

BILL ANALYSIS

Senate Research Center
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S.B. 1266
By: Whitmire
Criminal Justice
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Current Texas law provides judges with specific instructions and orders regarding community supervision.

As proposed, S.B. 1266 grants judges the authority and duty to determine who should get probation, what the condition of supervision should be, and when and how supervision should be ended. S.B. 1266 removes statutory limitations that have acted as barriers to effective systems of community supervision in the public interest.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 3(b) and (d), Article 42.12, Code of Criminal Procedure, as follows:

(b) Provides that, except as provided by Section 3(g) of this article, the maximum period of community supervision in a felony case is five years, rather than ten years, except that the judge may impose a maximum of five one-year extensions for good cause stated in the record of the case. Prohibits the judge from imposing more than one extension per hearing held under Section 21.

(d) Authorizes a judge to increase the maximum period of community supervision in the manner provided by Section 22A (Violation of Community Supervision: Detention and Hearing) of this article. Deletes existing reference to Section 22(c).

SECTION 2. Amends Section 3g, Article 42.12, Code of Criminal Procedure, as follows:

Sec. 3g. New heading: JUDGE ORDERED COMMUNITY SUPERVISION FOR CERTAIN OFFENSES. (a) Provides that the maximum period of community supervision, in a felony case in which the defendant is convicted of an offense listed in Subdivision (1) or for which the judgment contains an affirmative finding under Subdivision (2), that may be imposed in the manner provided by Section 3(a) is 10 years. Sets forth specific cases to which this subsection applies. Makes conforming changes.

(b) Authorizes the court, if there is an affirmative finding under Subsection (a)(2) in the trial of a felony of the second degree or higher that the deadly weapon used or exhibited was a firearm and the defendant is granted community supervision, to order the defendant confined in the institutional division of the Texas Department of Criminal Justice as provided by Section 6 of this article. Deletes existing text referring to time constraints on the confinement.

SECTION 3. Amends Sections 4(b), (c), and (d), Article 42.12, Code of Criminal Procedure, as follows:

(b) Requires the judge, if the jury recommends to the judge that the judge place the defendant on community supervision, to place the defendant on community supervision

for any period authorized under Section 3 or 3g, rather than Section 3(b) or 3(c), of this article, as appropriate.

(c) Authorizes a judge to increase the maximum period of community supervision in the manner provided by Section 22A of this article. Deletes existing reference to Section 22(c).

(d) Deletes existing text referring to a sworn motion under Subsection (c).

SECTION 4. Amends Sections 5(a) and (c), Article 42.12, Code of Criminal Procedure, as follows;

(a) Prohibits the period of community supervision, in a felony case, except as otherwise provided by Section 3 and 3g, from exceeding five years, rather than ten years. Deletes existing text referring to specific felonies, authorizing a judge to extend community supervision, and determination of jail confinement.

(c) Deletes existing text referring sex offender registration and prohibiting a judge from dismissing specific proceedings.

SECTION 5. Amends Section 6(a), Article 42.12, Code of Criminal Procedure, to require the jurisdiction of a court in which a sentence requiring imprisonment in the institutional division of the Texas Department of Criminal Justice is imposed by the judge of the court, for the purposes of this section, to continue for two years, rather than 180 days, from the date the execution of the sentence actually begins. Makes conforming changes.

SECTION 6. Amends Section 8(a), Article 42.12, Code of Criminal Procedure, to authorize a court to recommend a person for placement in the state boot camp program only if the person is otherwise eligible for community supervision under this article, except that the person remains eligible for purposes of this subsection if the person is sentenced to a term of confinement under Section 12.35 (State Jail Felony Punishment), Penal Code. Deletes existing text referring to a person not convicted of an offense punishable as a state jail felony.

SECTION 7. Amends Section 9(a), (j), and (k), Article 42.12, Code of Criminal Procedure, as follows:

(a) Authorizes the judge to request that the report contain a sentencing recommendation, a proposed client supervision plan describing programs and sanctions that the community supervision and corrections department would provide the defendant if the judge suspended the imposition of the sentence or granted deferred adjudication, or both. Deletes existing text referring to the amount of restitution necessary to adequately compensate a victim of the offense.

(j) Makes conforming changes.

(k) Authorizes the judge, if a presentence report in a felony case is not required under this section, to direct the officer to prepare a postsentence report containing the same information that would have been included in the presentence report, other than a proposed client supervision plan and any information that is reflected in the judgment.

SECTION 8. Amends Section 10(e), Article 42.12, Code of Criminal Procedure, to make a conforming change.

SECTION 9. Amends Section 11(a), Article 42.12, Code of Criminal Procedure, to delete existing text authorizing conditions of community supervision to include, but not be required to be limited to, the conditions the defendant is required to complete.

SECTION 10. Amends Section 14(b), Article 42.12, Code of Criminal Procedure, to authorize the judge to impose the condition of community supervision created under this section if the judge places the defendant on community supervision under this article and makes specific

affirmative findings. Deletes existing text referring to exceptions for a defendant charged with or convicted of a felony.

SECTION 11. Amends Sections 15(a), (b), (c), and (e), Article 42.12, Code of Criminal Procedure, as follows:

(a)(1) Authorizes the judge, on conviction of a state jail felony punished under Section 12.35(a), Penal Code, to suspend the imposition of the sentence and place the defendant on community supervision or order the sentence to be executed. Authorizes the judge to suspend in whole or in part the imposition of any fine imposed on conviction. Deletes existing text referring to convictions for a state jail felony, requiring the judge to suspend the imposition of the sentence for specific convictions, and exceptions to community supervision for specific violations.

(b) Authorizes a judge to impose a maximum period of community supervision under this section of five years, except that the judge is authorized to impose a maximum of five one-year extensions for good cause stated in the record of the case. Prohibits the judge from imposing more than one extension per hearing held under Section 21. Deletes existing text referring to minimum and maximum periods of community supervision.

(c) Deletes existing text in Subdivisions (2) and (3).

(e) Authorizes the judge to impose any sanction the judge determines is appropriate, if a defendant violates a condition of community supervision imposed on the defendant under this article and after a hearing under Section 21 of this article the judge modifies the defendant's community supervision. Deletes existing referring to Section 22.

SECTION 12. Amends Section 20, Article 42.12, Code of Criminal Procedure, to authorize the period of community supervision to be reduced or terminated by the judge at any time prior to the expiration of the term of community supervision if in the judge's opinion the best interest of society and defendant will be served. Deletes existing text referring to completing a percentage of required community supervision and a defendant convicted of an offense requiring registration as a sex offender.

SECTION 13. Amends Section 23(b), Article 42.12, Code of Criminal Procedure, to authorize a judge to credit against any term of confinement a defendant is sentenced to serve under this section all or part of the time that the defendant served on community supervision. Deletes existing text referring to considering any part of time required to be served.

SECTION 14. Repealer: (1) Section 3(f) (referring to minimum period of community supervision for a specific felony), Article 42.12, Code of Criminal Procedure;

(2) Section 4(e) (referring to eligibility for a defendant for community supervision), Article 42.12, Code of Criminal Procedure;

(3) Section 5(d) (referring to authorizing a judge to grant deferred adjudication), Article 42.12, Code of Criminal Procedure;

(4) Sections 9(h) and (i) (referring to the involvement of drug or alcohol abuse and mental impairments), Article 42.12, Code of Criminal Procedure;

(5) Section 9A (Sex Offenders: Presentence Investigation and Postsentence Treatment and Supervision), Article 42.12, Code of Criminal Procedure;

(6) Sections 11(b)-(1) (regarding prohibiting a judge from ordering a defendant to make specific payments as a term or condition of community supervision), Article 42.12, Code of Criminal Procedure;

(7) Section 13 (DWI Community Supervision), Article 42.12, Code of Criminal Procedure;

- (8) Section 13A (Community Supervision for Offense Committed Because of Bias or Prejudice), Article 42.12, Code of Criminal Procedure;
- (9) Section 13B (Defendants Placed on Community Supervision for Sexual Offenses Against Children), Article 42.12, Code of Criminal Procedure;
- (10) Section 13C (Community Supervision for Making a Firearm Accessible to a Child), Article 42.12, Code of Criminal Procedure;
- (11) Section 13D (Defendants Placed on Community Supervision for Violent Offenses; Protecting Children), Article 42.12, Code of Criminal Procedure;
- (12) Section 14 (Child Abusers and Family Violence Offenders; Special Conditions) as amended by Chapter 165, Acts of the 73rd Legislature, Regular Session, 1993, by Chapter 910, Acts of the 76th Legislature, Regular Session, 1999, and by Chapter 353, Acts of the 78th Legislature, Regular Session, 2003; Article 42.12, Code of Criminal Procedure;
- (13) Section 15(d) (regarding authorizing a judge to impose confinement at the beginning of community supervision), Article 42.12, Code of Criminal Procedure;
- (14) Section 15A (Enhanced Disorderly Conduct and Public Intoxication Offenses), Article 42.12, Code of Criminal Procedure; and
- (15) Section 22 (Continuation or Modification), Article 42.12, Code of Criminal Procedure.

SECTION 15. Makes application of this Act prospective.

SECTION 16. Effective date: September 1, 2005.