

BILL ANALYSIS

C.S.H.B. 1790
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the state jail system was originally designed to restructure and improve the state criminal justice and corrections systems by redirecting individuals with lower-level offenses out of overcrowded prisons and back into communities through community supervision, thus reserving space in prisons for those who pose a greater risk to public safety. However, interested parties report that, as a result of various statutory changes over the years, tens of thousands of Texans, primarily those convicted of minor drug or property offenses, have been sentenced directly to confinement in a state jail with little or no access to treatment or support typically provided in community supervision. In addition, reports indicate that incarceration in state jails usually results in higher recidivism rates and higher costs than incarceration alternatives such as community supervision.

The parties contend that offering offenders charged with a state jail felony the opportunity to receive a conviction for a lower-grade offense will encourage more offenders to opt for community supervision, providing more rehabilitative and treatment opportunities and a better chance for reintegration into society. To save taxpayer dollars, enhance public safety through lower recidivism, increase self-responsibility, and strengthen communities, C.S.H.B. 1790 provides for the modification of the record of conviction of a state jail felony to a Class A misdemeanor for certain eligible defendants who satisfy all conditions of community supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1790 amends the Code of Criminal Procedure to require a judge who places a defendant on community supervision following conviction of a state jail felony, on completion of two-thirds of the community supervision period, to review the defendant's record and consider whether to modify the record of conviction to reflect a conviction for a Class A misdemeanor in lieu of a state jail felony. The bill requires a judge who places a defendant on community supervision following a state jail felony conviction to inform the defendant of that modification procedure.

C.S.H.B. 1790 requires the judge to dispose of the case in the manner provided by statutory provisions relating to the reduction or termination of community supervision, except that the bill requires the judge, on discharge of the defendant, to modify the record of conviction if:

- the offense for which the defendant was placed on community supervision was not an offense involving improper sexual activity by certain officials or employees of a correctional facility with a person in custody, an offense of driving while intoxicated with a child passenger, an offense against the person, an offense of failure to comply with sex

offender registration requirements, or an offense involving family violence;

- the defendant has satisfactorily fulfilled all the conditions of community supervision, including the payment of all required restitution, and is not delinquent on the payment of any fines, costs, and fees that the defendant has the ability to pay;
- promptly after review of the defendant's record, the judge provides written notice of the right to request a hearing to the attorney representing the state and the defendant or, if the defendant has an attorney, the defendant's attorney; and
- before the expiration of the term of community supervision, a hearing is not requested by either party or a hearing is held at which the judge finds that a modification of the record of conviction is in the best interest of justice.

C.S.H.B. 1790 prohibits a judge who modifies a record of conviction from modifying the name of the state jail felony offense for which the judge placed the defendant on community supervision. The bill specifies that a defendant whose record of conviction is modified is not considered to have been convicted of a felony with respect to the modified offense for any purpose other than for the purpose of providing proof of the conviction or plea of guilty to the judge should the defendant again be convicted of any criminal offense.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1790 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 15, Article 42.12, Code of Criminal Procedure, is amended by adding Subsections (l) and (m) to read as follows:

(l) A judge who places a defendant on community supervision following conviction of a state jail felony shall inform the defendant of the procedure provided for a modification of the order of conviction under this subsection. Not later than the 70th day before the date on which the defendant will complete the term of community supervision imposed by the judge, the defendant may request the judge to modify the record of conviction to reflect a conviction for a Class A misdemeanor in lieu of a state jail felony. The judge shall dispose of the case in the manner provided by Section 20, except that the judge, on discharge of the defendant, shall grant the defendant's request to modify the record of conviction, subject to Subsection (m), if:

(1) the offense for which the defendant was

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 15, Article 42.12, Code of Criminal Procedure, is amended by adding Subsections (l) and (m) to read as follows:

(l) A judge who places a defendant on community supervision following conviction of a state jail felony shall inform the defendant of the procedure provided for a modification of the order of conviction under this subsection. On completion of two-thirds of the original community supervision period, the judge shall review the defendant's record and consider whether to modify the record of conviction to reflect a conviction for a Class A misdemeanor in lieu of a state jail felony. The judge shall dispose of the case in the manner provided by Section 20, except that the judge, on discharge of the defendant, shall modify the record of conviction, subject to Subsection (m), if:

(1) the offense for which the defendant was

placed on community supervision was not an offense under Title 5, Penal Code;

(2) the defendant has satisfactorily fulfilled all the conditions of community supervision, including the payment of all required restitution, and is not delinquent on the payment of any fines, costs, and fees that the defendant has the ability to pay;

(3) on receipt of a request under this subsection, the judge provides written notice of the right to request a hearing to the attorney representing the state and the defendant or, if the defendant has an attorney, the defendant's attorney; and

(4) before the expiration of the term of community supervision:

(A) a hearing is not requested by either party; or

(B) a hearing is held at which the judge finds that a modification of the record of conviction is in the best interest of justice.

(m) A judge who modifies a record of conviction under Subsection (l) may not modify the name of the state jail felony offense for which the judge placed the defendant on community supervision. A defendant whose record of conviction is modified under Subsection (l) is not considered to have been convicted of a felony with respect to the modified offense for any purpose other than the purpose described by Section 20(a)(1).

SECTION 2. The change in law made by this Act applies only to a defendant who is placed on community supervision on or after the effective date of this Act, regardless of whether the offense for which the defendant is placed on community supervision is committed before, on, or after that date.

SECTION 3. This Act takes effect September 1, 2013.

placed on community supervision was not an offense:

(A) under Section 39.04(a)(2), Section 49.045, or Title 5, Penal Code;

(B) under Article 62.102 of this code; or

(C) involving family violence, as defined by Section 71.004, Family Code;

(2) the defendant has satisfactorily fulfilled all the conditions of community supervision, including the payment of all required restitution, and is not delinquent on the payment of any fines, costs, and fees that the defendant has the ability to pay;

(3) promptly after review of the defendant's record, the judge provides written notice of the right to request a hearing to the attorney representing the state and the defendant or, if the defendant has an attorney, the defendant's attorney; and

(4) before the expiration of the term of community supervision:

(A) a hearing is not requested by either party; or

(B) a hearing is held at which the judge finds that a modification of the record of conviction is in the best interest of justice.

(m) A judge who modifies a record of conviction under Subsection (l) may not modify the name of the state jail felony offense for which the judge placed the defendant on community supervision. A defendant whose record of conviction is modified under Subsection (l) is not considered to have been convicted of a felony with respect to the modified offense for any purpose other than the purpose described by Section 20(a)(1).

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.