

BILL ANALYSIS

Senate Research Center

S.B. 1070
By: Hinojosa
Criminal Justice
6/29/2015
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas courts are required to include as a condition of community supervision that a defendant convicted of certain intoxication offenses, repeat offenses enhanced because of intoxication, and certain controlled substance offenses complete a rehabilitative educational program. Courts are permitted to grant an extension of time or waive the educational requirement if the defendant shows good cause by a motion in writing.

However, the educational requirement is currently not satisfied if a defendant receives equivalent rehabilitative education while mandated to reside at a substance abuse treatment facility as a requirement of community supervision.

Local probation programs are regulated by the residential standards of the Community Justice Assistance Division of the Texas Department of Criminal Justice (TDCJ). These residential programs are intensive and require six hours per week of cognitive behavioral chemical dependency counseling for supportive programs, and twenty hours per week for intensive residential treatment.

S.B. 1070 allows a judge to waive the requirement that a defendant complete a rehabilitative educational program operated by the Department of State Health and Human Services (DSHS) if the defendant has already completed educational training in a residential center under the standards of TDCJ.

S.B. 1070 amends current law relating to allowing certain defendants to successfully complete education at a substance abuse treatment facility in lieu of attending an education program, and changes required conditions of community supervision for certain defendants.

[**Note:** While the statutory reference in this bill is to the Texas Commission on Alcohol and Drug Abuse (TCADA), the following amendments affect the Department of State Health Services, as the successor to TCADA.]

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Commission on Alcohol and Drug Abuse is transferred to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Article 42.12, Code of Criminal Procedure) and of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Article 42.12, Code of Criminal Procedure) of this bill.

Rulemaking authority previously jointly granted to the Texas Commission on Alcohol and Drug Abuse and the Department of Public Safety of the State of Texas is transferred to the executive commissioner of Health and Human Services Commission and the Department of Public Safety of the State of Texas in SECTION 2 (Section 521.375, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 13, Article 42.12, Code of Criminal Procedure, by amending Subsections (h) and (j) and adding Subsection (o), as follows:

(h) Requires the judge, if a person convicted of an offense under Sections 49.04-49.08, Penal Code, is placed on community supervision, to require, as a condition of the community supervision, that the defendant attend and successfully complete before the 181st day after the day community supervision is granted an educational program jointly approved by the Department of State Health Services (DSHS), the Department of Public Safety (DPS), the Traffic Safety Section of the Texas Department of Transportation, and the community justice assistance division of the Texas Department of Criminal Justice (TDCJ) designed to rehabilitate persons who have driven while intoxicated, rather than jointly approved by the Texas Commission on Alcohol and Drug Abuse (TCADA), DPS, the Traffic Safety Section of the Texas Department of Transportation, and the community justice assistance division of TDCJ designed to rehabilitate persons who have driven while intoxicated. Requires the executive commissioner of the Health and Human Services Commission (executive commissioner), rather than TCADA, to publish the jointly approved rules and requires DSHS to monitor, coordinate, and provide training to persons providing the educational programs. Provides that DSHS, rather than TCADA, is responsible for the administration of the certification of approved educational programs and may charge a nonrefundable application fee for the initial certification of approval and for renewal of a certificate. Requires the judge to waive the educational program requirement if the defendant successfully completes equivalent education at a residential treatment facility under Subsection (o). Requires the judge to set out in the judgment the finding of good cause for waiver or the finding that the defendant has successfully completed equivalent education as provided by Subsection (o), as applicable, rather than the finding of good cause for waiver in the judgment. Requires the court clerk, if a defendant is required, as a condition of community supervision, to attend an educational program or if the court waives the educational program requirement or the defendant successfully completes equivalent education under Subsection (o), to immediately report that fact to DPS, on a form prescribed by DPS, for inclusion in the person's driving record. Requires the director of the residential treatment facility, upon release from a residential treatment facility at which the person successfully completed equivalent education under Subsection (o), at the request of the court clerk, to give notice to DPS for inclusion in the person's driving record. Makes no further change to this subsection.

(j) Requires the judge to require a defendant who is punished under Section 49.09 (Enhanced Offenses and Penalties), Penal Code, as a condition of community supervision, to attend and successfully complete an educational program for repeat offenders approved by DSHS, rather than by TCADA. Requires the executive commissioner, rather than TCADA, to adopt rules. Requires DSHS to monitor, coordinate, and provide training to persons providing the educational programs. Provides that DSHS, rather than TCADA, is responsible for the administration of the certification of approved educational programs and may charge a nonrefundable application fee for initial certification of approval or for renewal of the certification. Authorizes the judge to waive the educational program requirement if the defendant by a motion in writing shows good cause, rather than only if the defendant by a motion in writing shows good cause. Requires the judge to waive the educational program requirement if the defendant successfully completes equivalent education at a residential treatment facility under Subsection (o). Requires the judge to set out in the judgment the finding of good cause for waiver or the finding that the defendant has successfully completed equivalent education as provided by Subsection (o), as applicable. Makes a nonsubstantive change. Makes no further change to this subsection.

(o) Requires a judge to waive the educational requirement under Subsection (h) or (j) for a defendant who is required to receive treatment as a resident of a substance abuse treatment facility as a condition of community supervision if the defendant successfully completes equivalent education while the defendant is confined to the residential treatment facility. Requires DSHS to approve equivalent education provided at substance

abuse treatment facilities and the executive commissioner to adopt rules to implement this subsection. Provides that, for purposes of this subsection, a substance abuse treatment facility includes:

- (1) a substance abuse treatment facility or substance abuse felony punishment facility operated by TDCJ under Section 493.009 (Substance Abuse Felony Punishment Facilities), Government Code;
- (2) a community corrections facility, as defined by Section 509.001, Government Code; or
- (3) a chemical dependency treatment facility licensed under Chapter 464 (Facilities Treating Alcoholics and Drug-Dependent Persons), Health and Safety Code.

SECTION 2. Amends Sections 521.374, 521.375, 521.376, Transportation Code, as follows:

Sec. 521.374. New heading: EDUCATIONAL PROGRAM OR EQUIVALENT EDUCATION. (a) Authorizes a person whose license is suspended under Section 521.372 (Automatic Suspension; License Denial) to:

- (1) attend an educational program, approved by DSHS, rather than TCADA, under rules adopted by the executive commissioner, rather than TCADA, and DPS, that is designed to educate persons on the dangers of drug abuse; or
- (2) successfully complete education on the dangers of drug abuse approved by DSHS as equivalent to the educational program described by Subdivision (1), while the person is a resident of a facility for the treatment of drug abuse or chemical dependency, including:
 - (A) a substance abuse treatment facility or substance abuse felony punishment facility operated by TDCJ under Section 493.009, Government Code;
 - (B) a community corrections facility, as defined by Section 509.001, Government Code; or
 - (C) a chemical dependency treatment facility licensed under Chapter 464, Health and Safety Code.

(b) Provides that the period of suspension or prohibition under Section 521.372(c) (relating to the period of suspension, and the period of license denial under automatic suspension for certain drug offenses) continues for an indefinite period until the individual successfully completes the educational program or is released from the residential treatment facility at which the individual successfully completed equivalent education, as applicable.

Sec. 521.375. JOINT ADOPTION OF RULES. (a) Requires the executive commissioner, rather than TCADA, and DPS to jointly adopt rules for the qualification and approval of:

- (1) providers of educational programs under Section 521.374(a)(1); and
- (2) equivalent education provided in a residential treatment facility described by Section 521.374(a)(2), rather than by Section 521.374.

(b) Requires DSHS, rather than TCADA, to publish the jointly adopted rules.

Sec. 521.376. New heading: DUTIES OF DEPARTMENT OF STATE HEALTH SERVICES; APPLICATION AND RENEWAL FEES. Provides that DSHS, rather than TCADA:

(1) is required to monitor, coordinate, and provide training to:

(A) persons who provide educational programs under Section 521.374(a)(1), rather than under Section 521.374; and

(B) residential treatment facilities described by Section 521.374(a)(2) providing equivalent education;

(2) is required to administer the approval of the educational programs and the equivalent education provided in a residential treatment facility; and

(3) is authorized to charge a nonrefundable application fee to the provider of an educational program under Section 521.374(a)(1) for initial certification of approval and renewal of the certification.

Makes a nonsubstantive change.

SECTION 3. Amends Section 521.377(a), Transportation Code, to require DPS, on payment of the applicable fee, to reinstate a person's license or, if the person otherwise qualifies for a license, issue the license, if DPS receives notification from the clerk of the court in which the person was convicted that the person has successfully completed an educational program under Section 521.374(a)(1) or equivalent education in a residential treatment facility under Section 521.374(a)(2), rather than under this subchapter. Makes no further change to this subsection.

SECTION 4. (a) Provides that the change in law made by this Act to Section 13, Article 42.12, Code of Criminal Procedure, applies to a defendant placed on community supervision on or after the effective date of this Act, regardless of whether the offense for which the defendant was placed on community supervision occurred before, on, or after that date.

(b) Provides that the change in law made by this Act to Subchapter P, Chapter 521, Transportation Code, applies to a person whose driver's license is suspended on final conviction of an offense on or after the effective date of this Act, regardless of whether the offense occurred before, on, or after that date.

SECTION 5. Effective date: September 1, 2015.