

BILL ANALYSIS

Senate Research Center
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H.B. 385
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Probation is often used as an alternative to incarceration, and it can be a cost-effective and successful approach to stopping future recidivism. But Texas's probation system is not working as effectively as it could be. While the probation system was initially designed as a sentencing option for low-level offenses, people convicted of non-violent felonies like drug possession have instead been directly sentenced to incarceration at a higher cost to taxpayers. The current system challenges have driven too many people to choose imprisonment over probation. In one Texas county alone, one in three defendants in the 7,000 cases, which included a plea agreement that offered community supervision, opted for incarceration. Texas has an opportunity to make communities safer by enacting reforms in Texas that will update its probation system to improve public safety and cost efficiency.

H.B. 385 aims to improve the probation system in Texas by strengthening judicial review, aligning conditions of community supervision with individual risk assessments, and providing guidance to judges on the ability to pay determinations so people can satisfactorily complete probation and creating a time credit for participation in faith-based programs.

These changes are intended to reduce arbitrary conditions of probations, align conditions with the risks and needs of defendants to produce better safety outcomes, and decrease the number of people opting out of probation and into costly prisons.

H.B. 385 amends current law relating to conditions of community supervision and procedures applicable to the reduction or termination of a defendant's period of community supervision.

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 Article 42A.052(a), Code of Criminal Procedure, as follows:

(a) Authorizes a judge who places a defendant on community supervision to 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, rather than for the limited purpose, of:

(1) creates this subdivision from existing text and makes a nonsubstantive change;
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. Amends Article 42A.301(b), Code of Criminal Procedure, as follows:

(b) Authorizes that conditions of community supervision include conditions requiring the defendant to meet certain criteria, including to 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 (DSHS), provided that, notwithstanding Subsection (a) (relating to requiring a judge to determine conditions of community supervision after considering the results of a risk and needs assessment) or any other law, a judge is authorized to only require a defendant to attend counseling sessions or participate in treatment if 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 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. Deletes existing text authorizing conditions of community supervision to include conditions requiring the defendant to 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. Makes nonsubstantive changes.

SECTION 3. Amends Article 42A.303(e), Code of Criminal Procedure, to require DSHS or the community supervision and corrections department supervising the defendant, rather than to require DSHS, to develop the continuum of care treatment plan described by Subsection (d)(1) (relating to a drug or alcohol abuse continuum of care treatment plan for a defendant required to serve a term of confinement and treatment in a substance abuse felony punishment facility).

SECTION 4. Amends Articles 42A.403(d-1) and (e), Code of Criminal Procedure, as follows:

(d-1) Requires the judge to waive the educational program requirement if the defendant successfully completes education, rather than successfully completes equivalent education, at a residential treatment facility under Article 42A.4045 (Alternative to Educational Program: Substance Abuse Treatment Facility).

(e) Makes a conforming change to this subsection.

SECTION 5. Amends Articles 42A.404(b-1) and (c), Code of Criminal Procedure, to make conforming changes.

SECTION 6. Amends Articles 42A.4045(a) and (b), Code of Criminal Procedure, to make conforming changes.

SECTION 7. Amends Articles 42A.406(a) and (b-1), Code of Criminal Procedure, to make conforming changes.

SECTION 8. Amends Article 42A.655, Code of Criminal Procedure, as follows:

Art. 42A.655. ABILITY TO PAY. (a) Creates this subsection from existing text and makes no further changes.

(b) Requires the court, notwithstanding any other law and subject to Subsection (c), to consider whether the defendant has sufficient resources or income to make any payments under Chapter 42A (Community Supervision), 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 (Monthly Reimbursement Fee), or any other payment or cost authorized or required under Chapter 42A. Requires the court to consider under this subsection whether a defendant has sufficient resources or income before or immediately after placing the defendant on community supervision, including deferred adjudication 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 Chapter 42A.

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

(d) Requires the court, notwithstanding any other law, if a defendant is ordered to make a payment included under Subsection (b), to reconsider whether the defendant has sufficient resources or income to make the payment at any hearing held under Article 42A.751(d) (relating to a hearing on an alleged violation of a condition of community supervision).

(e) Authorizes a defendant who is ordered to make a payment included under Subsection (b) to, 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 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). Requires the court, on receipt of the statement, to 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. Requires the court, 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, to determine whether all or a portion of the payment should be satisfied by an alternative method provided under Subsection (f). Requires the court to 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) Requires the court, 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), to 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 (Waiver of Payment of Fines and Costs for Certain Defendants and for Children) or 45.0491 (Waiver of Payment of Fines and Costs for Certain Defendants and for Children);

(3) discharged by performing community service under Article 42A.304 (Community Service) or 45.049 (Community Service in Satisfaction of Fine or Costs), as applicable; or

(4) satisfied through any combination of methods under Subdivisions (1)-(3).

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

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

(2) a certain statement at the top of the form, in bold type and in any language in which the form is produced, as set forth in this subsection.

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

(i) Provides that this subsection applies only to a defendant whose payments are wholly or partly waived under this article. Authorizes the court, at any time during the defendant's period of community supervision, including deferred adjudication community supervision, on the court's own motion or by motion of the attorney representing the state, to reconsider the waiver of the payment. Authorizes the court, after providing written notice to the defendant and an opportunity for the defendant to present information relevant to the defendant's ability to pay, to 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. Amends Article 42A.701, Code of Criminal Procedure, by amending Subsection (b) and adding Subsections (b-1), (b-2), and (d-1), as follows:

(b) Requires the judge, on completion of one-half of the original community supervision period or two years of community supervision, whichever is more, to 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 restitution that the defendant has the ability to pay, rather than in paying required costs, fines, fees, or restitution, that the defendant has the ability to pay; or

(2) makes no changes to this subdivision.

(b-1) Requires the supervision officer to 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. Requires the judge on receipt of the notice to review the defendant's record and consider whether to reduce or terminate the period of community supervision.

(b-2) Authorizes the judge, following a review conducted under Subsection (b) or (b-1), to reduce or terminate the period of community supervision or decide not to reduce or terminate the period of community supervision. Authorizes the judge, in making the determination, to 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) Provides that if the judge does not terminate the defendant's period of community supervision after conducting a review under this article:

(1) the judge is required to 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 is required to promptly advise the defendant in writing of the reasons provided under Subdivision (1).

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

(a) Deletes existing text providing that Article 42A.702 (Time Credits for Completion of Certain Conditions of Community Supervision) applies only to a defendant who is not delinquent in paying required costs, fines, or fees. Makes nonsubstantive changes.

(d) Provides that 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:

(1)-(5) makes nonsubstantive changes to these subdivisions; and

(6) any other faith-based, volunteer, or community-based program ordered or approved by the court: 30 days.

SECTION 11. Requires OCA, not later than January 1, 2022, to adopt the form required by Article 42A.655(g), Code of Criminal Procedure, as added by this Act.

SECTION 12. (a) Provides that 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 of this Act.

(b) Provides that 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. Effective date: September 1, 2021.