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

4           (2) an offense, other than an offense described by  
5 Subdivision (1), committed on or after September 1, 2009, for which  
6 the person is subject to registration under Chapter [62](#), Code of  
7 Criminal Procedure.

8           SECTION 5. Section [773.06141](#)(a), Health and Safety Code, is  
9 amended to read as follows:

10           (a) The department may suspend, revoke, or deny an emergency  
11 medical services provider license on the grounds that the  
12 provider's administrator of record, employee, or other  
13 representative:

14           (1) has been convicted of, or placed on deferred  
15 adjudication community supervision or deferred disposition for, an  
16 offense that directly relates to the duties and responsibilities of  
17 the administrator, employee, or representative, other than an  
18 offense for which points are assigned under Section [708.052](#),  
19 Transportation Code;

20           (2) has been convicted of or placed on deferred  
21 adjudication community supervision or deferred disposition for an  
22 offense, including:

23           (A) an offense listed in Article [42A.054](#)(a)(2),  
24 (3), (4), [~~(6)~~] (7), (8), (9), (11) [~~(10)~~], or (17) [~~(14)~~], Code of  
25 Criminal Procedure; or

26           (B) an offense, other than an offense described  
27 by Subdivision (1), for which the person is subject to registration

1 under Chapter 62, Code of Criminal Procedure; or

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

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

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