

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1909
By: Ellis et al.
Criminal Justice
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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. 1909 authorizes many of these alternatives in the Texas criminal justice system. The bill requires nonviolent drug offenders with no previous conviction other than drug-related offenses to be placed on probation and given personalized treatment, rather than incarcerated, unless a judge finds that the individual is a danger to the community or not fit for treatment. A parolee, under similar conditions, would also be subject to other forms of punishment other than re-incarceration for violating a drug-related condition of parole under this bill. It also authorizes a judge to require an individual to comply with a range on conditions of probation in addition to requiring treatment, including vocational training, family counseling, literacy training, and community service, thereby giving judges the ability to select a mix of programs and monitoring conditions appropriate to each individual offender. The bill provides for a judge to use a number of progressively intensifying sanctions if the judge determines the individual is not amenable to treatment. The bill also authorizes an individual who successfully completes the assigned treatment program to petition the court for nondisclosure of the offense.

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 Section 15(a)(2), Article 42.12, Code of Criminal Procedure, to authorize the judge to suspend the imposition of the sentence and place the defendant on community supervision or order the sentence to be executed on conviction of state jail felony punished under Section 12.35(a) (imprisonment in a state jail for 180 days to two years), Penal Code. Deletes existing text excepting a state jail felony listed in Subdivision (1) (drug-related felonies and fraud regarding prescriptions for controlled substances).

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 a sentence and place a defendant convicted of a drug possession offense on community supervision (supervised defendant) unless certain conditions set forth in this subsection exist related to, among others, the danger an offender poses to others, previous convictions for certain offenses, multiple convictions, or the failure to complete a drug treatment program or programs.

(c) Requires a judge who determines under Subsection (b) that a defendant is a danger to the safety of others or is unlikely to benefit from participation in a drug

treatment program to enter the reasons for that determination in the proceeding record.

(d) Authorizes the judge to suspend in whole or in part the imposition of any fine imposed on a conviction of a defendant.

(e) Requires a court granting community supervision under this section to require the supervised defendant to meet certain conditions set forth in this subsection related to an evaluation and possible treatment of the defendant.

(f) Authorizes a course of treatment under Subsection (e)(2) to include certain types of treatment, therapies, and courses as set forth in this subsection.

(g) Requires the judge, in referring a defendant to a course of treatment in a program described by Subsection (e)(2) and imposing conditions for participation in the program, to order the defendant to participate in the level of care that is the least restrictive and most cost-effective to achieve the outcome objectives prescribed by the program and the recommendations of a treatment professional.

(h) Authorizes a court granting community supervision under this section to require as a condition of community supervision, in addition to the drug treatment program and other appropriate conditions, that the supervised defendant participate in other activities set forth in this subsection.

(i) Authorizes the judge, if a supervised defendant violates the terms of that supervision by committing another drug possession offense or by violating any drug-related condition of supervision, to take certain actions set forth in this subsection regarding the revocation of supervision, notwithstanding Section 21(b) (regarding the revocation of supervision).

(j) Requires a judge who modifies a defendant's conditions of supervision in response to the commission of another drug possession offense or violation of a drug-related condition of supervision to consider imposing one or more additional conditions of supervision as set forth in this subsection.

(k) Requires a judge, in making a determination under this section as to whether a defendant is unlikely to benefit from participation in a drug treatment program, to consider certain previous actions of the defendant as set forth in this subsection.

(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 a drug treatment program. 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) if the judge, after providing notice and giving attorneys for the defendant and state an opportunity to be heard, determines that the defendant substantially complied with the supervision conditions and successfully completed the drug treatment program.

SECTION 3. Amends Section 411.081, Government Code, by adding Subsection (d-1) and amending Subsection (e), as follows:

(d-1) Authorizes a defendant, if placed on community supervision under Section 15B (Community Supervision for Possession of Controlled Substance), Article 42.12, Code of Criminal Procedure, and who subsequently receives a discharge and dismissal under Section 15B(k) (due to the successful completion of a term of community supervision), Article 42.12, Code of Criminal Procedure, and satisfies the requirements of Subsection (e), 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, to petition the sentencing court for an order of nondisclosure under this subsection, notwithstanding any other provision of this subchapter (Criminal History Record Information). Requires the court, 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, to issue the order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the supervision. Authorizes a criminal justice agency to disclose such information 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 the payment to be made only on or after the discharge and dismissal.

(e) Entitles a person to petition the court under Subsection (d-1), in addition to certain other law, only if prior to discharge and dismissal or during the applicable period described by certain law, not including Subsection (d)(1) (the period immediately after a discharge or dismissal for a misdemeanor), as appropriate, the person is not convicted or placed on deferred adjudication supervision under Section 5 (Deferred Adjudication; Community Supervision), Article 42.12, Code of Criminal Procedure, for any offense other than another drug possession offense. Makes a conforming change.

SECTION 4. Amends Section 508.283(a), Government Code, to make conforming changes.

SECTION 5. Amends Subchapter I, Chapter 508, Government Code, by adding Section 508.2835, as follows:

Sec. 508.2835. CERTAIN DRUG-RELATED CHARGES: LIMITATIONS ON REVOCATION AND CONDITIONS ON MODIFICATION. (a) Defines “drug possession offense.”

(b) Prohibits a parole panel from revoking the parole or mandatory supervision of a releasee based on the commission of a drug possession offense or a violation of a drug-related condition of release unless certain conditions set forth in this subsection are met.

(c) Requires a parole panel that determines a defendant is a danger to the safety of others to enter the reasons for that determination in the proceeding record.

(d) Requires a parole panel that modifies a releasee's conditions of release in response to the releasee's commission of a new drug possession offense or a violation of a drug-related condition of release to modify the conditions as necessary to require that the releasee participate in a prescribed course of treatment in a drug treatment program licensed or approved by the Department of State Health Services, which may include certain treatments, therapies, or courses, and to pay a fee to cover certain costs based on the releasee's ability to pay.

(e) Requires a parole panel that modifies a releasee's conditions of supervision under Subsection (d) to consider imposing one or more additional conditions of supervision as set forth in this subsection.

SECTION 6. Amends Subchapter J, Chapter 508, Government Code, by adding Section 508.325, as follows:

Sec. 508.325. ANNUAL REPORT ON PAROLE AND MANDATORY SUPERVISION WITH DRUG TREATMENT. Requires the Texas Department of Criminal Justice (TDCJ) to study and report to the legislature on the effectiveness and financial impact to the state during the preceding state fiscal year of implementing Section 508.2835, not later than November 1 of each year. Sets forth the information of which the study and report is required to include an analysis.

SECTION 7. Amends Chapter 509, Government Code, by adding Section 509.016, as follows:

Sec. 509.016. ANNUAL REPORT ON COMMUNITY SUPERVISION WITH DRUG TREATMENT. Requires TDCJ to study and report to the legislature 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 not later than November 1 of each year. Sets forth the information of which the study and report is required to include an analysis.

SECTION 8. Repealer: Sections 15(a)(1), (c)(2), and (c)(3) (Procedures Relating to State Jail Felony Community Supervision), Article 42.12, Code of Criminal Procedure

SECTION 9. (a) Requires the defendant, in a criminal action under Section 481.115, 481.1151, 481.116, 481.117, 481.118, 481.119(b), 481.121, 483.041(a), or 485.031, Health and Safety Code, pending or commenced on or after this Act's effective date, for an offense committed before the effective date, if adjudged guilty, to be assessed the punishment under Section 15B, Article 42.12, Code of Criminal Procedure, as added by this Act, 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 that the former law is continued in effect for that purpose.

SECTION 10. 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 Act's effective date regardless of when the person committed the offense for which the person is placed on community supervision.

SECTION 11. Provides that the changes in law made by this Act to Chapter 508, Government Code, apply to a person released on parole or mandatory supervision regardless of the date of release.

SECTION 12. Requires TDCJ to submit the first reports required by Sections 508.325 and 509.016, Government Code, as added by this Act, to the legislature not later than November 1, 2008.

SECTION 13. Effective date: September 1, 2007.