

BILL ANALYSIS

C.S.H.B. 385
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Corrections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There have been calls 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 ability to pay determinations so people can satisfactorily complete probation. C.S.H.B. 385 makes these improvements.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory 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. 385 amends the Code of Criminal Procedure to revise provisions relating to the conditions of community supervision and procedures applicable to the reduction or termination of a defendant's community supervision.

Discretionary Conditions of Community Supervision

C.S.H.B. 385 makes the following changes with regard to the discretionary conditions of community supervision that may be imposed on a defendant:

- removes the condition requiring a defendant to avoid persons or places of disreputable or harmful character; and
- limits the condition requiring a defendant 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) to a defendant for whom:
 - 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 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.

Modifying Conditions of Supervision

C.S.H.B. 385 expands the limited purposes for which a judge who places a defendant on community supervision may authorize the defendant's supervision officer or a magistrate

appointed by the criminal district courts in the county to modify the conditions of community supervision to include prioritizing the conditions ordered by the court according to the defendant's needs as determined by a risk and needs assessment and the defendant's progress under supervision.

Continuum of Care Treatment Plan

C.S.H.B. 385 provides the option for a continuum of care treatment plan required as a condition of community supervision for a defendant released from a substance abuse felony punishment facility to be developed by the community supervision and corrections department supervising the defendant as an alternative to the plan being developed by DSHS.

Alternative Education at Substance Abuse Treatment Facilities

C.S.H.B. 385 removes the specification that the alternative education program DSHS is required to approve for purposes of its provision at substance abuse treatment facilities is equivalent to the educational program for certain intoxication offenders or for certain repeat intoxication offenders.

Ability to Pay

With respect to the statutory requirement for a court to consider the ability of a defendant placed on community supervision to pay before ordering the defendant to make any payments, C.S.H.B. 385 specifies that the court must consider whether the defendant has sufficient resources or income to make any payments, 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, monthly reimbursement fee payment, or any other payment or cost authorized or required relating to community supervision. The court must make this consideration at the following times:

- 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.

If the defendant is ordered to make a payment, the court must reconsider whether the defendant has sufficient resources or income to make the payment at any hearing for an alleged violation of a condition of community supervision. The bill's provisions relating to a court's consideration of a defendant's ability to pay do not apply with respect to restitution.

C.S.H.B. 385 authorizes a defendant who is ordered to make a payment, 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, to 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 established by the bill. The bill provides for the court 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 and, if that is the case, to determine whether all or a portion of the payment should be satisfied by an alternative method. The court must notify the defendant and the state's attorney of the court's decision regarding whether to allow all or a portion of the payment to be satisfied by an alternative method.

C.S.H.B. 385 requires a court that determines 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 ordered by the court, to determine whether all or a portion of the payment should be:

- required to be paid at a later date or in a specified portion at designated intervals;

- waived completely or partially;
- discharged by performing certain community service; or
- satisfied through any combination of those methods.

If the payment is wholly or partly waived, the court may reconsider the waiver at any time during the period of supervision on the court's own motion or by motion of the state's attorney. The bill 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.

C.S.H.B. 385 requires the Office of Court Administration of the Texas Judicial System (OCA) to adopt a standardized form, not later than January 1, 2022, that a defendant may use to make a request for reconsideration of the defendant's ability to pay and sets out the required contents of the form. The bill requires a supervision officer or the court to promptly provide a defendant a copy of the form on the defendant's request.

Reduction or Termination of Community Supervision Period

C.S.H.B. 385 makes the following changes with respect to the reduction or termination of a community supervision period based on a judge's review of the defendant's record:

- removes delinquency in paying required costs, fines, or fees as a factor that disqualifies a defendant from receiving a review and being considered for a reduction or termination on completion of a certain amount of community supervision;
- establishes a procedure under which a defendant who was disqualified from such a review and consideration based on delinquency in paying restitution or incompleteness of court-ordered counseling or treatment will receive the review and consideration after satisfying the applicable requirements, provided the defendant is otherwise compliant with the conditions of community supervision;
- authorizes the judge, following the review, to reduce or terminate the period of community supervision or decide not to reduce or terminate the period of community supervision and, in determining which action to take, 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; and
- if the judge does not terminate the defendant's period of community supervision, requires the following:
 - the judge to promptly advise the defendant's supervision officer of the reasons the judge did not terminate the defendant's period of community supervision; and
 - the supervision officer to promptly advise the defendant in writing of the reasons.

Time Credits

C.S.H.B. 385 removes delinquency in paying required costs, fines, or fees as a factor that disqualifies a defendant from eligibility for time credits for completion of certain conditions of community supervision. The bill expands the list of programs the successful completion of which entitle a defendant to time credits to include any other faith-based, volunteer, or community-based program ordered or approved by the court and sets the creditable time at 30 days.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 385 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include a provision that appeared in the original authorizing a judge to authorize a supervision officer or an applicable magistrate to modify the conditions of community supervision for a defendant who is not otherwise required to submit to testing for a controlled substance to require the defendant to submit to testing for a controlled substance on each occasion on which the supervision officer has a reasonable suspicion that the defendant is under the influence of a controlled substance.

With respect to the discretionary conditions of community supervision that may be imposed on a defendant, the original and substitute differ as follows:

- the original revised the condition requiring a defendant to avoid persons or places of disreputable or harmful character to apply only to the extent indicated by the results of a risks and needs assessment, whereas the substitute removes that condition altogether;
- the substitute does not include provisions that were in the original limiting the times at which a defendant may be required to submit to testing for alcohol or controlled substances as a condition of community supervision; and
- the substitute makes certain revisions to the original's provisions limiting the circumstances under which a defendant may be ordered to attend counseling sessions for substance abusers or participate in substance abuse treatment services, including revisions regarding the type of evaluation that may serve as a basis for such an order.

With respect to a court's consideration of whether a defendant placed on community supervision has sufficient resources or income to make payments, the substitute includes provisions not in the original that specify the payments to which that consideration applies and set out the times at which the court must make that consideration. The substitute also establishes that the consideration does not apply to a defendant's ability to pay restitution, which did not appear in the original.

The substitute does not include the requirement that appeared in the original for a court to reconsider whether a defendant placed on community supervision has sufficient resources or income to pay at any time the defendant's financial status or required payments change in such a way that the defendant's ability to make a payment previously ordered by the court is substantially hindered. However, the substitute does include the following provisions:

- an authorization for a defendant who is ordered to make a payment to file a written statement requesting reconsideration of the defendant's ability to make the payment and requesting that the payment be satisfied by an alternative method, subject to certain restrictions on the frequency of such requests;
- a requirement for the court 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;
- a requirement for the court to determine whether all or a portion of the payment should be satisfied by an alternative method; and
- a requirement for the court to notify the defendant and the state's attorney of its decision.

The substitute does not include provisions that appeared in the original authorizing a court that determines a payment may be satisfied through an alternative method to reconsider that action at any time during the defendant's period of community supervision. However, the substitute does include a provision authorizing a court that waives all or part of a defendant's payment to reconsider that waiver on the court's motion or by motion of the state's attorney. The substitute also includes provisions that were not in the original providing for written notice to the defendant, the opportunity for the defendant to present information relevant to the defendant's ability to pay, and the court's authority to order the defendant to pay all or part of the waived amount on determining that the defendant has sufficient resources or income to pay.

The substitute includes the following requirements not found in the original:

- a requirement for OCA to adopt a standardized form, not later than January 1, 2022, that a defendant may use to make a request for the reconsideration of the defendant's ability to pay; and

- a requirement for a supervision officer or the court to promptly provide a defendant a copy of the standardized form on the defendant's request.

Both the original and substitute establish procedures under which a defendant disqualified from receiving a review of their record and being considered for a reduction or termination of the community supervision period because of delinquency in paying restitution or incompleteness of court-ordered counseling or treatment will receive the review and consideration after fulfilling the applicable requirements. However, the substitute adds the condition that the defendant is otherwise compliant with the conditions of community supervision.

The substitute does not include the original's requirement for a judge who does not reduce or terminate a defendant's period of community supervision after a required review to perform another review and reconsider whether to reduce or terminate the community supervision period within a certain amount of time. Instead, the substitute includes the following:

- an authorization for a judge, following a required review, to reduce or terminate the community supervision period or decide not to do so;
- an authorization for the judge to consider any relevant factors in making the determination, including whether the defendant is delinquent in paying court-ordered costs, fines, or fees that the defendant has the ability to pay; and
- a requirement for a judge who does not terminate the community supervision period after conducting the review to provide the reasons for that decision to the defendant's supervision officer, who must advise the defendant of the reasons in writing.