

SUBJECT: Revising setting, modifying, reviewing community supervision terms

COMMITTEE: Corrections — committee substitute recommended

VOTE: 6 ayes — Murr, Allen, Bailes, Rodriguez, Sherman, Slaton

0 nays

3 absent — Burrows, Martinez Fischer, White

WITNESSES: For — Terra Tucker, Alliance for Safety and Justice; Mollee Westfall (*Registered, but did not testify*: Daniel Hodge, Alliance for Safety & Justice; Nick Hudson, American Civil Liberties Union of Texas; Amber Beam, Crime Survivors for Safety and Justice; Justin Keener, Doug Deason; Americans for Prosperity; Libre Initiative; Traci Berry, Goodwill Central Texas; Kathy Mitchell, Just Liberty; Penny Rayfield, OnShore Assembly; Megan Herring, Texas Association of Business; Lori Henning, Texas Association of Goodwills; Amelia Casas, Texas Fair Defense Project; Nikki Pressley, Texas Public Policy Foundation; Jennifer Allmon, The Texas Catholic Conference of Bishops; Staley Heatly; Lauren Johnson; Sarah Reyes)

Against — (*Registered, but did not testify*: Julie Wheeler, Travis County Commissioners Court)

On — Leighton Iles, Tarrant County Community Supervision and Corrections Department; (*Registered, but did not testify*: Andrea Bode, Kerr, Bandera and Gillespie County CSCD; Carey Green, Texas Department of Criminal Justice--Community Justice Assistance Division; Eric Knustrom, Texas Probation Association)

BACKGROUND: Under Code of Criminal Procedure art. 42A.701(a), after a defendant has completed one-third of a period of probation or two years, whichever is less, judges may reduce or terminate the probation. Under art. 42A.701(b), after completion of one-half of a probation term or two years, whichever is more, judges must review the defendant's record and consider whether

to reduce or terminate the probation unless the defendant was delinquent in paying costs, fines, fees, or restitution that the defendant has the ability to pay or the defendant has not completed counseling or treatment.

Some have suggested that the Texas community supervision system would be improved by revising the process for judicial review of probation terms, considering individual assessments when determining some conditions of probation, and revising the review of probationers ability to pay fees.

DIGEST: CSHB 385 would revise the statutes governing the modifying and setting of the conditions of community supervision; the consideration of reductions and early terminations of probation; the ways courts consider a probationers financial situation; and guidelines related to time credits for probationers.

Modifying probation. The bill would expand the current purposes for which probation officers could modify probation requirements, if authorized by a judge. Under the bill, the conditions could be modified to prioritize the court-ordered conditions according to the defendant's needs as determined by a risk and needs assessment and the defendants' progress.

Probation conditions. The bill would eliminate a current authorization for probation conditions to include requiring the individual on probation to avoid persons or places of disreputable or harmful character, including anyone, other than a family member, who is an active member of a criminal street gang.

The bill would make the current authorization for judges to order probationers to attend counseling or treatment related to substance abuse conditioned on:

- the results of an evaluation designed to determine appropriate type and level of treatment to address the defendant's alcohol or drug dependency indicated that counseling or treatment was necessary to

protect or restore the community or the victim or to rehabilitate the defendant; or

- the defendant's offense being related to a controlled substance or alcohol.

Ability to pay. CSHB 385 would revise the current requirement that courts consider a defendant's ability to pay before ordering payments related to probation.

Courts would be required to consider whether defendants had sufficient resources or income to make payments. Courts would have to make this consideration:

- before or immediately after placing the defendant on community supervision, and
- during the period of community supervision, before or immediately after the court orders or requires the defendant to make any payments under this chapter.

These requirement would not apply to consideration of a defendant's ability to pay restitution.

Courts would have to reconsider whether the defendant had sufficient resources or income to make the payment at certain hearing held after a probation violation. The bill would establish a process for defendants to request reconsideration of their ability to make payments and request that the payments be satisfied by an alternative methods. The alternative methods could include paying at a later date or with payment plans, waiving the amounts completely or partially, or discharging the amounts through community service.

The Office of Court Administration (OCA) would be required to adopt a form defendants could use to make these requests. CSHB 385 includes a statement that would have to be on the form that includes language informing probationers that they have the right to request that the court review their payments and consider changing or waiving the payments.

Courts could reconsider the waiver of payment on their motion or one from the prosecutor and, after allowing the defendant to present relevant information, could order the defendant to pay all or part of the amount.

Reduction in probation term. Probation officers would have to notify courts if probationers who at the time of a review of their probation were delinquent in paying restitution or had not completed counseling or treatment had later completed either task. After getting the notice, courts would have to review the defendant's record and consider whether to reduce or terminate probation.

After certain reviews of a defendant's probation, judges could reduce or terminate the community supervision or decide not to reduce or terminate the period of community supervision. In making the determination, the judge could consider any relevant factor, including whether the defendant was delinquent in paying court-ordered costs, fines, or fees that the defendant has the ability to pay them. Judges who did not reduce or terminate would have to advise the defendant's supervision officer of the reasons and the supervision officer would have to notify the defendant in writing of the reasons.

Time credits toward probation terms. The bill would revise the conditions under which certain probationers were entitled to time credits toward the completion of their probation terms. The bill would remove a prohibition on credits for those who are delinquent in paying costs, fines, and fees. The bill would expand the list of programs for which defendants are entitled to receive time credits to include 30 days credit for successfully completing faith-based, volunteer, or community-based programs ordered or approved by the court. This would apply only to defendants placed on probation on or after the bill's effective date.

Other provisions. The bill would allow local probation departments to develop the continuum of care treatment plan currently required when a judge sentences a probationer to a term in a substance abuse felony punishment facility.

The bill would take effect September 1, 2021, and would apply to individuals on community supervision on or after that date.