87R1200 JSC-F

By:  Wu H.B. No. 894

A BILL TO BE ENTITLED

AN ACT

relating to placement on community supervision of a defendant convicted of certain felony 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.  Article 42A.053, Code of Criminal Procedure, is amended by adding Subsection (h) to read as follows:

(h)  Notwithstanding any other provision of this article, for an offense for which the suspension of the imposition of the sentence occurs automatically under Article 42A.582, the maximum period of community supervision is three years and the minimum period of community supervision is 90 days.

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;

(2)  is convicted of an offense [~~a state jail felony~~] for which suspension of the imposition of the sentence occurs automatically under Article 42A.551 or 42A.582;

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

(4)  is convicted of an offense under Section 21.11, 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.  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 Article 42A.581 or to which Article 42A.515 applies, 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 4.  Chapter 42A, Code of Criminal Procedure, is amended by adding Subchapter L-1 to read as follows:

SUBCHAPTER L-1. COMMUNITY SUPERVISION FOR CERTAIN FELONY POSSESSION OFFENSES

Art. 42A.581.  APPLICABILITY. (a) Except as provided by Subsection (b), this subchapter applies to an offense under Section 481.115, 481.1151, 481.116, 481.1161, 481.117, 481.118, or 481.121, Health and Safety Code, that is punished as a state jail felony under Section 12.35(a), Penal Code, or a felony of the second or third degree.

(b)  This subchapter does not apply to an offense for which punishment is increased under Section 481.134, Health and Safety Code, or Subchapter D, Chapter 12, Penal Code.

Art. 42A.582.  PLACEMENT ON COMMUNITY SUPERVISION; EXECUTION OF SENTENCE. (a) Except as otherwise provided by Subsection (b), on conviction of an offense described by Article 42A.581, the judge shall suspend the imposition of the sentence and place the defendant on community supervision.

(b)  The judge may order the sentence to be executed if the defendant has been previously convicted three or more times of an offense described by Article 42A.581, regardless of whether the previous verdict was set aside or the defendant was permitted to withdraw the defendant's plea in the manner provided by Article 42A.701.

Art. 42A.583.  CONDITIONS OF COMMUNITY SUPERVISION. (a) Notwithstanding Article 42A.301 and subject to Subsection (b), the judge may impose only the following conditions on a defendant placed on community supervision under this subchapter:

(1)  substance abuse treatment conditions that are consistent with standards adopted by the Texas Board of Criminal Justice under Section 509.015, Government Code; and

(2)  conditions imposed under Articles 42A.301(a) and (b) that are consistent with the results of:

(A)  a risk and needs assessment conducted under Article 42A.301(a); or

(B)  an evaluation conducted under Article 42A.301(c).

(b)  A judge may not impose substance abuse treatment conditions under this article if the results of the evaluation conducted under Article 42A.301(c) indicate that the defendant is not in need of treatment to address a drug or alcohol dependency.

Art. 42A.584.  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 5.  Subchapter D, Chapter 12, Penal Code, is amended by adding Section 12.465 to read as follows:

Sec. 12.465.  CERTAIN PRIOR CONVICTIONS MAY NOT BE USED. Notwithstanding any other provision of this subchapter, a prior conviction may not be used for purposes of enhancing a penalty under this subchapter if:

(1)  the prior conviction was for an offense described by Article 42A.581, Code of Criminal Procedure; and

(2)  the charges for the offense were dismissed under Article 42A.584, Code of Criminal Procedure.

SECTION 6.  Article 42A.551(c), Code of Criminal Procedure, is repealed.

SECTION 7.  (a) In a criminal action under Section 481.115, 481.1151, 481.116, 481.1161, 481.117, 481.118, or 481.121, 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 an 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 8.  This Act takes effect September 1, 2021.