87R5905 JSC-F

By:  Hinojosa S.B. No. 1005

A BILL TO BE ENTITLED

AN ACT

relating to the punishment for certain controlled substance possession offenses under the Texas Controlled Substances Act; changing eligibility for community supervision.

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

SECTION 1.  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 2.  Article 42A.551(a), Code of Criminal Procedure, is 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.

SECTION 3.  Chapter 42A, Code of Criminal Procedure, is amended by adding Subchapter L-1 to read as follows:

SUBCHAPTER L-1. COMMUNITY SUPERVISION FOR CERTAIN CONTROLLED SUBSTANCE POSSESSION OFFENSES

Art. 42A.581.  APPLICABILITY. (a) Except as otherwise provided by Subsection (b), this subchapter applies to an offense under Section 481.115(b) or (c) or 481.116(c) or (d), Health and Safety Code.

(b)  This subchapter does not apply to an offense for which the punishment is increased under Section 481.134, Health and Safety Code, or Section 12.42, Penal Code.

Art. 42A.582.  PLACEMENT ON COMMUNITY SUPERVISION; EXECUTION OF SENTENCE. (a) On conviction of an offense described by Section 42A.581, the judge shall suspend the imposition of the sentence and place the defendant on community supervision, except that the judge may order the sentence to be executed if:

(1)  the defendant has been previously convicted of:

(A)  an offense under Section 481.115 or 481.116, Health and Safety Code; or

(B)  a felony, other than a felony punished under Section 12.44(a), Penal Code;

(2)  the conviction resulted from an adjudication of the guilt of a defendant previously placed on deferred adjudication community supervision for the offense; or

(3)  the judge determines by a preponderance of the evidence that the defendant:

(A)  is a danger to the safety of others; or

(B)  possessed the substance with the intent to deliver the substance.

(b)  A judge who makes a determination described by Subsection (a)(3) shall enter the reasons for making that determination in the record of the proceeding.

(c)  The judge may suspend in whole or in part the imposition of any fine imposed on a conviction if a defendant is placed on community supervision under this subchapter.

SECTION 4.  Sections 509.011(a) and (b), Government Code, are amended to read as follows:

(a)  If the division determines that a department complies with division standards and if the department has submitted a strategic plan under Section 509.007 and the supporting information required by the division and the division determines the plan and supporting information are acceptable, the division shall prepare and submit to the comptroller vouchers for payment to the department as follows:

(1)  for per capita funding, a per diem amount for the term of supervision for each [~~felony~~] defendant directly supervised by the department pursuant to lawful authority for an offense punishable as:

(A)  a felony; or

(B)  a Class A misdemeanor under Section 481.115(b) or 481.116(b), Health and Safety Code;

(2)  for per capita funding, a per diem amount for a period not to exceed 182 days for each defendant supervised by the department pursuant to lawful authority for a misdemeanor offense[~~,~~] other than an offense described by Subdivision (1)(B) [~~a felony defendant~~]; and

(3)  for formula funding, an annual amount as computed by multiplying a percentage determined by the allocation formula established under Subsection (f) times the total amount provided in the General Appropriations Act for payments under this subdivision.

(b)  The division may use discretionary grant funds to further the purposes of this chapter by contracting for services with state agencies or nonprofit organizations. The division may also make discretionary grants to departments, municipalities, or counties for the following purposes:

(1)  development and operation of pretrial and presentencing services;

(2)  electronic monitoring services, surveillance supervision programs, and controlled substances testing services;

(3)  research projects to evaluate the effectiveness of community corrections programs, if the research is conducted in cooperation with the Criminal Justice Policy Council;

(4)  contract services for felony defendants;

(5)  residential services for misdemeanor defendants who exhibit levels of risk or needs indicating a need for confinement and treatment[~~, as described by Section 509.005(b)~~];

(6)  establishment or operation of county correctional centers under Subchapter H, Chapter 351, Local Government Code, or community corrections facilities for which the division has established standards under Section 509.006;

(7)  development and operation of treatment alternative to incarceration programs under Section 76.017; [~~and~~]

(8)  other purposes determined appropriate by the division and approved by the board; and

(9)  placement of defendants in pretrial intervention programs to provide substance abuse treatment, aftercare, and specialized pretrial supervision for defendants charged with an offense punishable as a Class A misdemeanor under Section 481.115(b) or 481.116(b), Health and Safety Code.

SECTION 5.  Section 481.115(b), Health and Safety Code, is amended to read as follows:

(b)  An offense under Subsection (a) is a Class A misdemeanor [~~state jail felony~~] if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, a usable quantity that is more than 0.02 grams but less than one gram.

SECTION 6.  Section 481.116(b), Health and Safety Code, is amended to read as follows:

(b)  An offense under Subsection (a) is a Class A misdemeanor [~~state jail felony~~] if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, a usable quantity that is more than 0.02 grams but less than one gram.

SECTION 7.  (a) Section 509.011(a), Government Code, as amended by this Act, applies only to a payment to a community supervision and corrections department based on a voucher submitted to the comptroller on or after September 1, 2021.

(b)  Except as provided by Subsection (c) of this section:

(1)  the change in law made by this Act applies only to an offense committed on or after the effective date of this Act; and

(2)  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.

(c)  In a criminal action pending on or commenced on or after the effective date of this Act, for an offense under Section 481.115 or 481.116, Health and Safety Code, committed before the effective date, the defendant, if adjudged guilty, shall be assessed punishment under Section 481.115 or 481.116, Health and Safety Code, as applicable, as amended by this Act, if the defendant so elects by written motion filed with the trial court before the sentencing hearing begins.

(d)  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.

(e)  A defendant who elects by written motion to be assessed punishment under Section 481.115 or 481.116, Health and Safety Code, as applicable, as amended by this Act, is eligible for treatment, supervision, and care in accordance with Sections 509.011(a) and (b), Government Code, as amended by this Act. A community supervision and corrections department established under Chapter 76, Government Code, is eligible to be paid for providing the treatment, supervision, and care in accordance with Sections 509.011(a) and (b), Government Code, as amended by this Act. A municipality, county, or community supervision and corrections department established under Chapter 76, Government Code, may provide treatment, supervision, and care to the defendant under a grant made to the municipality, county, or department under Section 509.011(b), Government Code, as amended by this Act.

SECTION 8.  This Act takes effect September 1, 2021.