

1-1 By: Hernandez (Senate Sponsor - Huffman) H.B. No. 2758
 1-2 (In the Senate - Received from the House April 24, 2019;
 1-3 May 1, 2019, read first time and referred to Committee on Criminal
 1-4 Justice; May 10, 2019, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;
 1-6 May 10, 2019, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8 Whitmire	X			
1-9 Huffman	X			
1-10 Buckingham	X			
1-11 Flores			X	
1-12 Hughes			X	
1-13 Miles	X			
1-14 Perry	X			

1-16 COMMITTEE SUBSTITUTE FOR H.B. No. 2758 By: Whitmire

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to changing the eligibility of persons charged with
 1-20 certain offenses to receive community supervision, including
 1-21 deferred adjudication community supervision.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Article 42A.054, Code of Criminal Procedure, is
 1-24 amended by amending Subsection (a) and adding Subsection (e) to
 1-25 read as follows:

1-26 (a) Article 42A.053 does not apply to a defendant adjudged
 1-27 guilty of an offense under:

1-28 (1) Section 15.03, Penal Code, if the offense is
 1-29 punishable as a felony of the first degree;

1-30 (2) Section 19.02, Penal Code (Murder);

1-31 (3) Section 19.03, Penal Code (Capital Murder);

1-32 (4) Section 20.04, Penal Code (Aggravated
 1-33 Kidnapping);

1-34 (5) Section 20A.02, Penal Code (Trafficking of
 1-35 Persons);

1-36 (6) Section 20A.03, Penal Code (Continuous
 1-37 Trafficking of Persons);

1-38 (7) Section 21.11 [~~21.11(a)(1)~~], Penal Code
 1-39 (Indecency with a Child);

1-40 (8) [~~7~~] Section 22.011, Penal Code (Sexual
 1-41 Assault);

1-42 (9) [~~8~~] Section 22.021, Penal Code (Aggravated
 1-43 Sexual Assault);

1-44 (10) [~~9~~] Section 22.04(a)(1), Penal Code (Injury to
 1-45 a Child, Elderly Individual, or Disabled Individual), if:

1-46 (A) the offense is punishable as a felony of the
 1-47 first degree; and

1-48 (B) the victim of the offense is a child;

1-49 (11) [~~10~~] Section 29.03, Penal Code (Aggravated
 1-50 Robbery);

1-51 (12) [~~11~~] Section 30.02, Penal Code (Burglary), if:

1-52 (A) the offense is punishable under Subsection
 1-53 (d) of that section; and

1-54 (B) the actor committed the offense with the
 1-55 intent to commit a felony under Section 21.02, 21.11, 22.011,
 1-56 22.021, or 25.02, Penal Code;

1-57 (13) Section 43.04, Penal Code (Aggravated Promotion
 1-58 of Prostitution);

1-59 (14) [~~12~~] Section 43.05, Penal Code (Compelling
 1-60 Prostitution);

2-1 (15) [~~13~~] Section 43.25, Penal Code (Sexual
 2-2 Performance by a Child); or
 2-3 (16) [~~14~~] Chapter 481, Health and Safety Code, for
 2-4 which punishment is increased under:
 2-5 (A) Section 481.140 of that code (Use of Child in
 2-6 Commission of Offense); or
 2-7 (B) Section 481.134(c), (d), (e), or (f) of that
 2-8 code (Drug-free Zones) if it is shown that the defendant has been
 2-9 previously convicted of an offense for which punishment was
 2-10 increased under any of those subsections.

2-11 (e) Notwithstanding Subsection (a), with respect to an
 2-12 offense committed by a defendant under Section 43.04 or 43.05,
 2-13 Penal Code, a judge may place the defendant on community
 2-14 supervision as permitted by Article 42A.053 if the judge makes a
 2-15 finding that the defendant committed the offense solely as a victim
 2-16 of an offense under Section 20A.02, 20A.03, 43.03, 43.04, or 43.05,
 2-17 Penal Code.

2-18 SECTION 2. Article 42A.056, Code of Criminal Procedure, is
 2-19 amended to read as follows:

2-20 Art. 42A.056. LIMITATION ON JURY-RECOMMENDED COMMUNITY
 2-21 SUPERVISION. A defendant is not eligible for community supervision
 2-22 under Article 42A.055 if the defendant:

- 2-23 (1) is sentenced to a term of imprisonment that
- 2-24 exceeds 10 years;
- 2-25 (2) is convicted of a state jail felony for which
- 2-26 suspension of the imposition of the sentence occurs automatically
- 2-27 under Article 42A.551;
- 2-28 (3) is adjudged guilty of an offense under Section
- 2-29 19.02, Penal Code;
- 2-30 (4) is convicted of an offense under Section 21.11
- 2-31 [~~21.11(a)(1)~~], 22.011, or 22.021, Penal Code, if the victim of the
- 2-32 offense was younger than 14 years of age at the time the offense was
- 2-33 committed;
- 2-34 (5) is convicted of an offense under Section 20.04,
- 2-35 Penal Code, if:
 - 2-36 (A) the victim of the offense was younger than 14
 - 2-37 years of age at the time the offense was committed; and
 - 2-38 (B) the actor committed the offense with the
 - 2-39 intent to violate or abuse the victim sexually;
 - 2-40 (6) is convicted of an offense under Section 20A.02,
 - 2-41 20A.03, 43.04, 43.05, or 43.25, Penal Code; or
 - 2-42 (7) is convicted of an offense for which punishment is
 - 2-43 increased under Section 481.134(c), (d), (e), or (f), Health and
 - 2-44 Safety Code, if it is shown that the defendant has been previously
 - 2-45 convicted of an offense for which punishment was increased under
 - 2-46 any of those subsections.

2-47 SECTION 3. Article 42A.102, Code of Criminal Procedure, is
 2-48 amended to read as follows:

2-49 Art. 42A.102. ELIGIBILITY FOR DEFERRED ADJUDICATION
 2-50 COMMUNITY SUPERVISION. (a) Subject to Subsection (b), a [A] judge
 2-51 may place on deferred adjudication community supervision a
 2-52 defendant charged with an offense under Section 21.11, 22.011, or
 2-53 22.021, Penal Code, regardless of the age of the victim, or a
 2-54 defendant charged with a felony described by Article 42A.453(b)
 2-55 only if the judge makes a finding in open court that placing the
 2-56 defendant on deferred adjudication community supervision is in the
 2-57 best interest of the victim. The failure of the judge to make a
 2-58 finding under this subsection is not grounds for the defendant to
 2-59 set aside the plea, deferred adjudication, or any subsequent
 2-60 conviction or sentence.

2-61 (b) In all other cases, the judge may grant deferred
 2-62 adjudication community supervision unless:

- 2-63 (1) the defendant is charged with an offense:
 - 2-64 (A) under Section 20A.02 or 20A.03 or Sections
 - 2-65 49.04-49.08, Penal Code; or
 - 2-66 (B) for which punishment may be increased under
 - 2-67 Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it
 - 2-68 is shown that the defendant has been previously convicted of an
 - 2-69 offense for which punishment was increased under any one of those

3-1 subsections;

3-2 (2) the defendant:

3-3 (A) is charged with an offense under Section

3-4 21.11, 22.011, ~~or~~ 22.021, 43.04, or 43.05, Penal Code, regardless

3-5 of the age of the victim, or a felony described by Article

3-6 42A.453(b), other than a felony described by Subdivision (1)(A) or

3-7 (3)(B) of this subsection; and

3-8 (B) has previously been placed on community

3-9 supervision for an offense under Paragraph (A);

3-10 (3) the defendant is charged with an offense under:

3-11 (A) Section 21.02, Penal Code; or

3-12 (B) Section 22.021, Penal Code, that is

3-13 punishable under Subsection (f) of that section or under Section

3-14 12.42(c)(3) or (4), Penal Code; or

3-15 (4) the defendant is charged with an offense under

3-16 Section 19.02, Penal Code, except that the judge may grant deferred

3-17 adjudication community supervision on determining that the

3-18 defendant did not cause the death of the deceased, did not intend to

3-19 kill the deceased or another, and did not anticipate that a human

3-20 life would be taken.

3-21 SECTION 4. Section 773.0614(c), Health and Safety Code, is

3-22 amended to read as follows:

3-23 (c) A certificate holder's certificate shall be revoked if

3-24 the certificate holder has been convicted of or placed on deferred

3-25 adjudication community supervision or deferred disposition for:

3-26 (1) an offense listed in Article 42A.054(a)(2), (3),

3-27 (4), ~~(6),~~ (7), (8), (9), (11) ~~(10)~~, or (16) ~~(14)~~, Code of

3-28 Criminal Procedure; or

3-29 (2) an offense, other than an offense described by

3-30 Subdivision (1), committed on or after September 1, 2009, for which

3-31 the person is subject to registration under Chapter 62, Code of

3-32 Criminal Procedure.

3-33 SECTION 5. Section 773.06141(a), Health and Safety Code, is

3-34 amended to read as follows:

3-35 (a) The department may suspend, revoke, or deny an emergency

3-36 medical services provider license on the grounds that the

3-37 provider's administrator of record, employee, or other

3-38 representative:

3-39 (1) has been convicted of, or placed on deferred

3-40 adjudication community supervision or deferred disposition for, an

3-41 offense that directly relates to the duties and responsibilities of

3-42 the administrator, employee, or representative, other than an

3-43 offense for which points are assigned under Section 708.052,

3-44 Transportation Code;

3-45 (2) has been convicted of or placed on deferred

3-46 adjudication community supervision or deferred disposition for an

3-47 offense, including:

3-48 (A) an offense listed in Article 42A.054(a)(2),

3-49 (3), (4), ~~(6),~~ (7), (8), (9), (11) ~~(10)~~, or (16) ~~(14)~~, Code of

3-50 Criminal Procedure; or

3-51 (B) an offense, other than an offense described

3-52 by Subdivision (1), for which the person is subject to registration

3-53 under Chapter 62, Code of Criminal Procedure; or

3-54 (3) has been convicted of Medicare or Medicaid fraud,

3-55 has been excluded from participation in the state Medicaid program,

3-56 or has a hold on payment for reimbursement under the state Medicaid

3-57 program under Subchapter C, Chapter 531, Government Code.

3-58 SECTION 6. The changes in law made by this Act apply only to

3-59 an offense committed on or after the effective date of this Act. An

3-60 offense committed before the effective date of this Act is governed

3-61 by the law in effect on the date the offense was committed, and the

3-62 former law is continued in effect for that purpose. For purposes of

3-63 this section, an offense was committed before the effective date of

3-64 this Act if any element of the offense occurred before that date.

3-65 SECTION 7. The Texas Department of Criminal Justice is

3-66 required to implement a provision of this Act only if the

3-67 legislature appropriates money specifically for that purpose. If

3-68 the legislature does not appropriate money specifically for that

3-69 purpose, the department may, but is not required to, implement a

4-1 provision of this Act using other appropriations available for that
4-2 purpose.

4-3 SECTION 8. This Act takes effect September 1, 2019.

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