

BILL ANALYSIS

Senate Research Center
81R2257 PEP-F

S.B. 1118
By: Ellis et al.
Criminal Justice
4/10/2009
As Filed

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.

S.B. 1118 expands many of these alternatives in the Texas criminal justice system. The bill requires nonviolent drug offenders with no previous convictions other than a drug possession offense or certain offenses under the Transportation Code to be placed on community supervision and given personalized treatment, rather than incarcerated, unless a judge finds that the individual is a danger to the community, possessed the drugs with the intention to sell, or is found not fit for treatment.

As proposed, S.B. 1118 authorizes a court to require an individual to comply with a range of conditions of community supervision 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 also authorizes certain individuals who successfully complete the assigned treatment program and successfully complete the term of community supervision 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 a 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 on conviction of a state jail felony. Deletes existing text providing that a state jail felony listed in Subdivision (1) is an exception to this subdivision.

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 the judge determines by a preponderance of the evidence that the defendant is a danger to the safety of others, the defendant has been previously convicted of an offense other than a drug possession offense 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; the defendant is convicted in the same proceeding of an additional offense, other than a drug possession offense 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; or 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 drug treatment program, and the defendant has previously been convicted on two or more occasions of a drug possession offense 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 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 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) to include certain treatments, therapies, and education.

(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 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 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 participation in a drug treatment program.

(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 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 drug treatment program.

(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) (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 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 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 4. 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 the Texas Department of Criminal Justice (TDCJ) to study and report to the legislature, not later than November 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 the study to include an analysis of the implementation of Section 15B, Article 42.12, Code of Criminal Procedure; 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.

SECTION 5. Repealers: Sections 15(a)(1) (relating to the suspension of the sentence and placement of the defendant on community supervision), (c)(2) (relating to compliance by the defendant with substance abuse treatment conditions), and (3) (relating to imposition of conditions required to complete the period of community supervision), Article 42.12, Code of Criminal Procedure.

SECTION 6. (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 Sections 481.115 (Offense: Possession of a Substance in Penalty Group 1), 481.1151 (Offense: Possession of a Substance in Penalty Group 1-A), 481.116 (Offense: Possession of a Substance in Penalty Group 2), 481.117 (Offense: Possession of a Substance in Penalty Group 3), 481.118 (Offense: Possession of a Substance in Penalty Group 4), 481.119(b) (relating to the intentional possession of a controlled substance listed in a schedule by an action of the commissioner under this chapter but not listed in a penalty group), 481.121 (Offense: Possession of Marijuana), 483.041(a) (Possession of Dangerous Drug), or 485.031 (Possession and Use), 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 7. 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 8. 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 November 1, 2010.

SECTION 9. Effective date: September 1, 2009.