

**House Bill 385**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Article 42A.052(a), Code of Criminal Procedure, is amended to read as follows:

(a) A judge who places a defendant on community supervision may authorize the supervision officer supervising the defendant or a magistrate appointed by the district courts in the county that give preference to criminal cases to modify the conditions of community supervision for the limited purposes ~~[purpose]~~ of:

(1) transferring the defendant to different programs within the community supervision continuum of programs and sanctions;

or

(2) prioritizing the conditions ordered by the court according to:

(A) the defendant's needs as determined by a risk and needs assessment; and

(B) the defendant's progress under supervision.

SECTION 2. Article 42A.301(b), Code of Criminal Procedure, is amended to read as follows:

(b) Conditions of community supervision may include conditions requiring the defendant to:

(1) commit no offense against the laws of this state or of any other state or of the United States;

(2) avoid injurious or vicious habits;

(3) ~~[avoid persons or places of disreputable or harmful character, including any person, other than a family member of the defendant, who is an active member of a criminal street gang;~~

~~[(4)]~~ report to the supervision officer as directed by the judge or supervision officer and obey all rules and regulations of the community supervision and corrections department;

SENATE VERSION (IE)

SECTION 1. Article 42A.052(a), Code of Criminal Procedure, is amended to read as follows:

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(1) transferring the defendant to different programs within the community supervision continuum of programs and sanctions;

or

(2) prioritizing the conditions ordered by the court according to the defendant's progress under supervision. [FA1]

SECTION 2. Article 42A.301(b), Code of Criminal Procedure, is amended to read as follows:

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(2) avoid injurious or vicious habits;

(3) ~~[avoid persons or places of disreputable or harmful character, including any person, other than a family member of the defendant, who is an active member of a criminal street gang;~~

~~[(4)]~~ report to the supervision officer as directed by the judge or supervision officer and obey all rules and regulations of the community supervision and corrections department;

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(4) ~~[(5)]~~ permit the supervision officer to visit the defendant at the defendant's home or elsewhere;

(5) ~~[(6)]~~ work faithfully at suitable employment to the extent possible;

(6) ~~[(7)]~~ remain within a specified place;

(7) ~~[(8)]~~ pay in one or more amounts:

(A) the defendant's fine, if one is assessed; and

(B) all court costs, regardless of whether a fine is assessed;

(8) ~~[(9)]~~ support the defendant's dependents;

(9) ~~[(10)]~~ participate, for a period specified by the judge, in any community-based program, including a community service project under Article 42A.304;

(10) ~~[(11)]~~ if the judge determines that the defendant has financial resources that enable the defendant to offset in part or in whole the costs of the legal services provided to the defendant in accordance with Article 1.051(c) or (d), including any expenses and costs, reimburse the county in which the prosecution was instituted for the costs of the legal services in an amount that the judge finds the defendant is able to pay, except that the defendant may not be ordered to pay an amount that exceeds:

(A) the actual costs, including any expenses and costs, paid by the county for the legal services provided by an appointed attorney; or

(B) if the defendant was represented by a public defender's office, the actual amount, including any expenses and costs, that would have otherwise been paid to an appointed attorney had the county not had a public defender's office;

(11) ~~[(12)]~~ if under custodial supervision in a community corrections facility:

(A) remain under that supervision;

(B) obey all rules and regulations of the facility; and

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(4) ~~[(5)]~~ permit the supervision officer to visit the defendant at the defendant's home or elsewhere;

(5) ~~[(6)]~~ work faithfully at suitable employment to the extent possible;

(6) ~~[(7)]~~ remain within a specified place;

(7) ~~[(8)]~~ pay in one or more amounts:

(A) the defendant's fine, if one is assessed; and

(B) all court costs, regardless of whether a fine is assessed;

(8) ~~[(9)]~~ support the defendant's dependents;

(9) ~~[(10)]~~ participate, for a period specified by the judge, in any community-based program, including a community service project under Article 42A.304;

(10) ~~[(11)]~~ if the judge determines that the defendant has financial resources that enable the defendant to offset in part or in whole the costs of the legal services provided to the defendant in accordance with Article 1.051(c) or (d), including any expenses and costs, reimburse the county in which the prosecution was instituted for the costs of the legal services in an amount that the judge finds the defendant is able to pay, except that the defendant may not be ordered to pay an amount that exceeds:

(A) the actual costs, including any expenses and costs, paid by the county for the legal services provided by an appointed attorney; or

(B) if the defendant was represented by a public defender's office, the actual amount, including any expenses and costs, that would have otherwise been paid to an appointed attorney had the county not had a public defender's office;

(11) ~~[(12)]~~ if under custodial supervision in a community corrections facility:

(A) remain under that supervision;

(B) obey all rules and regulations of the facility; and

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(C) pay a percentage of the defendant's income to the facility for room and board;

(12) [(13)] submit to testing for alcohol or controlled substances;

(13) [(14)] attend counseling sessions for substance abusers or participate in substance abuse treatment services in a program or facility approved or licensed by the Department of State Health Services, provided that, notwithstanding Subsection (a) or any other law, a judge may only require a defendant to attend counseling sessions or participate in treatment if:

(A) the results of an evaluation that is designed to determine the appropriate type and level of treatment necessary to address the defendant's alcohol or drug dependency indicate that counseling or treatment is necessary to protect or restore the community or the victim and to rehabilitate the defendant;  
or

(B) the defendant's use, manufacture, possession, or delivery of a controlled substance or alcohol was an element of the offense for which the defendant was placed on community supervision;

(14) [(15)] with the consent of the victim of a misdemeanor offense or of any offense under Title 7, Penal Code, participate in victim-defendant mediation;

(15) [(16)] submit to electronic monitoring;

(16) [(17)] reimburse the compensation to victims of crime fund for any amounts paid from that fund to or on behalf of a victim, as defined by Article 56B.003, of the offense or if no reimbursement is required, make one payment to the compensation to victims of crime fund in an amount not to exceed \$50 if the offense is a misdemeanor or not to exceed \$100 if the offense is a felony;

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(C) pay a percentage of the defendant's income to the facility for room and board;

(12) [(13)] submit to testing for alcohol or controlled substances;

(13) [(14)] attend counseling sessions for substance abusers or participate in substance abuse treatment services in a program or facility approved or licensed by the Department of State Health Services; [FA1, 3rd]

(14) [(15)] with the consent of the victim of a misdemeanor offense or of any offense under Title 7, Penal Code, participate in victim-defendant mediation;

(15) [(16)] submit to electronic monitoring;

(16) [(17)] reimburse the compensation to victims of crime fund for any amounts paid from that fund to or on behalf of a victim, as defined by Article 56B.003, of the offense or if no reimbursement is required, make one payment to the compensation to victims of crime fund in an amount not to exceed \$50 if the offense is a misdemeanor or not to exceed \$100 if the offense is a felony;

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(17) ~~[(18)]~~ reimburse a law enforcement agency for the analysis, storage, or disposal of raw materials, controlled substances, chemical precursors, drug paraphernalia, or other materials seized in connection with the offense;

(18) ~~[(19)]~~ reimburse all or part of the reasonable and necessary costs incurred by the victim for psychological counseling made necessary by the offense or for counseling and education relating to acquired immune deficiency syndrome or human immunodeficiency virus made necessary by the offense;

(19) ~~[(20)]~~ pay a fine in an amount not to exceed \$50 to a crime stoppers organization, as defined by Section 414.001, Government Code, and as certified by the Texas Crime Stoppers Council;

(20) ~~[(21)]~~ submit a DNA sample to the Department of Public Safety under Subchapter G, Chapter 411, Government Code, for the purpose of creating a DNA record of the defendant; and

(21) ~~[(22)]~~ in any manner required by the judge, provide in the county in which the offense was committed public notice of the offense for which the defendant was placed on community supervision.

SECTION 3. Article 42A.303(e), Code of Criminal Procedure, is amended to read as follows:

(e) The Department of State Health Services or the community supervision and corrections department supervising the defendant shall develop the continuum of care treatment plan described by Subsection (d)(1).

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(17) ~~[(18)]~~ reimburse a law enforcement agency for the analysis, storage, or disposal of raw materials, controlled substances, chemical precursors, drug paraphernalia, or other materials seized in connection with the offense;

(18) ~~[(19)]~~ reimburse all or part of the reasonable and necessary costs incurred by the victim for psychological counseling made necessary by the offense or for counseling and education relating to acquired immune deficiency syndrome or human immunodeficiency virus made necessary by the offense;

(19) ~~[(20)]~~ pay a fine in an amount not to exceed \$50 to a crime stoppers organization, as defined by Section 414.001, Government Code, and as certified by the Texas Crime Stoppers Council;

(20) ~~[(21)]~~ submit a DNA sample to the Department of Public Safety under Subchapter G, Chapter 411, Government Code, for the purpose of creating a DNA record of the defendant; and

(21) ~~[(22)]~~ in any manner required by the judge, provide in the county in which the offense was committed public notice of the offense for which the defendant was placed on community supervision.

SECTION 3. Same as House version.

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| <p>SECTION 4. Articles 42A.403(d-1) and (e), Code of Criminal Procedure, are amended to read as follows:</p> <p>(d-1) The judge shall waive the educational program requirement if the defendant successfully completes [<del>equivalent</del>] education at a residential treatment facility under Article 42A.4045.</p> <p>(e) The judge shall set out in the judgment, as applicable:</p> <p>(1) the finding of good cause for waiver; or</p> <p>(2) the finding that the defendant has successfully completed [<del>equivalent</del>] education as provided by Article 42A.4045.</p> | <p>SECTION 4. Same as House version.</p> |            |
| <p>SECTION 5. Articles 42A.404(b-1) and (c), Code of Criminal Procedure, are amended to read as follows:</p> <p>(b-1) The judge shall waive the educational program requirement if the defendant successfully completes [<del>equivalent</del>] education at a residential treatment facility under Article 42A.4045.</p> <p>(c) The judge shall set out in the judgment, as applicable:</p> <p>(1) the finding of good cause for waiver; or</p> <p>(2) the finding that the defendant has successfully completed [<del>equivalent</del>] education as provided by Article 42A.4045.</p> | <p>SECTION 5. Same as House version.</p> |            |
| <p>SECTION 6. Articles 42A.4045(a) and (b), Code of Criminal Procedure, are amended to read as follows:</p> <p>(a) A judge shall waive the educational requirement under Article 42A.403 or 42A.404 for a defendant who is required to receive treatment as a resident of a substance abuse treatment facility as a condition of community supervision if the defendant successfully completes [<del>equivalent</del>] education while the defendant is confined to the residential treatment facility.</p>  | <p>SECTION 6. Same as House version.</p> |            |

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(b) The Department of State Health Services shall approve [equivalent] education provided at substance abuse treatment facilities.

SECTION 7. Articles 42A.406(a) and (b-1), Code of Criminal Procedure, are amended to read as follows:

(a) If a defendant is required as a condition of community supervision to attend an educational program under Article 42A.403 or 42A.404, or if the court waives the educational program requirement under Article 42A.403 or the defendant successfully completes [equivalent] education under Article 42A.4045, the court clerk shall immediately report that fact to the Department of Public Safety, on a form prescribed by the department, for inclusion in the defendant's driving record. If the court grants an extension of time in which the defendant may complete the educational program under Article 42A.403, the court clerk shall immediately report that fact to the Department of Public Safety on a form prescribed by the department. The clerk's report under this subsection must include the beginning date of the defendant's community supervision.

(b-1) Upon release from a residential treatment facility at which the person successfully completed [equivalent] education under Article 42A.4045, at the request of the court clerk, the director of the residential treatment facility shall give notice to the Department of Public Safety for inclusion in the person's driving record.

SECTION 7. Same as House version.

SECTION 8. Article 42A.655, Code of Criminal Procedure, is amended to read as follows:

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Art. 42A.655. ABILITY TO PAY. (a) The court shall consider the defendant's ability to pay before ordering the defendant to make any payments under this chapter.

(b) Notwithstanding any other law and subject to Subsection (c), the court shall consider whether the defendant has sufficient resources or income to make any payments under this chapter, excluding restitution but including any fee, fine, reimbursement cost, court cost, rehabilitation cost, program cost, service cost, counseling cost, ignition interlock cost, assessment cost, testing cost, education cost, treatment cost, payment required under Article 42A.652, or any other payment or cost authorized or required under this chapter. The court shall consider under this subsection whether a defendant has sufficient resources or income:

(1) before or immediately after placing the defendant on community supervision, including deferred adjudication community supervision; and

(2) during the period of community supervision, before or immediately after the court orders or requires the defendant to make any payments under this chapter.

(c) Subsection (b) does not apply to consideration of a defendant's ability to pay restitution.

(d) Notwithstanding any other law, if a defendant is ordered to make a payment included under Subsection (b), the court shall reconsider whether the defendant has sufficient resources or income to make the payment at any hearing held under Article 42A.751(d).

(e) A defendant who is ordered to make a payment included under Subsection (b) may, at any time during the defendant's period of community supervision, including deferred adjudication community supervision, but not more than once in any six-month period unless the defendant shows a

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Art. 42A.655. ABILITY TO PAY. (a) The court shall consider the defendant's ability to pay before ordering the defendant to make any payments under this chapter.

(b) Notwithstanding any other law and subject to Subsection (c), the court shall consider whether the defendant has sufficient resources or income to make any payments under this chapter, excluding restitution but including any fee, fine, reimbursement cost, court cost, rehabilitation cost, program cost, service cost, counseling cost, ignition interlock cost, assessment cost, testing cost, education cost, treatment cost, payment required under Article 42A.652, or any other payment or cost authorized or required under this chapter. The court shall consider under this subsection whether a defendant has sufficient resources or income:

(1) before or immediately after placing the defendant on community supervision, including deferred adjudication community supervision; and

(2) during the period of community supervision, before or immediately after the court orders or requires the defendant to make any payments under this chapter.

(c) Subsection (b) does not apply to consideration of a defendant's ability to pay restitution.

(d) Notwithstanding any other law, if a defendant is ordered to make a payment included under Subsection (b), the court shall reconsider whether the defendant has sufficient resources or income to make the payment at any hearing held under Article 42A.751(d).

(e) A defendant who is ordered to make a payment included under Subsection (b) may, at any time during the defendant's period of community supervision, including deferred adjudication community supervision, but not more than once in any six-month period unless the defendant shows a

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substantial and compelling reason for making an additional request during that period, file a written statement with the clerk of the court requesting reconsideration of the defendant's ability to make the payment and requesting that the payment be satisfied by an alternative method provided under Subsection (f). On receipt of the statement, the court shall consider whether the defendant's financial status or required payments have changed in such a way that the defendant's ability to make a payment previously ordered by the court is substantially hindered. If after conducting a review under this subsection the court finds that the defendant's ability to make a payment previously ordered by the court is substantially hindered, the court shall determine whether all or a portion of the payment should be satisfied by an alternative method provided under Subsection (f). The court shall notify the defendant and the attorney representing the state of the court's decision regarding whether to allow all or a portion of the payment to be satisfied by an alternative method.

(f) Notwithstanding any other law, if the court determines under this article at any time during a defendant's period of community supervision, including deferred adjudication community supervision, that the defendant does not have sufficient resources or income to make a payment included under Subsection (b), the court shall determine whether all or a portion of the payment should be:

- (1) required to be paid at a later date or in a specified portion at designated intervals;
- (2) waived completely or partially under Article 43.091 or 45.0491;
- (3) discharged by performing community service under Article 42A.304 or 45.049, as applicable; or
- (4) satisfied through any combination of methods under

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substantial and compelling reason for making an additional request during that period, file a written statement with the clerk of the court requesting reconsideration of the defendant's ability to make the payment and requesting that the payment be satisfied by an alternative method provided under Subsection (f). On receipt of the statement, the court shall consider whether the defendant's financial status or required payments have changed in such a way that the defendant's ability to make a payment previously ordered by the court is substantially hindered. If after conducting a review under this subsection the court finds that the defendant's ability to make a payment previously ordered by the court is substantially hindered, the court shall determine whether all or a portion of the payment should be satisfied by an alternative method provided under Subsection (f). The court shall notify the defendant and the attorney representing the state of the court's decision regarding whether to allow all or a portion of the payment to be satisfied by an alternative method.

(f) Notwithstanding any other law, if the court determines under this article at any time during a defendant's period of community supervision, including deferred adjudication community supervision, that the defendant does not have sufficient resources or income to make a payment included under Subsection (b), the court shall determine whether all or a portion of the payment should be:

- (1) required to be paid at a later date or in a specified portion at designated intervals;
- (2) waived completely or partially under Article 43.091 or 45.0491;
- (3) discharged by performing community service under Article 42A.304 or 45.049, as applicable; or
- (4) satisfied through any combination of methods under

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Subdivisions (1)-(3).

(g) The Office of Court Administration of the Texas Judicial System shall adopt a standardized form that a defendant may use to make a request under Subsection (e) for the reconsideration of the defendant's ability to pay. The form must include:

(1) detailed and clear instructions for how to fill out the form and submit a request to the court; and

(2) the following statement at the top of the form, in bold type and in any language in which the form is produced:

"If at any time while you are on community supervision your ability to pay any fine, fee, program cost, or other payment ordered by the court, other than restitution, changes and you cannot afford to pay, you have the right to request that the court review your payments and consider changing or waiving your payments. You can use this form to make a request for a change in your payments. You cannot use this form to request a change in restitution payments."

(h) A supervision officer or the court shall promptly provide a defendant a copy of the form adopted under Subsection (g) on the defendant's request for the form.

(i) This subsection applies only to a defendant whose payments are wholly or partly waived under this article. At any time during the defendant's period of community supervision, including deferred adjudication community supervision, the court, on the court's own motion or by motion

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Subdivisions (1)-(3).

( ) In making a determination under Subsection (f), a court may waive completely or partially a payment required under Article 42A.652 only if, after waiving all other applicable payments included under Subsection (b), the court determines that the defendant does not have sufficient resources or income to make the payment. [FA2]

(g) The Office of Court Administration of the Texas Judicial System shall adopt a standardized form that a defendant may use to make a request under Subsection (e) for the reconsideration of the defendant's ability to pay. The form must include:

(1) detailed and clear instructions for how to fill out the form and submit a request to the court; and

(2) the following statement at the top of the form, in bold type and in any language in which the form is produced:

"If at any time while you are on community supervision your ability to pay any fine, fee, program cost, or other payment ordered by the court, other than restitution, changes and you cannot afford to pay, you have the right to request that the court review your payments and consider changing or waiving your payments. You can use this form to make a request for a change in your payments. You cannot use this form to request a change in restitution payments."

(h) A supervision officer or the court shall promptly provide a defendant a copy of the form adopted under Subsection (g) on the defendant's request for the form.

(i) This subsection applies only to a defendant whose payments are wholly or partly waived under this article. At any time during the defendant's period of community supervision, including deferred adjudication community supervision, the court, on the court's own motion or by motion

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of the attorney representing the state, may reconsider the waiver of the payment. After providing written notice to the defendant and an opportunity for the defendant to present information relevant to the defendant's ability to pay, the court may order the defendant to pay all or part of the waived amount of the payment only if the court determines that the defendant has sufficient resources or income to pay the amount.

SECTION 9. Article 42A.701, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsections (b-1), (b-2), and (d-1) to read as follows:

(b) On completion of one-half of the original community supervision period or two years of community supervision, whichever is more, the judge shall review the defendant's record and consider whether to reduce or terminate the period of community supervision, unless the defendant:

(1) is delinquent in paying required ~~[costs, fines, fees, or]~~ restitution that the defendant has the ability to pay; or

(2) has not completed court-ordered counseling or treatment.

(b-1) The supervision officer shall notify the judge as soon as practicable after the date a defendant, who at the time of the review required by Subsection (b) was delinquent in paying restitution or had not completed court-ordered counseling or treatment, completes the remaining court-ordered counseling or treatment and makes the delinquent restitution payments, as applicable, and is otherwise compliant with the conditions of community supervision. On receipt of the notice the judge shall review the defendant's record and consider whether to reduce or terminate the period of community supervision.

(b-2) Following a review conducted under Subsection (b) or

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of the attorney representing the state, may reconsider the waiver of the payment. After providing written notice to the defendant and an opportunity for the defendant to present information relevant to the defendant's ability to pay, the court may order the defendant to pay all or part of the waived amount of the payment only if the court determines that the defendant has sufficient resources or income to pay the amount.

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(b-1), the judge may reduce or terminate the period of community supervision or decide not to reduce or terminate the period of community supervision. In making the determination, the judge may consider any factors the judge considers relevant, including whether the defendant is delinquent in paying court-ordered costs, fines, or fees that the defendant has the ability to pay as provided by Article 42A.655.

(d-1) If the judge does not terminate the defendant's period of community supervision after conducting a review under this article:

(1) the judge shall promptly advise the defendant's supervision officer of the reasons the judge did not terminate the defendant's period of community supervision; and

(2) the supervision officer shall promptly advise the defendant in writing of the reasons provided under Subdivision (1).

SECTION 10. Articles 42A.702(a) and (d), Code of Criminal Procedure, are amended to read as follows:

(a) This article applies only to a defendant who:

(1) is granted community supervision, including deferred adjudication community supervision, for an offense punishable as a state jail felony or a felony of the third degree, other than an offense:

(A) included as a "reportable conviction or adjudication" under Article 62.001(5);

(B) involving family violence as defined by Section 71.004, Family Code;

(C) under Section 20.03 or 28.02, Penal Code; or

(D) under Chapter 49, Penal Code; and

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| <p>(2) <del>[is not delinquent in paying required costs, fines, or fees; and</del><br/>[(3)] has fully satisfied any order to pay restitution to a victim.</p> <p>(d) A defendant is entitled to time credits toward the completion of the defendant's period of community supervision for the successful completion of treatment or rehabilitation programs as follows:</p> <p>(1) parenting class or parental responsibility program: 30 days;</p> <p>(2) anger management program: 30 days;</p> <p>(3) life skills training program: 30 days;</p> <p>(4) vocational, technical, or career education or training program: 60 days; <del>and</del></p> <p>(5) alcohol or substance abuse counseling or treatment: 90 days; <u>and</u></p> <p><u>(6) any other faith-based, volunteer, or community-based program ordered or approved by the court: 30 days.</u></p> |   |            |
| <p>SECTION 11. Not later than January 1, 2022, the Office of Court Administration of the Texas Judicial System shall adopt the form required by Article 42A.655(g), Code of Criminal Procedure, as added by this Act.</p>  | <p>SECTION 11. Same as House version.</p> |            |
| <p>SECTION 12. (a) Except as provided by Subsection (b) of this section, the change in law made by this Act to Chapter 42A, Code of Criminal Procedure, applies to a person on community supervision on or after the effective date of this Act, regardless of whether the person was placed on community supervision before, on, or after the effective date</p>  | <p>SECTION 12. Same as House version.</p> |            |

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| of this Act.<br>(b) Article 42A.702(d)(6), Code of Criminal Procedure, as added by this Act, applies only to a person placed on community supervision on or after the effective date of this Act. |                                    |            |
| SECTION 13. This Act takes effect September 1, 2021.  | SECTION 13. Same as House version. |            |