

SENATE AMENDMENTS

2nd Printing

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.

ADOPTED

MAY 21 2019

Leta Spaw
Secretary of the Senate

By: Joan Huffman
Substitute the following for H.B. No. 2758

H.B. No. 2758

By: SENATOR WHITMIRE

C.S. H.B. No. 2758

John Whitmire

A BILL TO BE ENTITLED

AN ACT

1

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

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

6 SECTION 1. Article 42A.054, Code of Criminal Procedure, is
7 amended by amending Subsection (a) and adding Subsection (e) to
8 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 [~~21.11(a)(1)~~], Penal Code
22 (Indecency with a 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 43.04, Penal Code (Aggravated Promotion
17 of Prostitution);

18 (14) [~~12~~] Section 43.05, Penal Code (Compelling
19 Prostitution);

20 (15) [~~13~~] Section 43.25, Penal Code (Sexual
21 Performance by a Child); or

22 (16) [~~14~~] Chapter 481, Health and Safety Code, for
23 which punishment is increased under:

24 (A) Section 481.140 of that code (Use of Child in
25 Commission of Offense); or

26 (B) Section 481.134(c), (d), (e), or (f) of that
27 code (Drug-free Zones) if it is shown that the defendant has been

1 previously convicted of an offense for which punishment was
2 increased under any of those subsections.

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

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

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

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

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

20 (3) is adjudged guilty of an offense under Section
21 19.02, Penal Code;

22 (4) is convicted of an offense under Section 21.11
23 [~~21.11(a)(1)~~], 22.011, or 22.021, Penal Code, if the victim of the
24 offense was younger than 14 years of age at the time the offense was
25 committed;

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

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

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

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

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

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

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

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

1 (1) the defendant is charged with an offense:
2 (A) under Section 20A.02 or 20A.03 or Sections
3 49.04-49.08, Penal Code; or
4 (B) for which punishment may be increased under
5 Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it
6 is shown that the defendant has been previously convicted of an
7 offense for which punishment was increased under any one of those
8 subsections;
9 (2) the defendant:
10 (A) is charged with an offense under Section
11 21.11, 22.011, ~~or~~ 22.021, 43.04, or 43.05, Penal Code, regardless
12 of the age of the victim, or a felony described by Article
13 42A.453(b), other than a felony described by Subdivision (1)(A) or
14 (3)(B) of this subsection; and
15 (B) has previously been placed on community
16 supervision for an offense under Paragraph (A);
17 (3) the defendant is charged with an offense under:
18 (A) Section 21.02, Penal Code; or
19 (B) Section 22.021, Penal Code, that is
20 punishable under Subsection (f) of that section or under Section
21 12.42(c)(3) or (4), Penal Code; or
22 (4) the defendant is charged with an offense under
23 Section 19.02, Penal Code, except that the judge may grant deferred
24 adjudication community supervision on determining that the
25 defendant did not cause the death of the deceased, did not intend to
26 kill the deceased or another, and did not anticipate that a human
27 life would be taken.

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

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

6 (1) an offense listed in Article 42A.054(a)(2), (3),
7 (4), [~~(6)~~] (7), (8), (9), (11) [~~(10)~~], or (16) [~~(14)~~], Code of
8 Criminal Procedure; or

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

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

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

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

25 (2) has been convicted of or placed on deferred
26 adjudication community supervision or deferred disposition for an
27 offense, including:

1 (A) an offense listed in Article 42A.054(a)(2),
2 (3), (4), [~~6~~] (7), (8), (9), (11) [~~10~~], or (16) [~~14~~], Code of
3 Criminal Procedure; or

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

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

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

18 SECTION 7. The Texas Department of Criminal Justice is
19 required to implement a provision of this Act only if the
20 legislature appropriates money specifically for that purpose. If
21 the legislature does not appropriate money specifically for that
22 purpose, the department may, but is not required to, implement a
23 provision of this Act using other appropriations available for that
24 purpose.

25 SECTION 8. This Act takes effect September 1, 2019.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 21, 2019

TO: Honorable Dennis Bonnen, Speaker of the House, House of Representatives

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2758 by Hernandez (Relating to changing the eligibility of persons charged with certain offenses to receive community supervision, including deferred adjudication community supervision.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2758, As Passed 2nd House: a negative impact of (\$960,659) through the biennium ending August 31, 2021.

The Texas Department of Criminal Justice (TDCJ) is required to implement a provision in this bill only if the legislature appropriates money for that purpose. Otherwise, TDCJ may, but is not required to, implement a provision of this bill using other available appropriations. The bill would make no appropriation but could provide the legal basis or an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	(\$304,221)
2021	(\$656,438)
2022	(\$1,005,792)
2023	(\$2,568,279)
2024	(\$5,048,416)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1
2020	(\$304,221)
2021	(\$656,438)
2022	(\$1,005,792)
2023	(\$2,568,279)
2024	(\$5,048,416)

Fiscal Analysis

The bill would amend various codes as they relate to changing the eligibility of persons charged with certain offenses to receive community supervision, including deferred adjudication community supervision. Under the provisions of the bill, individuals with certain indecency with child, trafficking, and prostitution offenses would no longer be eligible for community supervision and instead would be sentenced to incarceration.

Methodology

The State would realize a net cost to the General Revenue Fund due to the increase in individuals incarcerated within state correctional institutions. The provisions of the bill would modify the Code of Criminal Procedure to add individuals convicted of certain indecency with child, trafficking, and prostitution offenses to the list of those ineligible for community supervision or to the list of those required to serve a term of incarceration, without consideration of good conduct time, one-half of the sentence or 30 calendar years, whichever is less, with a two calendar year minimum before the individual would be eligible for release onto parole. The bill would also make modifications to the eligibility for emergency medical service personnel certification and license based on these offenses. Under current statute, individuals charged with the offenses outlined in the bill can be placed under community supervision or sentenced to a term of incarceration within state correctional institutions.

To estimate the fiscal impact, LBB staff analyzed records belonging to those individuals placed under community supervision in fiscal year 2018 for the offenses outlined in the bill's provisions, building into the analysis a minor time lag between offense and receipt into the correctional institution. The time lag was based on that observed within both the community supervision and correctional institution datasets analyzed. LBB staff estimated the time incarcerated based on sentencing patterns and the actual time served by those individuals with identical or similar offenses who were released from incarceration in fiscal year 2018. After calculating the additional time that would be spent incarcerated, the number of additional days were multiplied by the fiscal year 2018 system-wide cost per day per person (\$62.34) for a total cost. The estimated incarceration costs for fiscal years 2020 and 2021 are \$304,717.92 and \$656,938.92, respectively. With those convicted of certain indecency with child, trafficking, and prostitution offenses no longer eligible for community supervision, the State would realize a savings. The decrease in demand for each fiscal year was adjusted based on the projections published in the January 2019 Adult and Juvenile Correctional Population Projections report. The state cost per day per person for community supervision (\$1.92) was multiplied by the adjusted decrease in placements to felony community supervision for a total savings. The estimated community supervision savings for fiscal years 2020 and 2021 are \$497.28 and \$500.56, respectively. The costs per day per person are as reported in the January 2019 Criminal and Juvenile Justice Uniform Cost Report. These estimates are based on the assumption that sentencing patterns and release policies not addressed in this bill remain constant. The estimated net incarceration costs for fiscal years 2020 and 2021 are \$304,220.64 and \$656,438.36, respectively. The Office of Court Administration, Department of State Health Services, and Board of Pardons and Paroles indicate the modifications outlined in the bill's provisions will not result in a significant fiscal impact.

Local Government Impact

According to the Office of Court Administration, no significant fiscal impact to local courts is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 537 State Health Services, Department of, 696 Department of Criminal Justice, 697 Board of Pardons and Paroles

LBB Staff: WP, SD, LBO, LM, SPa, DA

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 10, 2019

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2758 by Hernandez (relating to changing the eligibility of persons charged with certain offenses to receive community supervision, including deferred adjudication community supervision.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2758, Committee Report 2nd House, Substituted: a negative impact of (\$960,659) through the biennium ending August 31, 2021.

The Texas Department of Criminal Justice (TDCJ) is required to implement a provision in this bill only if the legislature appropriates money for that purpose. Otherwise, TDCJ may, but is not required to, implement a provision of this bill using other available appropriations. The bill would make no appropriation but could provide the legal basis or an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	(\$304,221)
2021	(\$656,438)
2022	(\$1,005,792)
2023	(\$2,568,279)
2024	(\$5,048,416)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from General Revenue Fund
2020	(\$304,221)
2021	(\$656,438)
2022	(\$1,005,792)
2023	(\$2,568,279)
2024	(\$5,048,416)

Fiscal Analysis

The bill would amend various codes as they relate to changing the eligibility of persons charged with certain offenses to receive community supervision, including deferred adjudication community supervision. Under the provisions of the bill, individuals with certain indecency with child, trafficking, and prostitution offenses would no longer be eligible for community supervision and instead would be sentenced to incarceration.

Methodology

The State would realize a net cost to the General Revenue Fund due to the increase in individuals incarcerated within state correctional institutions. The provisions of the bill would modify the Code of Criminal Procedure to add individuals convicted of certain indecency with child, trafficking, and prostitution offenses to the list of those ineligible for community supervision or to the list of those required to serve a term of incarceration, without consideration of good conduct time, one-half of the sentence or 30 calendar years, whichever is less, with a two calendar year minimum before the individual would be eligible for release onto parole. The bill would also make modifications to the eligibility for emergency medical service personnel certification and license based on these offenses. Under current statute, individuals charged with the offenses outlined in the bill can be placed under community supervision or sentenced to a term of incarceration within state correctional institutions.

To estimate the fiscal impact, LBB staff analyzed records belonging to those individuals placed under community supervision in fiscal year 2018 for the offenses outlined in the bill's provisions, building into the analysis a minor time lag between offense and receipt into the correctional institution. The time lag was based on that observed within both the community supervision and correctional institution datasets analyzed. LBB staff estimated the time incarcerated based on sentencing patterns and the actual time served by those individuals with identical or similar offenses who were released from incarceration in fiscal year 2018. After calculating the additional time that would be spent incarcerated, the number of additional days were multiplied by the fiscal year 2018 system-wide cost per day per person (\$62.34) for a total cost. The estimated incarceration costs for fiscal years 2020 and 2021 are \$304,717.92 and \$656,938.92, respectively. With those convicted of certain indecency with child, trafficking, and prostitution offenses no longer eligible for community supervision, the State would realize a savings. The decrease in demand for each fiscal year was adjusted based on the projections published in the January 2019 Adult and Juvenile Correctional Population Projections report. The state cost per day per person for community supervision (\$1.92) was multiplied by the adjusted decrease in placements to felony community supervision for a total savings. The estimated community supervision savings for fiscal years 2020 and 2021 are \$497.28 and \$500.56, respectively. The costs per day per person are as reported in the January 2019 Criminal and Juvenile Justice Uniform Cost Report. These estimates are based on the assumption that sentencing patterns and release policies not addressed in this bill remain constant. The estimated net incarceration costs for fiscal years 2020 and 2021 are \$304,220.64 and \$656,438.36, respectively. The Office of Court Administration, Department of State Health Services, and Board of Pardons and Paroles indicate the modifications outlined in the bill's provisions will not result in a significant fiscal impact.

Local Government Impact

According to the Office of Court Administration, no significant fiscal impact to local courts is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 537 State Health Services, Department of, 696 Department of Criminal Justice, 697 Board of Pardons and Paroles

LBB Staff: WP, LBO, LM, SPa, DA

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 7, 2019

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2758 by Hernandez (Relating to changing the eligibility of persons charged with certain trafficking and prostitution offenses to receive community supervision, including deferred adjudication community supervision.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure and the Health and Safety Code to add to the list of offenses from the Penal Code for which both a judge is prohibited from ordering community supervision or deferred adjudication and a jury is prohibited from recommending community supervision unless a judge finds that a defendant committed the offense solely as a victim of the list of prohibited offenses.

Based on the analysis of the Office of Court Administration, the Department of State Health Services, the Department of Criminal Justice, and the Board of Pardons and Paroles, no significant fiscal impact to the state is anticipated.

This analysis assumes the provisions of the bill addressing felony sanctions for criminal offenses would not result in a significant impact on state correctional agencies.

The bill would take effect September 1, 2019.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 696
 Department of Criminal Justice, 697 Board of Pardons and Paroles, 537
 State Health Services, Department of

LBB Staff: WP, DA, LBO, MW, SPa

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 11, 2019

TO: Honorable James White, Chair, House Committee on Corrections

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2758 by Hernandez (relating to changing the eligibility of persons charged with certain trafficking and prostitution offenses to receive community supervision, including deferred adjudication community supervision.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure and the Health and Safety Code to add to the list of offenses from the Penal Code for which both a judge is prohibited from ordering community supervision or deferred adjudication and a jury is prohibited from recommending community supervision.

Based on the analysis of the Office of Court Administration, the Department of State Health Services, the Department of Criminal Justice, and the Board of Pardons and Paroles, no significant fiscal impact to the state is anticipated.

This analysis assumes the provisions of the bill addressing felony sanctions for criminal offenses would not result in a significant impact on state correctional agencies.

The bill would take effect September 1, 2019.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 696
 Department of Criminal Justice, 697 Board of Pardons and Paroles, 537
 State Health Services, Department of

LBB Staff: WP, DA, LBO, MW, SPa

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

March 20, 2019

TO: Honorable James White, Chair, House Committee on Corrections

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2758 by Hernandez (Relating to changing the eligibility of persons charged with certain trafficking and prostitution offenses to receive community supervision, including deferred adjudication community supervision.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure and the Health and Safety Code to add to the list of offenses from the Penal Code for which both a judge is prohibited from ordering community supervision or deferred adjudication and a jury is prohibited from recommending community supervision.

Based on the analysis of the Office of Court Administration, the Department of State Health Services, the Department of Criminal Justice, and the Board of Pardons and Paroles, no significant fiscal impact to the state is anticipated.

This analysis assumes the provisions of the bill addressing felony sanctions for criminal offenses would not result in a significant impact on state correctional agencies.

The bill would take effect September 1, 2019.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 537 State Health Services, Department of, 696 Department of Criminal Justice, 697 Board of Pardons and Paroles

LBB Staff: WP, LBO, MW, DA, SPa

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

86TH LEGISLATIVE REGULAR SESSION

May 10, 2019

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2758 by Hernandez (relating to changing the eligibility of persons charged with certain offenses to receive community supervision, including deferred adjudication community supervision.), **Committee Report 2nd House, Substituted**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Code of Criminal Procedure as it relates to changing the eligibility of persons charged with certain offenses to receive community supervision, including deferred adjudication community supervision. Under the provisions of the bill, individuals with certain indecency with child, trafficking, and prostitution offenses would no longer be eligible for community supervision. These modifications to the Code of Criminal Procedure would also add individuals convicted of these offenses to the list of those ineligible for community supervision or to the list of those required to serve a term of incarceration, without consideration of good conduct time, one-half of the sentence or 30 calendar years, whichever is less, with a two calendar year minimum before the individual would be eligible for release onto parole. Under current statute, individuals charged with the offenses outlined in the bill can be placed on community supervision or incarcerated. A first degree felony is punishable by confinement in prison for life or a term from 5 to 99 years; a second degree felony is punishable by confinement in prison for a term from 2 to 20 years; and a third degree felony is punishable by confinement in prison for a term from 2 to 10 years. In addition to confinement, most felonies may be subject to an optional fine not to exceed \$10,000.

In fiscal year 2018, 259 individuals would have been ineligible for placement onto community supervision based on their offenses. To estimate the fiscal impact, LBB staff analyzed records belonging to those individuals placed under community supervision in fiscal year 2018 for the offenses outlined in the bill's provisions, building into the analysis a minor time lag between offense and receipt into the correctional institution. The time lag was based on that observed within both the community supervision and correctional institution datasets analyzed. This time delay is built into the analysis because not everyone will be arrested, convicted, and incarcerated on the first day the provisions of the bill become effective. LBB staff estimated the time incarcerated based on sentencing patterns and the actual time served for those individuals with identical or similar offenses who were released from incarceration in fiscal year 2018. The decrease in individuals placed under community supervision for these offenses for each fiscal year was adjusted based on the projections published in the *January 2019 Adult and Juvenile Correctional Population Projections* report.

Assuming that sentencing patterns and release policies not addressed in the bill remain constant, the probable impact of implementing the provisions of the bill during each of the first five fiscal years following passage, in terms of daily demand upon the adult corrections agencies, is estimated as follows:

Fiscal Year	Increase in Demand for TDCJ Bed Capacity	Decrease in Demand for Felony Community Supervision
2020	13	259
2021	29	261
2022	44	261
2023	113	262
2024	222	261

Source Agencies:

LBB Staff: WP, LM, SPa

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

86TH LEGISLATIVE REGULAR SESSION

May 7, 2019

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2758 by Hernandez (Relating to changing the eligibility of persons charged with certain trafficking and prostitution offenses to receive community supervision, including deferred adjudication community supervision.), **As Engrossed**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Code of Criminal Procedure as it relates to changing the eligibility of individuals charged with certain trafficking and prostitution offenses to be placed on community supervision. Under the provisions of the bill, certain trafficking and promotion of prostitution offenses would no longer be eligible for judge-ordered, jury recommended, or deferred adjudication supervision. These modifications would also add individuals convicted of these offenses to the list of those required to serve a term of incarceration, without consideration of good conduct time, one-half of the sentence or 30 calendar years, whichever is less, with a two calendar year minimum before the individual would be eligible for release onto parole.

A first degree felony is punishable by confinement in prison for life or a term from 5 to 99 years; a second degree felony is punishable by confinement in prison for a term from 2 to 20 years; a third degree felony is punishable by confinement in prison for a term from 2 to 10 years; and a state jail felony is punishable by confinement in a state jail for a term from 180 days to 2 years or Class A misdemeanor punishment. In addition to confinement, most felonies may be subject to an optional fine not to exceed \$10,000. A Class A misdemeanor is punishable by confinement in county jail for a term not to exceed one year and, in addition to confinement, an optional fine not to exceed \$4,000.

Modifying the types of offenses eligible for community supervision is expected to result in additional demands upon the correctional resources of the State due to an increase in the number of individuals sentenced to a term of confinement within state correctional institutions and the amount of time some of these individuals would be required to serve before consideration for release onto parole supervision. In fiscal year 2018, 300 people were arrested and 26 were placed under felony direct community supervision for these offenses. This analysis assumes the provisions of the bill addressing felony sanctions would not result in a significant impact on state correctional populations or on the demand for state correctional resources.

Source Agencies:

LBB Staff: WP, LM, SPa

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

86TH LEGISLATIVE REGULAR SESSION

April 11, 2019

TO: Honorable James White, Chair, House Committee on Corrections

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2758 by Hernandez (relating to changing the eligibility of persons charged with certain trafficking and prostitution offenses to receive community supervision, including deferred adjudication community supervision.), **Committee Report 1st House, Substituted**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Code of Criminal Procedure as it relates to changing the eligibility of individuals charged with certain trafficking and prostitution offenses to be placed on community supervision. Under the provisions of the bill, certain trafficking and promotion of prostitution bills would no longer be eligible for judge-ordered, jury recommended, or deferred adjudication supervision. These modifications would also add individuals convicted of these offenses to the list of those required to serve a term of incarceration, without consideration of good conduct time, one-half of the sentence or 30 calendar years, whichever is less, with a two calendar year minimum before the individual would be eligible for release onto parole.

A first degree felony is punishable by confinement in prison for life or a term from 5 to 99 years; a second degree felony is punishable by confinement in prison for a term from 2 to 20 years; a third degree felony is punishable by confinement in prison for a term from 2 to 10 years; and a state jail felony is punishable by confinement in a state jail for a term from 180 days to 2 years or Class A misdemeanor punishment. In addition to confinement, most felonies may be subject to an optional fine not to exceed \$10,000. A Class A misdemeanor is punishable by confinement in county jail for a term not to exceed one year and, in addition to confinement, an optional fine not to exceed \$4,000.

Modifying the types of offenses eligible for community supervision is expected to result in additional demands upon the correctional resources of the State due to an increase in the number of individuals sentenced to a term of confinement within state correctional institutions and the amount of time some of these individuals would be required to serve before consideration for release onto parole supervision. In fiscal year 2018, 300 people were arrested, and 26 placed on felony direct community supervision for these offenses. This analysis assumes the provisions of the bill addressing felony sanctions would not result in a significant impact on state correctional populations or on the demand for state correctional resources.

Source Agencies:

LBB Staff: WP, LM, SPa

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

86TH LEGISLATIVE REGULAR SESSION

March 20, 2019

TO: Honorable James White, Chair, House Committee on Corrections

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB2758 by Hernandez (Relating to changing the eligibility of persons charged with certain trafficking and prostitution offenses to receive community supervision, including deferred adjudication community supervision.), **As Introduced**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Code of Criminal Procedure as it relates to changing the eligibility of individuals charged with certain trafficking and prostitution offenses to be placed on community supervision. Under the provisions of the bill, certain trafficking and promotion of prostitution offenses would no longer be eligible for judge-ordered, jury recommended, or deferred adjudication supervision. These modifications to the Code of Criminal Procedure would also add individuals convicted of these offenses to the list of those required to serve a term of incarceration, without consideration of good conduct time, one-half of the sentence or 30 calendar years, whichever is less, with a two calendar year minimum before the individual would be eligible for release onto parole.

A first degree felony is punishable by confinement in prison for life or a term from 5 to 99 years; a second degree felony is punishable by confinement in prison for a term from 2 to 20 years; a third degree felony is punishable by confinement in prison for a term from 2 to 10 years; and a state jail felony is punishable by confinement in a state jail for a term from 180 days to 2 years or Class A misdemeanor punishment. In addition to confinement, most felonies may be subject to an optional fine not to exceed \$10,000.

Modifying the types of offenses eligible for community supervision is expected to result in additional demands upon the correctional resources of the State due to an increase in the number of individuals sentenced to a term of confinement within state correctional institutions and an increase in the number of individuals released to parole supervision. In fiscal year 2018, 784 people were arrested and 38 placed on community supervision for these offenses. This analysis assumes the provisions of the bill addressing felony sanctions would not result in a significant impact on state correctional populations or on the demand for state correctional resources.

Source Agencies:

LBB Staff: WP, LM, SPa