

BILL ANALYSIS

Senate Research Center
81R26224 E

C.S.S.B. 1118
By: Ellis et al.
Criminal Justice
4/20/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas is over-reliant on incarceration as a means of addressing the serious problem of substance abuse. There are treatment diversion alternatives that could effectively reduce recidivism among drug offenders, aid in alleviating prison overcrowding, and save taxpayers millions of dollars over time.

C.S.S.B. 1118 amends current law relating to community supervision for certain drug possession offenses and to a person's eligibility for an order of nondisclosure following a term of community supervision for any of those offenses.

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 15(a)(1) and (2), Article 42.12, Code of Criminal Procedure, as follows:

(1) Deletes existing text requiring a judge, on conviction of a state jail felony under Section 481.115(b) (relating to possession of less than one gram of a controlled substance), Health and Safety Code, that is punished under Section 12.35(a) (relating to punishment of an individual by confinement in a state jail for not more than two years or less than 180 days), Penal Code, to suspend the imposition of the sentence, unless the defendant has previously been convicted of a felony, other than a felony punished under Section 12.44(a) (relating to reduction of state jail felony punishment to misdemeanor punishment), Penal Code, or unless the conviction resulted from an adjudication of the guilt of a defendant previously placed on deferred adjudication community supervision for the offense, in which event the judge is authorized to suspend the imposition of the sentence and place the defendant on community supervision or to order the sentence to be executed.

(2) Authorizes a judge, on conviction of a state jail felony punished under Section 12.35(a), Penal Code, other than a state jail felony listed in Subdivision (1) or a state jail felony under Section 481.115(b), Health and Safety Code, to suspend the imposition of the sentence and place the defendant on community supervision or order the sentence to be executed.

SECTION 2. Amends Article 42.12, Code of Criminal Procedure, by adding Section 15B, as follows:

Sec. 15B. COMMUNITY SUPERVISION FOR POSSESSION OF CONTROLLED SUBSTANCE. (a) Defines "drug possession offense."

(b) Requires the judge to suspend the imposition of the sentence and place the defendant on community supervision, on conviction of a drug possession offense, except that the judge may order the sentence to be executed if:

(1) the judge determines by a preponderance of the evidence that the defendant is a danger to the safety of others, or possessed the controlled substance with the intent to deliver the substance in violation of Section 481.112 (Offense: Manufacture or Delivery of Substance in Penalty Group 1) or 481.120 (Offense: Delivery of Marihuana), Health and Safety Code, as applicable;

(2) the defendant has been previously convicted of an offense other than a drug possession offense or a state jail felony listed in Section 15(a) (relating to certain convictions of a state jail felony), or an offense under the Transportation Code punishable by fine only, or an offense related to a pedestrian or the parking of a motor vehicle punishable by fine only;

(3) the defendant is convicted in the same proceeding of an additional offense, other than a drug possession offense or a state jail felony listed in Section 15(a), or an offense under the Transportation Code punishable by fine only or an offense related to a pedestrian or the parking of a motor vehicle punishable by fine only;

(4) the judge determines that a drug treatment program or other treatment services that are appropriate for the defendant are not available in the area in which the defendant resides; or

(5) the judge determines by clear and convincing evidence, based on an evidence-based drug and alcohol assessment, that the defendant is unlikely to benefit from participation in a course of treatment in a drug treatment program or facility, and the defendant has been previously convicted on two or more occasions of a drug possession offense or state jail felony listed in Section 15(a) or discharged from a drug court program established under Chapter 469 (Drug Court Programs), Health and Safety Code, after failing to successfully complete the program.

(c) Requires a judge who makes a determination described by Subsection (b)(1), (4), or (5) to execute the defendant's sentence to enter the reasons for making that determination in the record of the proceeding.

(d) Authorizes the judge to suspend wholly or partly the imposition of any fine imposed on a conviction if a defendant is placed on community supervision under this section.

(e) Requires a court granting community supervision under this section to require as a condition of community supervision that the defendant do certain things.

(f) Authorizes a course of treatment under Subsection (e)(2) (relating to a prescribed course of treatment in a drug treatment program or facility) to include certain treatments, therapies, and education.

(g) Requires the judge, in referring a defendant to a course of treatment under Subsection (e)(2) and imposing conditions for participation in the course of treatment, to order the defendant to participate in the level of treatment that the evaluation indicates is appropriate for the defendant to achieve the outcome objectives prescribed by the drug treatment program or facility, and the recommendations of a drug treatment professional.

(h) Authorizes a court granting community supervision under this section to require as a condition of community supervision, in addition to any required participation in a course of treatment under Subsection (e)(2) and other appropriate conditions, that the defendant participate in vocational training, family counseling, literacy training, or community service.

(i) Authorizes the judge, notwithstanding Section 21(b) (relating to consequences for the violation of any of the conditions of the community supervision), if a defendant placed on community supervision under this section violates the terms of that supervision by committing another drug possession offense or state jail felony listed in Section 15(a) or by violating any treatment-related condition of supervision, to use certain graduated sanctions and incentives offered to a defendant by the community supervision and corrections department supervising the defendant or the courts served by that department; and revoke the community supervision of the defendant if the judge determines by a preponderance of the evidence that the defendant poses a danger to the safety of others or is unlikely to benefit from a course of treatment in a drug treatment program or facility.

(j) Requires a judge who modifies a defendant's conditions of supervision in response to the defendant's commission of another drug possession offense or state jail felony listed in Section 15(a) or violation of a treatment-related condition of supervision to consider imposing certain additional conditions of supervision.

(k) Requires the judge to consider whether the defendant has previously committed certain violations in making a determination under this section as to whether a defendant is unlikely to benefit from participation in a course of treatment in a drug treatment program or facility.

(l) Authorizes a defendant to petition the court for dismissal of the charges after successful completion of a term of community supervision imposed under this section, including completion of any required course of treatment in a drug treatment program or facility. Requires the judge to discharge the defendant, set aside the verdict or permit the defendant to withdraw the plea, and dismiss the accusation, complaint, information, or indictment in the manner provided by Section 20(a) (relating to the reduction or termination of community supervision) if the judge, after providing notice and giving attorneys for the defendant and the state an opportunity to be heard, determines that the defendant substantially complied with the conditions of supervision and successfully completed any required course of treatment.

(m) Creates the drug treatment program account as a dedicated account in the general revenue fund of the state treasury. Authorizes money in the account to be appropriated only to the Texas Department of Criminal Justice (TDCJ) for distribution to drug treatment programs or facilities that provide a course of treatment to defendants under this section and that apply for the money. Provides that funds collected and distributed under this subsection are subject to audit by the comptroller of public accounts (comptroller).

SECTION 3. Amends Subchapter A, Chapter 102, Code of Criminal Procedure, by adding Article 102.0179, as follows:

Art. 102.0179. ADDITIONAL COSTS ATTENDANT TO CERTAIN INTOXICATION AND DRUG CONVICTIONS. (a) Requires a person to pay \$50 as a court cost on conviction of any offense under Chapter 49 (Intoxication and Alcoholic Beverage Offenses), Penal Code, or Chapter 481 (Texas Controlled Substances Act), Health and Safety Code, in addition to other costs on conviction imposed by this chapter, including costs described by Article 102.0178 (Costs Attendant to Certain Intoxication and Drug Convictions).

(b) Provides that in this article, a person is considered to have been convicted if a sentence is imposed; the person is placed on community supervision, including deferred adjudication community supervision; or the court defers final disposition of the person's case.

(c) Provides that court costs under this article are collected in the same manner as other fines or costs. Requires an officer collecting the costs to send to the

comptroller costs collected under this article for deposit to the credit of the drug treatment program account established under Section 15B, Article 42.12.

SECTION 4. (a) Amends Section 102.021, Government Code, to conform to Chapter 1263 (H.B. 3060), Acts of the 80th Legislature, Regular Session, 2007, and amends it, as follows:

Sec. 102.021. COURT COSTS ON CONVICTION: CODE OF CRIMINAL PROCEDURE. Requires a person convicted of an offense to pay certain costs under the Code of Criminal Procedure, in addition to all other costs, including fees for certain services of peace officer, including executing or processing an issued arrest warrant, capias, or capias pro fine (Art. 102.011, Code of Criminal Procedure)...\$50; costs attendant to convictions under Chapter 49, Penal Code, and under Chapter 481, Health and Safety Code, to help fund drug court programs established under Chapter 469, Health and Safety Code (Art. 102.0178, Code of Criminal Procedure)...\$50; and costs attendant to convictions under Chapter 49, Penal Code, and under Chapter 481, Health and Safety Code, for certain drug treatment programs and facilities (Art. 102.0179, Code of Criminal Procedure)...\$50. Makes nonsubstantive changes.

(b) Repealer: Section 102.0215 (Additional Court Costs on Conviction: Code of Criminal Procedure), Government Code.

SECTION 5. Amends Section 411.081, Government Code, by adding Subsection (d-1) and amending Subsection (e), as follows:

(d-1) Authorizes the person to petition the court that placed the defendant on community supervision for an order of nondisclosure under this subsection, notwithstanding any other provision of this subchapter, if a person is placed on community supervision under Section 15B, Article 42.12, Code of Criminal Procedure, and subsequently receives a discharge and dismissal under Section 15B(1) (relating to the definition of "drug possession offense"), Article 42.12, Code of Criminal Procedure, and satisfies the requirements of Subsection (e). Requires the court to issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the community supervision after notice to the state and a hearing on whether the person is entitled to file the petition and issuance of the order is in the best interest of justice. Authorizes a criminal justice agency to disclose criminal history record information that is the subject of the order only to other criminal justice agencies, for criminal justice purposes, an agency or entity listed in Subsection (i), or the person who is the subject of the order. Authorizes a person to petition the court that placed the person on community supervision for an order of nondisclosure on payment of a \$28 fee to the clerk of the court in addition to any other fee that generally applies to the filing of a civil petition. Authorizes the payment to be made only after the discharge and dismissal, if the offense for which the person was placed on community supervision was a misdemeanor; or the fifth anniversary if the discharge and dismissal, if the offense for which the person was placed on community supervision was a felony.

(e) Provides that a person is entitled to petition the court under Subsection (d) or (d-1) only if during the period of the community supervision, including deferred adjudication community supervision, for which the order of nondisclosure is requested and during the applicable period described by Subsection (d)(1), (2), or (3) or Subsection (d-1) (1) or (2), as appropriate, the person is not convicted of or placed on deferred adjudication community supervision under Section 5 (Deferred Adjudication; Community Supervision), Article 42.12, Code of Criminal Procedure, for any offense other than an offense under the Transportation Code punishable by fine only or, for purposes of Subsection (d-1), the person is not convicted of or placed on community supervision, including deferred adjudication community supervision, for another drug possession offense described by Section 15B, Article 42.12, Code of Criminal Procedure. Provides that a person is not entitled to petition the court under Subsection (d) or (d-1) if the person was placed on community supervision, including deferred adjudication community supervision, for, or has been previously convicted of or placed on any deferred adjudication for certain offenses. Makes nonsubstantive changes.

SECTION 6. Amends Chapter 509, Government Code, by adding Section 509.013, as follows:

Sec. 509.013. ANNUAL REPORT ON COMMUNITY SUPERVISION WITH DRUG TREATMENT. (a) Requires TDCJ to study and report to the legislature, not later than December 1 of each year, on the effectiveness and financial impact to the state during the preceding state fiscal year of placing defendants on community supervision with drug treatment for a drug possession offense under Section 15B, Article 42.12, Code of Criminal Procedure.

(b) Requires that the study and report include an analysis of the implementation of Section 15B, Article 42.12, Code of Criminal Procedure, including the amount of cost savings the state realizes through that implementation; the adequacy of funding available for operation of the programs described by Section 15B, Article 42.12, Code of Criminal Procedure; the effect of implementing Section 15B, Article 42.12, Code of Criminal Procedure, with respect to certain things; and other effects of or issues with implementing Section 15B, Article 42.12, Code of Criminal Procedure.

(c) Requires the comptroller to verify the findings of TDCJ in analyzing the cost savings realized by the state through the implementation of Section 15B, Article 42.12, Code of Criminal Procedure. Authorizes TDCJ to retain an amount not to exceed 20 percent of the amount of the actual savings attributable to implementation of that section, to the extent that the savings come from funds appropriated to TDCJ and to the extent TDCJ distributed that amount to drug treatment programs or facilities that provide a course of treatment to defendants under that section. Authorizes TDCJ to transfer savings attributable to implementation of that section from the first year of the fiscal biennium to the second year of the fiscal biennium, provided that TDCJ uses the full amount transferred for distribution to drug treatment programs or facilities as described by this subsection.

SECTION 7. (a) Requires the defendant, if adjudged guilty, to be assessed the punishment under Section 15B, Article 42.12, Code of Criminal Procedure, as added by this Act, in a criminal action under Section 481.115 (Offense: Possession of a Substance in Penalty Group 1) or 481.121 (Offense: Possession of Marihuana), Health and Safety Code, pending on or commenced on or after the effective date of this Act, for an offense committed before the effective date, if the defendant meets the eligibility requirements under that section and other law and so elects by written motion filed with the trial court before the sentencing hearing begins.

(b) Provides that if the defendant does not make the election under Subsection (a) of this section, punishment is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 8. Makes application of Article 102.0179, Code of Criminal Procedure, as added by this Act, prospective.

SECTION 9. Provides that the change in law made by Section 411.081(d-1), Government Code, as added by this Act, applies to a person placed on community supervision under Section 15B, Article 42.12, Code of Criminal Procedure, as added by this Act, on or after the effective date of this Act regardless of when the person committed the offense for which the person is placed on community supervision.

SECTION 10. Requires the TDCJ to submit to the legislature the first report required by Section 509.013, Government Code, as added by this Act, not later than December 1, 2010.

SECTION 11. Effective date: September 1, 2009.