

By: Wu

H.B. No. 894

A BILL TO BE ENTITLED

AN ACT

1
2 relating to placement on community supervision of a defendant
3 convicted of certain felony possession offenses under the Texas
4 Controlled Substances Act; changing eligibility for and conditions
5 of community supervision.

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

7 SECTION 1. Article 42A.053, Code of Criminal Procedure, is
8 amended by adding Subsection (h) to read as follows:

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

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

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

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

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

24 (3) is adjudged guilty of an offense under Section

1 19.02, Penal Code;

2 (4) is convicted of an offense under Section 21.11,
3 22.011, or 22.021, Penal Code, if the victim of the offense was
4 younger than 14 years of age at the time the offense was committed;

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

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

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

11 (6) is convicted of an offense under Section 20A.02,
12 20A.03, 43.04, 43.05, or 43.25, Penal Code; or

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

18 SECTION 3. Articles 42A.551(a) and (d), Code of Criminal
19 Procedure, are amended to read as follows:

20 (a) Except as otherwise provided by Subsection (b) [~~or (c)~~],
21 on conviction of a state jail felony under Section [~~481.115(b),~~
22 ~~481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.121(b)(3), or~~
23 481.129(g)(1), Health and Safety Code, that is punished under
24 Section 12.35(a), Penal Code, the judge shall suspend the
25 imposition of the sentence and place the defendant on community
26 supervision.

27 (d) On conviction of a state jail felony punished under

1 Section 12.35(a), Penal Code, other than a state jail felony listed
2 in Subsection (a) or Article 42A.581 or to which Article 42A.515
3 applies, and subject to Subsection (e), the judge may:

4 (1) suspend the imposition of the sentence and place
5 the defendant on community supervision; or

6 (2) order the sentence to be executed:

7 (A) in whole; or

8 (B) in part, with a period of community
9 supervision to begin immediately on release of the defendant from
10 confinement.

11 SECTION 4. Chapter 42A, Code of Criminal Procedure, is
12 amended by adding Subchapter L-1 to read as follows:

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

15 Art. 42A.581. APPLICABILITY. (a) Except as provided by
16 Subsection (b), this subchapter applies to an offense under Section
17 481.115, 481.1151, 481.116, 481.1161, 481.117, 481.118, or
18 481.121, Health and Safety Code, that is punished as a state jail
19 felony under Section 12.35(a), Penal Code, or a felony of the second
20 or third degree.

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

24 Art. 42A.582. PLACEMENT ON COMMUNITY SUPERVISION;
25 EXECUTION OF SENTENCE. (a) Except as otherwise provided by
26 Subsection (b), on conviction of an offense described by Article
27 42A.581, the judge shall suspend the imposition of the sentence and

1 place the defendant on community supervision.

2 (b) The judge may order the sentence to be executed if the
3 defendant has been previously convicted three or more times of an
4 offense described by Article 42A.581, regardless of whether the
5 previous verdict was set aside or the defendant was permitted to
6 withdraw the defendant's plea in the manner provided by Article
7 42A.701.

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

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

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

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

19 (B) an evaluation conducted under Article
20 42A.301(c).

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

25 Art. 42A.584. DISMISSAL. (a) After successful completion
26 of a term of community supervision imposed under this subchapter,
27 including completion of any required course of treatment in a drug

1 treatment program or facility, a defendant may petition the court
2 for dismissal of the charges.

3 (b) If the judge, after providing notice and giving
4 attorneys for the defendant and the state an opportunity to be
5 heard, determines that the defendant substantially complied with
6 the conditions of community supervision and successfully completed
7 any required course of treatment, the judge shall discharge the
8 defendant, set aside the verdict or permit the defendant to
9 withdraw the plea, and dismiss the accusation, complaint,
10 information, or indictment in the manner provided by Article
11 42A.701.

12 SECTION 5. Subchapter D, Chapter 12, Penal Code, is amended
13 by adding Section 12.465 to read as follows:

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

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

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

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

24 SECTION 7. (a) In a criminal action under Section 481.115,
25 481.1151, 481.116, 481.1161, 481.117, 481.118, or 481.121, Health
26 and Safety Code, pending on or commenced on or after the effective
27 date of this Act, for an offense committed before the effective date

1 of this Act, the defendant, if adjudged guilty, shall be assessed
2 the punishment under Subchapter L-1, Chapter 42A, Code of Criminal
3 Procedure, as added by this Act, if the offense is an offense
4 described by Article 42A.581, Code of Criminal Procedure, as added
5 by this Act, and the defendant meets the eligibility requirements
6 under that subchapter and other law and so elects by written motion
7 filed with the trial court before the sentencing hearing begins.

8 (b) If the defendant does not make the election under
9 Subsection (a) of this section, punishment is governed by the law in
10 effect on the date the offense was committed, and the former law is
11 continued in effect for that purpose.

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