

By: Hinojosa

S.B. No. 1005

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the punishment for certain controlled substance
3 possession offenses under the Texas Controlled Substances Act;
4 changing eligibility for community supervision.

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

6 SECTION 1. Article [42A.056](#), Code of Criminal Procedure, is
7 amended to read as follows:

8 Art. 42A.056. LIMITATION ON JURY-RECOMMENDED COMMUNITY
9 SUPERVISION. A defendant is not eligible for community supervision
10 under Article [42A.055](#) if the defendant:

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

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

16 (3) is adjudged guilty of an offense under Section
17 [19.02](#), Penal Code;

18 (4) is convicted of an offense under Section [21.11](#),
19 [22.011](#), or [22.021](#), Penal Code, if the victim of the offense was
20 younger than 14 years of age at the time the offense was committed;

21 (5) is convicted of an offense under Section [20.04](#),
22 Penal Code, if:

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

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

3 (6) is convicted of an offense under Section 20A.02,
4 20A.03, 43.04, 43.05, or 43.25, Penal Code; or

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

10 SECTION 2. Article 42A.551(a), Code of Criminal Procedure,
11 is amended to read as follows:

12 (a) Except as otherwise provided by Subsection (b) or (c),
13 on conviction of a state jail felony under Section [~~481.115(b)~~,
14 481.1151(b)(1), [~~481.116(b)~~] 481.1161(b)(3), 481.121(b)(3), or
15 481.129(g)(1), Health and Safety Code, that is punished under
16 Section 12.35(a), Penal Code, the judge shall suspend the
17 imposition of the sentence and place the defendant on community
18 supervision.

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

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

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

27 (b) This subchapter does not apply to an offense for which

1 the punishment is increased under Section 481.134, Health and
2 Safety Code, or Section 12.42, Penal Code.

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

8 (1) the defendant has been previously convicted of:

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

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

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

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

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

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

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

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

27 SECTION 4. Sections 509.011(a) and (b), Government Code,

1 are amended to read as follows:

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

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

13 (A) a felony; or

14 (B) a Class A misdemeanor under Section
15 481.115(b) or 481.116(b), Health and Safety Code;

16 (2) for per capita funding, a per diem amount for a
17 period not to exceed 182 days for each defendant supervised by the
18 department pursuant to lawful authority for a misdemeanor
19 offense~~[7]~~ other than an offense described by Subdivision (1)(B) [a
20 felony defendant]; and

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

25 (b) The division may use discretionary grant funds to
26 further the purposes of this chapter by contracting for services
27 with state agencies or nonprofit organizations. The division may

1 also make discretionary grants to departments, municipalities, or
2 counties for the following purposes:

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

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

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

10 (4) contract services for felony defendants;

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

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

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

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

22 (9) placement of defendants in pretrial intervention
23 programs to provide substance abuse treatment, aftercare, and
24 specialized pretrial supervision for defendants charged with an
25 offense punishable as a Class A misdemeanor under Section
26 481.115(b) or 481.116(b), Health and Safety Code.

27 SECTION 5. Section 481.115(b), Health and Safety Code, is

1 amended to read as follows:

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

7 SECTION 6. Section [481.116\(b\)](#), Health and Safety Code, is
8 amended to read as follows:

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

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

18 (b) Except as provided by Subsection (c) of this section:
19 (1) the change in law made by this Act applies only to
20 an offense committed on or after the effective date of this Act; and
21 (2) an offense committed before the effective date of
22 this Act is governed by the law in effect on the date the offense was
23 committed, and the former law is continued in effect for that
24 purpose.

25 (c) In a criminal action pending on or commenced on or after
26 the effective date of this Act, for an offense under Section [481.115](#)
27 or [481.116](#), Health and Safety Code, committed before the effective

1 date, the defendant, if adjudged guilty, shall be assessed
2 punishment under Section 481.115 or 481.116, Health and Safety
3 Code, as applicable, as amended by this Act, if the defendant so
4 elects by written motion filed with the trial court before the
5 sentencing hearing begins.

6 (d) For purposes of this section, an offense was committed
7 before the effective date of this Act if any element of the offense
8 occurred before that date.

9 (e) A defendant who elects by written motion to be assessed
10 punishment under Section 481.115 or 481.116, Health and Safety
11 Code, as applicable, as amended by this Act, is eligible for
12 treatment, supervision, and care in accordance with Sections
13 509.011(a) and (b), Government Code, as amended by this Act. A
14 community supervision and corrections department established under
15 Chapter 76, Government Code, is eligible to be paid for providing
16 the treatment, supervision, and care in accordance with Sections
17 509.011(a) and (b), Government Code, as amended by this Act. A
18 municipality, county, or community supervision and corrections
19 department established under Chapter 76, Government Code, may
20 provide treatment, supervision, and care to the defendant under a
21 grant made to the municipality, county, or department under Section
22 509.011(b), Government Code, as amended by this Act.

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