

House Bill 2758
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Section 21.11 ~~[21.11(a)(1)]~~, Penal Code (Indecency with a Child);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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(13) Section 43.04, Penal Code (Aggravated Promotion of Prostitution);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Art. 42A.102. ELIGIBILITY FOR DEFERRED ADJUDICATION COMMUNITY SUPERVISION. (a) Subject to Subsection (b), a [A] judge may place on deferred adjudication community supervision a defendant charged with an offense under Section 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the victim, or a

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

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

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

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

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

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

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

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

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

Art. 42A.102. ELIGIBILITY FOR DEFERRED ADJUDICATION COMMUNITY SUPERVISION. (a) Subject to Subsection (b), a [A] judge may place on deferred adjudication community supervision a defendant charged with an offense under Section 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the victim, or a

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defendant charged with a felony described by Article 42A.453(b) only if the judge makes a finding in open court that placing the defendant on deferred adjudication community supervision is in the best interest of the victim. The failure of the judge to make a finding under this subsection is not grounds for the defendant to set aside the plea, deferred adjudication, or any subsequent conviction or sentence.

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

(1) the defendant is charged with an offense:

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

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

(2) the defendant:

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

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

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

(A) Section 21.02, Penal Code; or

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

(4), Penal Code; or

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defendant charged with a felony described by Article 42A.453(b) only if the judge makes a finding in open court that placing the defendant on deferred adjudication community supervision is in the best interest of the victim. The failure of the judge to make a finding under this subsection is not grounds for the defendant to set aside the plea, deferred adjudication, or any subsequent conviction or sentence.

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

(1) the defendant is charged with an offense:

(A) under Section 20A.02 or 20A.03 or Sections 49.04-49.08, Penal Code; or

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

(2) the defendant:

(A) is charged with an offense under Section 21.11, 22.011, [ø] 22.021, 43.04, or 43.05, Penal Code, regardless of the age of the victim, or a felony described by Article 42A.453(b), other than a felony described by Subdivision (1)(A) or (3)(B) of this subsection; and

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

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

(A) Section 21.02, Penal Code; or

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

(4), Penal Code; or

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

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

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

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

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

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

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

(1) has been convicted of, or placed on deferred adjudication community supervision or deferred disposition for, an offense that directly relates to the duties and responsibilities

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

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

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

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

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

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

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

(1) has been convicted of, or placed on deferred adjudication community supervision or deferred disposition for, an offense that directly relates to the duties and responsibilities

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of the administrator, employee, or representative, other than an offense for which points are assigned under Section 708.052, Transportation Code;

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

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

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

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

SECTION 6. The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act 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. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

No equivalent provision.

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of the administrator, employee, or representative, other than an offense for which points are assigned under Section 708.052, Transportation Code;

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

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

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

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

SECTION 6. Same as House version.

SECTION 7. The Texas Department of Criminal Justice is required to implement a provision of this Act only if the

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legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the department may, but is not required to, implement a provision of this Act using other appropriations available for that purpose.

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

SECTION 8. Same as House version.