

Effective Jan. 1, 2017

CHAPTER 42A. COMMUNITY SUPERVISION

Subchapter A. General Provisions

ART. 42A.001. DEFINITIONS

In this chapter:

- (1) "Community supervision" means the placement of a defendant by a court under a continuum of programs and sanctions, with conditions imposed by the court for a specified period during which:
 - (A) criminal proceedings are deferred without an adjudication of guilt; or
 - (B) a sentence of imprisonment or confinement, imprisonment and fine, or confinement and fine, is probated and the imposition of sentence is suspended in whole or in part.
- (2) "Court" means a court of record having original criminal jurisdiction.
- (3) "Electronic monitoring" includes voice tracking systems, position tracking systems, position location systems, biometric tracking systems, and any other electronic or telecommunications system that may be used to assist in the supervision of defendants under this chapter.
- (4) "Supervision officer" means a person appointed or employed under Section 76.004, Government Code, to supervise defendants placed on community supervision.

Formerly Art. 42.12, §2.

Subchapter B. Placement on Community Supervision

ART. 42A.051. AUTHORITY TO GRANT COMMUNITY SUPERVISION, IMPOSE OR MODIFY CONDITIONS, OR DISCHARGE DEFENDANT

- (a) Unless the judge has transferred jurisdiction of the case to another court under Article 42A.151, only the court in which the defendant was tried may:
 - (1) grant community supervision;
 - (2) impose conditions; or
 - (3) discharge the defendant.
- (b) The judge of the court having jurisdiction of the case may, at any time during the period of community supervision, modify the conditions of community supervision. Except as provided by Article 42A.052(a), only the judge may modify the conditions.

Formerly Art. 42.12, §§10(a) & 11(a).

ART. 42A.052. MODIFICATION OF CONDITIONS BY SUPERVISION OFFICER OR MAGISTRATE

- (a) A judge who places a defendant on community supervision may authorize the supervision officer supervising the defendant or a magistrate appointed by the district courts in the county that give preference to criminal cases to modify the

conditions of community supervision for the limited purpose of transferring the defendant to different programs within the community supervision continuum of programs and sanctions.

(b) A supervision officer or magistrate who modifies the conditions of community supervision shall:

- (1) deliver a copy of the modified conditions to the defendant;
- (2) file a copy of the modified conditions with the sentencing court; and
- (3) note the date of delivery of the copy in the defendant's file.

(c) If the defendant agrees to the modification in writing, the officer or magistrate shall file a copy of the modified conditions with the district clerk and the conditions shall be enforced as modified. If the defendant does not agree to the modification in writing, the supervision officer or magistrate shall refer the case to the judge for modification in the manner provided by Article 42A.752.

Formerly Art. 42.12, §10(d)-(e).

ART. 42A.053. JUDGE-ORDERED COMMUNITY SUPERVISION

(a) A judge, in the best interest of justice, the public, and the defendant, after conviction or a plea of guilty or nolo contendere, may:

- (1) suspend the imposition of the sentence and place the defendant on community supervision; or
- (2) impose a fine applicable to the offense and place the defendant on community supervision.

(b) A judge may not deny community supervision to a defendant based solely on the defendant's inability to speak, read, write, hear, or understand English.

(c) A defendant is not eligible for community supervision under this article if the defendant is sentenced to serve:

- (1) a term of imprisonment that exceeds 10 years; or
- (2) a term of confinement under Section 12.35, Penal Code.

(d) In a felony case:

(1) the minimum period of community supervision is the same as the minimum term of imprisonment applicable to the offense; and

- (2) the maximum period of community supervision is:
 - (A) 10 years, for a felony other than a third degree felony described by Paragraph (B); and
 - (B) five years, for any of the following third degree felonies:
 - (i) a third degree felony under Title 7, Penal Code; and
 - (ii) a third degree felony under Chapter 481, Health and Safety Code.

(e) Notwithstanding Subsection (d), the minimum period of community supervision under this article for a felony described by Article 42A.453(b) is five years.

(f) The maximum period of community supervision in a misdemeanor case is two years.

(g) Notwithstanding Subsection (d)(2) or (f), a judge may extend the maximum period of community supervision in the manner provided by Article 42A.753 or 42A.757.

Formerly Art. 42.12, §3(a)-(g).

ART. 42A.054. LIMITATION ON JUDGE-ORDERED COMMUNITY SUPERVISION

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

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

(2) Section 19.02, Penal Code (Murder);

(3) Section 19.03, Penal Code (Capital Murder);

(4) Section 20.04, Penal Code (Aggravated Kidnapping);

(5) Section 20A.02, Penal Code (Trafficking of Persons);

(6) Section 21.11(a)(1), Penal Code (Indecency with a Child);

(7) Section 22.011, Penal Code (Sexual Assault);

(8) Section 22.021, Penal Code (Aggravated Sexual Assault);

(9) Section 22.04(a)(1), Penal Code (Injury to a Child, Elderly Individual, or Disabled Individual), if:

(A) the offense is punishable as a felony of the first degree; and

(B) the victim of the offense is a child;

(10) Section 29.03, Penal Code (Aggravated Robbery);

(11) Section 30.02, Penal Code (Burglary), if:

(A) the offense is punishable under Subsection (d) of that section; and

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

(12) Section 43.05, Penal Code (Compelling Prostitution);

(13) Section 43.25, Penal Code (Sexual Performance by a Child); or

(14) Chapter 481, Health and Safety Code, for which punishment is increased under:

(A) Section 481.140 of that code (Use of Child in Commission of Offense); or

(B) Section 481.134(c), (d), (e), or (f) of that code (Drug-free Zones) if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any of those subsections.

(b) Article 42A.053 does not apply to a defendant when it is shown that:

(1) a deadly weapon as defined by Section 1.07, Penal Code, was used or exhibited during the:

(A) commission of a felony offense; or

(B) immediate flight from the commission of a felony offense; and

(2) the defendant:

(A) used or exhibited the deadly weapon; or

(B) was a party to the offense and knew that a deadly weapon would be used or exhibited.

(c) On an affirmative finding regarding the use or exhibition of a deadly weapon as described by Subsection (b), the trial court shall enter the finding in the judgment of the court.

(d) On an affirmative finding that the deadly weapon under Subsection (c) was a firearm, the court shall enter that finding in its judgment.

Formerly Art. 42.12, §3g(a)(1)-(2).

ART. 42A.055. JURY-RECOMMENDED COMMUNITY SUPERVISION

(a) A jury that imposes confinement as punishment for an offense may recommend to the judge that the judge suspend the imposition of the sentence and place the defendant on community supervision. A judge shall suspend the imposition of the sentence and place the defendant on community supervision if the jury makes that recommendation in the verdict.

(b) A defendant is eligible for community supervision under this article only if:

(1) before the trial begins, the defendant files a written sworn motion with the judge that the defendant has not previously been convicted of a felony in this or any other state; and

(2) the jury enters in the verdict a finding that the information contained in the defendant's motion is true.

(c) If the jury recommends to the judge that the judge place the defendant on community supervision, the judge shall place the defendant on community supervision for any period permitted under Articles 42A.053(d) and (f), as appropriate.

(d) A judge may extend the maximum period of community supervision in the manner provided by Article 42A.753 or 42A.757.

Formerly Art. 42.12, §4(a)-(c), (e).

ART. 42A.056. LIMITATION ON JURY-RECOMMENDED COMMUNITY SUPERVISION

A defendant is not eligible for community supervision under Article 42A.055 if the defendant:

(1) is sentenced to a term of imprisonment that exceeds 10 years;

(2) is convicted of a state jail felony for which suspension of the imposition of the sentence occurs automatically under Article 42A.551;

(3) is adjudged guilty of an offense under Section 19.02, Penal Code;

(4) is convicted of an offense under Section 21.11(a)(1), 22.011, or 22.021, Penal Code, if the victim of the offense was younger than 14 years of age at the time the offense was committed;

(5) is convicted of an offense under Section 20.04, Penal Code, if:

(A) the victim of the offense was younger than 14 years of age at the time the offense was committed; and

(B) the actor committed the offense with the intent to violate or abuse the victim sexually;

(6) is convicted of an offense under Section 20A.02, 43.05, or 43.25, Penal Code; or

(7) is convicted of an offense for which punishment is increased under Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any of those subsections.

Formerly Art. 42.12, §4(d)(1)-(2) & (4)-(8).

**ART. 42A.057. MINIMUM PERIOD OF
COMMUNITY SUPERVISION FOR CERTAIN
BURGLARIES OF VEHICLES**

The minimum period of community supervision for an offense under Section 30.04, Penal Code, punishable as a Class A misdemeanor with a minimum term of confinement of six months is one year.

Formerly Art. 42.12, §§3(h) & 4(f).

***Subchapter C. Deferred Adjudication
Community Supervision***

**ART. 42A.101. PLACEMENT ON DEFERRED
ADJUDICATION COMMUNITY SUPERVISION**

(a) Except as provided by Article 42A.102(b), if in the judge's opinion the best interest of society and the defendant will be served, the judge may, after receiving a plea of guilty or nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt and place the defendant on deferred adjudication community supervision.

(b) After placing the defendant on deferred adjudication community supervision under Subsection (a), the judge shall inform the defendant orally or in writing of the possible consequences under Articles 42A.108 and 42A.110 of a violation of a condition of deferred adjudication community supervision. If the information is provided orally, the judge must record and maintain the judge's statement to the defendant. The failure of a judge to inform a defendant of possible consequences under Articles 42A.108 and 42A.110 is not a ground for reversal unless the defendant shows that the defendant was harmed by the failure of the judge to provide the information.

Formerly Art. 42.12, §5(a).

**ART. 42A.102. ELIGIBILITY FOR DEFERRED
ADJUDICATION COMMUNITY SUPERVISION**

(a) A judge may place on deferred adjudication community supervision a defendant charged with an offense under Section 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the victim, or a defendant charged with a felony described by Article 42A.453(b) only if the judge makes a finding in open court that placing the defendant on deferred adjudication community supervision is in the best interest of the victim. The failure of the judge to make a finding under this subsection is not grounds for the defendant to set aside the plea, deferred adjudication, or any subsequent conviction or sentence.

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

- (1) the defendant is charged with an offense:
 - (A) under Sections 49.04-49.08, Penal Code; or
 - (B) for which punishment may be increased under Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any one of those subsections;
- (2) the defendant:
 - (A) is charged with an offense under Section 21.11, 22.011, or 22.021, Penal Code, regardless of the age of

the victim, or a felony described by Article 42A.453(b); and

(B) has previously been placed on community supervision for an offense under Paragraph (A);

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

(A) Section 21.02, Penal Code; or

(B) Section 22.021, Penal Code, that is punishable under Subsection (f) of that section or under Section 12.42(c)(3) or (4), Penal Code; or

(4) the defendant is charged with an offense under Section 19.02, Penal Code, except that the judge may grant deferred adjudication community supervision on determining that the defendant did not cause the death of the deceased, did not intend to kill the deceased or another, and did not anticipate that a human life would be taken.

Formerly Art. 42.12, §5(a) & (d).

**ART. 42A.103. PERIOD OF DEFERRED
ADJUDICATION COMMUNITY SUPERVISION**

(a) In a felony case, the period of deferred adjudication community supervision may not exceed 10 years. For a defendant charged with a felony under Section 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the victim, and for a defendant charged with a felony described by Article 42A.453(b), the period of deferred adjudication community supervision may not be less than five years.

(b) In a misdemeanor case, the period of deferred adjudication community supervision may not exceed two years.

(c) A judge may extend the maximum period of deferred adjudication community supervision in the manner provided by Article 42A.753 or 42A.757.

Formerly Art. 42.12, §5(a).

**ART. 42A.104. CONDITIONS OF DEFERRED
ADJUDICATION COMMUNITY SUPERVISION;
IMPOSITION OF FINE**

(a) The judge may impose a fine applicable to the offense and require any reasonable condition of deferred adjudication community supervision that a judge could impose on a defendant placed on community supervision for a conviction that was probated and suspended, including:

(1) confinement; and

(2) mental health treatment under Article 42A.506.

(b) The provisions of Subchapter L specifying whether a defendant convicted of a state jail felony is to be confined in a county jail or state jail felony facility and establishing the minimum and maximum terms of confinement as a condition of community supervision apply in the same manner to a defendant placed on deferred adjudication community supervision after pleading guilty or nolo contendere to a state jail felony.

Formerly Art. 42.12, §5(a).

ART. 42A.105. AFFIRMATIVE FINDINGS

(a) If a judge places on deferred adjudication community supervision a defendant charged with a sexually violent offense, as defined by Article 62.001, the judge shall make an affirmative finding of fact and file a statement of that affirmative finding with the papers in the case if the judge determines that the

victim or intended victim was younger than 14 years of age at the time of the offense.

(b) If a judge places on deferred adjudication community supervision a defendant charged with an offense under Section 20.02, 20.03, or 20.04, Penal Code, or an attempt, conspiracy, or solicitation to commit one of those offenses, the judge shall make an affirmative finding of fact and file a statement of that affirmative finding with the papers in the case if the judge determines that the victim or intended victim was younger than 17 years of age at the time of the offense.

(c) If a judge places on deferred adjudication community supervision a defendant charged with an offense under Section 21.11 or 22.011, Penal Code, the judge shall make an affirmative finding of fact and file a statement of that affirmative finding with the papers in the case if the judge determines that:

- (1) at the time of the offense, the defendant was not more than four years older than the victim or intended victim and the victim or intended victim was at least 15 years of age; and
- (2) the charge to which the plea is entered under this subchapter is based solely on the ages of the defendant and the victim or intended victim at the time of the offense.

(d) If a judge places a defendant on deferred adjudication community supervision, on the motion of the attorney representing the state the judge shall make an affirmative finding of fact and file a statement of that affirmative finding with the papers in the case if the judge determines that, regardless of whether the conduct at issue is the subject of the prosecution or part of the same criminal episode as the conduct that is the subject of the prosecution, a victim in the trial:

- (1) is or has been a victim of a severe form of trafficking in persons, as defined by 22 U.S.C. Section 7102(9); or
- (2) has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described by 8 U.S.C. Section 1101(a)(15)(U)(iii).

(e) The part of the papers in the case containing an affirmative finding under Subsection (d):

- (1) must include specific information identifying the victim, as available;
- (2) may not include information identifying the victim's location; and
- (3) is confidential, unless written consent for the release of the affirmative finding is obtained from the victim or, if the victim is younger than 18 years of age, the victim's parent or guardian.

Formerly Art. 42.12, §5(e)-(g), (i), & (j).

**ART. 42A.106. RECORD NOT CONFIDENTIAL;
RIGHT TO PETITION FOR ORDER OF
NONDISCLOSURE**

(a) Except as provided by Section 552.142, Government Code, a record in the custody of the court clerk regarding a case in which a defendant is granted deferred adjudication community supervision is not confidential.

(b) Before placing a defendant on deferred adjudication community supervision, the court shall inform the defendant of the defendant's right to petition the court for an order of nondisclosure under Section 411.081, Government Code, unless the defendant is ineligible to pursue that right because of:

- (1) the nature of the offense for which the defendant is placed on deferred adjudication community supervision; or
- (2) the defendant's criminal history.

Formerly Art. 42.12, §5(a-1) & (f).

**ART. 42A.107. REQUEST FOR FINAL
ADJUDICATION**

On written motion of the defendant requesting final adjudication that is filed within 30 days after the entry of the defendant's plea and the deferment of adjudication, the judge shall proceed to final adjudication as in all other cases.

Formerly Art. 42.12, §5(a).

**ART. 42A.108. VIOLATION OF CONDITION OF
DEFERRED ADJUDICATION COMMUNITY
SUPERVISION; HEARING**

(a) On violation of a condition of deferred adjudication community supervision imposed under Article 42A.104, the defendant may be arrested and detained as provided in Article 42A.751.

(b) The defendant is entitled to a hearing limited to a determination by the court of whether the court will proceed with an adjudication of guilt on the original charge. The court may not proceed with an adjudication of guilt on the original charge if the court finds that the only evidence supporting the alleged violation of a condition of deferred adjudication community supervision is the uncorroborated results of a polygraph examination. The determination to proceed with an adjudication of guilt on the original charge is reviewable in the same manner as a revocation hearing conducted under Article 42A.751(d) in a case in which the adjudication of guilt was not deferred.

(c) A court retains jurisdiction to hold a hearing under Subsection (b) and to proceed with an adjudication of guilt, regardless of whether the period of deferred adjudication community supervision imposed on the defendant has expired, if before the expiration of the supervision period:

- (1) the attorney representing the state files a motion to proceed with the adjudication; and
- (2) a *capias* is issued for the arrest of the defendant.

Formerly Art. 42.12, §5(b) & (h).

ART. 42A.109. DUE DILIGENCE DEFENSE

For the purposes of a hearing under Article 42A.108, it is an affirmative defense to revocation for an alleged violation based on a failure to report to a supervision officer as directed or to remain within a specified place that no supervision officer, peace officer, or other officer with the power of arrest under a warrant issued by a judge for that alleged violation contacted or attempted to contact the defendant in person at the defendant's last known residence address or last known employment address, as reflected in the files of the department serving the county in which the order of deferred adjudication community supervision was entered.

Formerly Art. 42.12, §24.

**ART. 42A.110. PROCEEDINGS AFTER
ADJUDICATION**

(a) After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, grant-

ing of community supervision, and defendant's appeal, continue as if the adjudication of guilt had not been deferred.

(b) A court assessing punishment after an adjudication of guilt of a defendant charged with a state jail felony may suspend the imposition of the sentence and place the defendant on community supervision or may order the sentence to be executed, regardless of whether the defendant has previously been convicted of a felony.

Formerly Art. 42.12, §5(b).

ART. 42A.111. DISMISSAL AND DISCHARGE

(a) On expiration of a period of deferred adjudication community supervision imposed under this subchapter, if the judge has not proceeded to an adjudication of guilt, the judge shall dismiss the proceedings against the defendant and discharge the defendant.

(b) The judge may dismiss the proceedings and discharge a defendant before the expiration of the period of deferred adjudication community supervision if, in the judge's opinion, the best interest of society and the defendant will be served, except that the judge may not dismiss the proceedings and discharge a defendant charged with an offense requiring the defendant to register as a sex offender under Chapter 62.

(c) Except as provided by Section 12.42(g), Penal Code, a dismissal and discharge under this article may not be considered a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense.

(d) For any defendant who receives a dismissal and discharge under this article:

(1) on conviction of a subsequent offense, the fact that the defendant previously has received deferred adjudication community supervision is admissible before the court or jury for consideration on the issue of penalty;

(2) if the defendant is an applicant for or the holder of a license under Chapter 42, Human Resources Code, the Department of Family and Protective Services may consider the fact that the defendant previously has received deferred adjudication community supervision in issuing, renewing, denying, or revoking a license under that chapter; and

(3) if the defendant is an applicant for or the holder of a license to provide mental health or medical services for the rehabilitation of sex offenders, the Council on Sex Offender Treatment may consider the fact that the defendant previously has received deferred adjudication community supervision in issuing, renewing, denying, or revoking a license issued by that council.

(e) A judge who dismisses the proceedings against a defendant and discharges the defendant under this article shall:

(1) provide the defendant with a copy of the order of dismissal and discharge; and

(2) if applicable, inform the defendant of the defendant's eligibility to petition the court for an order of nondisclosure under Section 411.081, Government Code, and the earliest date the defendant is eligible to file the petition for the order of nondisclosure.

Formerly Art. 42.12, §5(c) & (c-1).

Subchapter D. Jurisdiction over Case;

Geographical Jurisdiction

ART. 42A.151. TRANSFER OF JURISDICTION

(a) After a defendant has been placed on community supervision, jurisdiction of the case may be transferred to a court of the same rank in this state that:

(1) has geographical jurisdiction where the defendant:

(A) resides; or

(B) violates a condition of community supervision; and

(2) consents to the transfer.

(b) On transfer, the clerk of the court of original jurisdiction shall forward to the court accepting jurisdiction a transcript of any portion of the record as the transferring judge shall direct. The court accepting jurisdiction subsequently shall proceed as if the defendant's trial and conviction had occurred in that court.

Formerly Art. 42.12, §10(b).

ART. 42A.152. ISSUANCE OF WARRANT BY COURT HAVING GEOGRAPHICAL JURISDICTION

(a) A judge of a court having geographical jurisdiction where a defendant resides or where the defendant violates a condition of community supervision may issue a warrant for the defendant's arrest.

(b) Notwithstanding Subsection (a), the determination of the action to be taken after the defendant's arrest may be made only by the judge of the court having jurisdiction of the case at the time the action is taken.

Formerly Art. 42.12, §10(c).

ART. 42A.153. CHANGE OF RESIDENCE WITHIN THE STATE

(a) If, for good and sufficient reasons, a defendant desires to change the defendant's residence within the state, the change may be effected by application to the supervising supervision officer.

(b) The change of residence is subject to:

(1) the judge's consent; and

(2) any regulations the judge may require in the absence of a supervision officer in the locality to which the defendant is transferred.

Formerly Art. 42.12, §17(a).

ART. 42A.154. LEAVING THE STATE

A defendant who leaves the state without permission of the judge having jurisdiction of the case is:

(1) considered a fugitive from justice; and

(2) subject to extradition as provided by law.

Formerly Art. 42.12, §17(b).

Subchapter E. Partial Execution of Sentence; Continuing Jurisdiction

ART. 42A.201. CONTINUING JURISDICTION IN MISDEMEANOR CASES

(a) For the purposes of this article, the jurisdiction of the courts in this state in which a sentence requiring confinement

in a jail is imposed for conviction of a misdemeanor continues for 180 days from the date the execution of the sentence actually begins.

(b) The judge of a court that imposed a sentence requiring confinement in a jail for conviction of a misdemeanor may, on the judge's own motion, on the motion of the attorney representing the state, or on the written motion of the defendant, suspend further execution of the sentence and place the defendant on community supervision under the terms and conditions of this chapter if, in the opinion of the judge, the defendant would not benefit from further confinement.

(c) When the defendant files a written motion with the court requesting suspension of further execution of the sentence and placement on community supervision or when requested to do so by the judge, the clerk of the court shall request a copy of the defendant's record while confined from the agency operating the jail in which the defendant is confined. On receipt of the request, the agency shall forward a copy of the record to the court as soon as possible.

(d) The judge may deny the motion without holding a hearing but may not grant a motion without holding a hearing and allowing the attorney representing the state and the defendant to present evidence in the case.

Formerly Art. 42.12, §7(a)-(c).

ART. 42A.202. CONTINUING JURISDICTION IN FELONY CASES

(a) For the purposes of this article, the jurisdiction of a court imposing a sentence requiring imprisonment in the Texas Department of Criminal Justice for an offense other than a state jail felony continues for 180 days from the date the execution of the sentence actually begins.

(b) Before the expiration of the 180-day period described by Subsection (a), the judge of the court that imposed the sentence described by that subsection may, on the judge's own motion, on the motion of the attorney representing the state, or on the written motion of the defendant, suspend further execution of the sentence and place the defendant on community supervision under the terms and conditions of this chapter if:

- (1) in the opinion of the judge, the defendant would not benefit from further imprisonment;
- (2) the defendant is otherwise eligible for community supervision under this chapter; and
- (3) the defendant had never before been incarcerated in a penitentiary serving a sentence for a felony.

(c) When the defendant files a written motion requesting the judge to suspend further execution of the sentence and place the defendant on community supervision, the defendant shall immediately deliver or cause to be delivered a copy of the motion to the office of the attorney representing the state.

(d) When the defendant or the attorney representing the state files a written motion requesting the judge to suspend further execution of the sentence and place the defendant on community supervision, and when requested to do so by the judge, the clerk of the court shall request a copy of the defendant's record while imprisoned from the Texas Department of Criminal Justice or, if the defendant is confined in county jail, from the sheriff. On receipt of the request, the Texas Department of Criminal Justice or the sheriff shall forward a copy of the

record to the judge as soon as possible.

(e) The judge may deny the motion without holding a hearing but may not grant the motion without holding a hearing and providing the attorney representing the state and the defendant the opportunity to present evidence on the motion.

Formerly Art. 42.12, §6(a)-(c).

ART. 42A.203. AUTHORITY TO SUSPEND EXECUTION OF SENTENCE IN FELONY CASES

(a) Except as otherwise provided by Subsection (b), only the judge who originally sentenced the defendant may suspend execution of the sentence and place the defendant on community supervision under Article 42A.202.

(b) If the judge who originally sentenced the defendant is deceased or disabled or the office is vacant, and if a motion is filed in accordance with Article 42A.202, the clerk of the court shall promptly forward a copy of the motion to the presiding judge of the administrative judicial district for that court. The presiding judge may deny the motion without holding a hearing or may appoint a judge to hold a hearing on the motion.

Formerly Art. 42.12, §10(a).

ART. 42A.204. PARTIAL EXECUTION OF SENTENCE; FIREARM USED OR EXHIBITED

(a) If in the trial of a felony of the second degree or higher there is an affirmative finding described by Article 42A.054(d) and the jury recommends that the court place the defendant on community supervision, the court may order the defendant imprisoned in the Texas Department of Criminal Justice for not less than 60 and not more than 120 days.

(b) At any time after the defendant has served 60 days in the custody of the Texas Department of Criminal Justice, the sentencing judge, on the judge's own motion or on motion of the defendant, may order the defendant released to community supervision.

(c) The department shall release the defendant to community supervision after the defendant has served 120 days.

Formerly Art. 42.12, §3g(b).

Subchapter F. Presentence and Postsentence Reports and Evaluations

ART. 42A.251. DEFINITIONS

In this subchapter:

- (1) "Council" means the Council on Sex Offender Treatment.
- (2) "Sex offender" means a person who has been convicted of, or has entered a plea of guilty or nolo contendere for, an offense under any one of the following provisions of the Penal Code:

- (A) Section 20.04(a)(4) (Aggravated Kidnapping), if the person committed the offense with the intent to violate or abuse the victim sexually;
- (B) Section 21.08 (Indecent Exposure);
- (C) Section 21.11 (Indecency with a Child);
- (D) Section 22.011 (Sexual Assault);
- (E) Section 22.021 (Aggravated Sexual Assault);
- (F) Section 25.02 (Prohibited Sexual Conduct);
- (G) Section 30.02 (Burglary), if:

- (i) the offense is punishable under Subsection (d) of that section; and
 - (ii) the person committed the offense with the intent to commit a felony listed in this subdivision;
- (H) Section 43.25 (Sexual Performance by a Child); or
 (I) Section 43.26 (Possession or Promotion of Child Pornography).

Formerly Art. 42.12, §9A(a).

**ART. 42A.252. PRESENTENCE REPORT
REQUIRED**

- (a) Except as provided by Subsections (b) and (c), before the imposition of the sentence by a judge, the judge shall direct a supervision officer to prepare a presentence report for the judge.
- (b) The judge is not required to direct a supervision officer to prepare a presentence report in a misdemeanor case if:
- (1) the defendant requests that a report not be made and the judge agrees to the request; or
 - (2) the judge:
 - (A) finds that there is sufficient information in the record to permit the meaningful exercise of sentencing discretion; and
 - (B) explains that finding on the record.
- (c) The judge is not required to direct a supervision officer to prepare a presentence report in a felony case if:
- (1) punishment is to be assessed by a jury;
 - (2) the defendant is convicted of or enters a plea of guilty or nolo contendere to capital murder;
 - (3) the only available punishment is imprisonment; or
 - (4) the judge is informed that a plea bargain agreement exists, under which the defendant agrees to a punishment of imprisonment, and the judge intends to follow that agreement.

Formerly Art. 42.12, §9(a), (b) & (g).

**ART. 42A.253. CONTENTS OF PRESENTENCE
REPORT**

- (a) A presentence report must be in writing and include:
- (1) the circumstances of the offense with which the defendant is charged;
 - (2) the amount of restitution necessary to adequately compensate a victim of the offense;
 - (3) the criminal and social history of the defendant;
 - (4) a proposed supervision plan describing programs and sanctions that the community supervision and corrections department will provide the defendant if the judge suspends the imposition of the sentence or grants deferred adjudication community supervision;
 - (5) if the defendant is charged with a state jail felony, recommendations for conditions of community supervision that the community supervision and corrections department considers advisable or appropriate based on the circumstances of the offense and other factors addressed in the report;
 - (6) the results of a psychological evaluation of the defendant that determines, at a minimum, the defendant's IQ and adaptive behavior score if the defendant:
 - (A) is convicted of a felony offense; and

(B) appears to the judge, through the judge's own observation or on the suggestion of a party, to have a mental impairment;

- (7) information regarding whether the defendant is a current or former member of the state military forces or whether the defendant currently serves or has previously served in the armed forces of the United States in an active-duty status and, if available, a copy of the defendant's military discharge papers and military records;
 - (8) if the defendant has served in the armed forces of the United States in an active-duty status, a determination as to whether the defendant was deployed to a combat zone and whether the defendant may suffer from post-traumatic stress disorder or a traumatic brain injury; and
 - (9) any other information relating to the defendant or the offense as requested by the judge.
- (b) A presentence report is not required to contain a sentencing recommendation.

Formerly Art. 42.12, §9(a), (i) & (l).

**ART. 42A.254. INSPECTION BY JUDGE;
DISCLOSURE OF CONTENTS**

The judge may not inspect a presentence report and the contents of the report may not be disclosed to any person unless:

- (1) the defendant pleads guilty or nolo contendere or is convicted of the offense; or
- (2) the defendant, in writing, authorizes the judge to inspect the report.

Formerly Art. 42.12, §9(c).

**ART. 42A.255. INSPECTION AND COMMENT BY
DEFENDANT; ACCESS TO INFORMATION BY
STATE**

- (a) Unless waived by the defendant, at least 48 hours before sentencing a defendant, the judge shall permit the defendant or the defendant's attorney to read the presentence report.
- (b) The judge shall allow the defendant or the defendant's attorney to comment on a presentence investigation or a post-sentence report and, with the approval of the judge, introduce testimony or other information alleging a factual inaccuracy in the investigation or report.
- (c) The judge shall allow the attorney representing the state access to any information made available to the defendant under this article.

Formerly Art. 42.12, §9(d)-(f).

**ART. 42A.256. RELEASE OF INFORMATION TO
SUPERVISION OFFICER; CONFIDENTIALITY OF
REPORT**

- (a) The judge by order may direct that any information and records that are not privileged and that are relevant to a presentence or postsentence report be released to a supervision officer conducting a presentence investigation under this subchapter or preparing a postsentence report under Article 42A.259. The judge may also issue a subpoena to obtain that information.
- (b) A presentence or postsentence report and all information obtained in connection with a presentence investigation or postsentence report are confidential and may be released only as:

- (1) provided by:
- (A) Subsection (c);
 - (B) Article 42A.255;
 - (C) Article 42A.257;
 - (D) Article 42A.259; or
 - (E) Section 614.017, Health and Safety Code; or
- (2) directed by the judge for the effective supervision of the defendant.
- (c) If the defendant is a sex offender, a supervision officer may release information in a presentence or postsentence report concerning the social and criminal history of the defendant to a person who:
- (1) is licensed or certified in this state to provide mental health or medical services, including a:
 - (A) physician;
 - (B) psychiatrist;
 - (C) psychologist;
 - (D) licensed professional counselor;
 - (E) licensed marriage and family therapist; or
 - (F) certified social worker; and
 - (2) provides mental health or medical services for the rehabilitation of the defendant.

Formerly Art. 42.12, §§9(j) & (l) & 9A(b).

ART. 42A.257. EVALUATION FOR PURPOSES OF ALCOHOL OR DRUG REHABILITATION

- (a) The judge shall direct a supervision officer approved by the community supervision and corrections department or the judge, or a person, program, or other agency approved by the Department of State Health Services, to conduct an evaluation to determine the appropriateness of, and a course of conduct necessary for, alcohol or drug rehabilitation for a defendant and to report the results of that evaluation to the judge, if:
- (1) the judge determines that alcohol or drug abuse may have contributed to the commission of the offense; or
 - (2) the case involves a second or subsequent offense under:
 - (A) Section 49.04, Penal Code, if the offense was committed within five years of the date on which the most recent preceding offense was committed; or
 - (B) Section 49.07 or 49.08, Penal Code, if the offense involved the operation of a motor vehicle and was committed within five years of the date on which the most recent preceding offense was committed.
- (b) The evaluation must be made:
- (1) after arrest and before conviction, if requested by the defendant;
 - (2) after conviction and before sentencing, if the judge assesses punishment in the case;
 - (3) after sentencing and before the entry of a final judgment, if the jury assesses punishment in the case; or
 - (4) after community supervision is granted, if the evaluation is required as a condition of community supervision under Article 42A.402.

Formerly Art. 42.12, §9(h).

ART. 42A.258. EVALUATION FOR PURPOSES OF SEX OFFENDER TREATMENT, SPECIALIZED SUPERVISION, OR REHABILITATION

- (a) If the defendant is a sex offender, the judge shall direct a su-

pervision officer approved by the community supervision and corrections department or the judge, or a person, program, or other agency approved by the council, to:

- (1) evaluate the appropriateness of, and a course of conduct necessary for, treatment, specialized supervision, or rehabilitation of the defendant; and
 - (2) report the results of the evaluation to the judge.
- (b) The judge may require the evaluation to use offense-specific standards of practice adopted by the council and may require the report to reflect those standards.
- (c) The evaluation must be made:
- (1) after arrest and before conviction, if requested by the defendant; or
 - (2) after conviction and before the entry of a final judgment.

Formerly Art. 42.12, §9A(c).

ART. 42A.259. POSTSENTENCE REPORT

- (a) If a presentence report in a felony case is not required under Article 42A.252(c), the judge may direct a supervision officer to prepare a postsentence report containing the same information that would have been required for the presentence report, other than a proposed supervision plan and any information that is reflected in the judgment.
- (b) If a postsentence report is ordered, the supervision officer shall send the report to the clerk of the court not later than the 30th day after the date on which sentence is pronounced or deferred adjudication community supervision is granted. The clerk shall deliver the postsentence report with the papers in the case to a designated officer of the Texas Department of Criminal Justice, to the extent required by Section 8(a), Article 42.09.

Formerly Art. 42.12, §9(k).

Subchapter G. Discretionary Conditions Generally

ART. 42A.301. BASIC DISCRETIONARY CONDITIONS

The judge of the court having jurisdiction of the case shall determine the conditions of community supervision. The judge may impose any reasonable condition that is designed to protect or restore the community, protect or restore the victim, or punish, rehabilitate, or reform the defendant. Conditions of community supervision may include conditions requiring the defendant to:

- (1) commit no offense against the laws of this state or of any other state or of the United States;
- (2) avoid injurious or vicious habits;
- (3) avoid persons or places of disreputable or harmful character, including any person, other than a family member of the defendant, who is an active member of a criminal street gang;
- (4) report to the supervision officer as directed by the judge or supervision officer and obey all rules and regulations of the community supervision and corrections department;
- (5) permit the supervision officer to visit the defendant at the defendant's home or elsewhere;
- (6) work faithfully at suitable employment to the extent possible;

- (7) remain within a specified place;
- (8) pay in one or more amounts:
 - (A) the defendant's fine, if one is assessed; and
 - (B) all court costs, regardless of whether a fine is assessed;
- (9) support the defendant's dependents;
- (10) participate, for a period specified by the judge, in any community-based program, including a community service project under Article 42A.304;
- (11) reimburse the county in which the prosecution was instituted as follows:
 - (A) if counsel was appointed, an amount for compensation paid to appointed counsel for defending the defendant in the case; or
 - (B) if the defendant was represented by a public defender's office, an amount that would have been paid to an appointed attorney had the county not had a public defender's office;
- (12) if under custodial supervision in a community corrections facility:
 - (A) remain under that supervision;
 - (B) obey all rules and regulations of the facility; and
 - (C) pay a percentage of the defendant's income to:
 - (i) the facility for room and board; and
 - (ii) the defendant's dependents for their support during the period of custodial supervision;
- (13) submit to testing for alcohol or controlled substances;
- (14) 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;
- (15) with the consent of the victim of a misdemeanor offense or of any offense under Title 7, Penal Code, participate in victim-defendant mediation;
- (16) submit to electronic monitoring;
- (17) reimburse the compensation to victims of crime fund for any amounts paid from that fund to or on behalf of a victim, as defined by Article 56.32, of the offense or if no reimbursement is required, make one payment to the compensation to victims of crime fund in an amount not to exceed \$50 if the offense is a misdemeanor or not to exceed \$100 if the offense is a felony;
- (18) reimburse a law enforcement agency for the analysis, storage, or disposal of raw materials, controlled substances, chemical precursors, drug paraphernalia, or other materials seized in connection with the offense;
- (19) pay all or part of the reasonable and necessary costs incurred by the victim for psychological counseling made necessary by the offense or for counseling and education relating to acquired immune deficiency syndrome or human immunodeficiency virus made necessary by the offense;
- (20) make one payment in an amount not to exceed \$50 to a crime stoppers organization, as defined by Section 414.001, Government Code, and as certified by the Texas Crime Stoppers Council;
- (21) submit a DNA sample to the Department of Public Safety under Subchapter G, Chapter 411, Government Code, for the purpose of creating a DNA record of the defendant;
- (22) in any manner required by the judge, provide in the county in which the offense was committed public notice of the offense for which the defendant was placed on community supervision; and

(23) reimburse the county in which the prosecution was instituted for compensation paid to any interpreter in the case.

Formerly Art. 42.12, §11(a).

ART. 42A.302. CONFINEMENT

(a) If a judge having jurisdiction of a case requires as a condition of community supervision that the defendant submit to a term of confinement in a county jail, the term of confinement may not exceed:

- (1) 30 days, in a misdemeanor case; or
- (2) 180 days, in a felony case.

(b) A judge who requires as a condition of community supervision that the defendant serve a term of confinement in a community corrections facility under Subchapter M may not impose a term of confinement under this article that, if added to the term imposed under Subchapter M, exceeds 24 months.

(c) A judge may impose a term of confinement as a condition of community supervision under this article on placing the defendant on supervision or at any time during the supervision period. The judge may impose terms of confinement as a condition of community supervision in increments smaller than the maximum terms provided by Subsection (a), except that the judge may not impose terms of confinement that, if added together, exceed the maximum terms provided by Subsection (a).

Formerly Art. 42.12, §12(a)-(c).

ART. 42A.303. SUBSTANCE ABUSE FELONY PROGRAM

(a) If a court places a defendant on community supervision under any provision of this chapter as an alternative to imprisonment, the judge may require as a condition of community supervision that the defendant serve a term of confinement and treatment in a substance abuse felony punishment facility operated by the Texas Department of Criminal Justice under Section 493.009, Government Code.

(b) A term of confinement and treatment imposed under this article must be an indeterminate term of not more than one year or less than 90 days.

(c) The judge may impose the condition of community supervision described by this article if:

(1) the defendant is charged with or convicted of a felony other than:

- (A) a felony under Section 21.11, 22.011, or 22.021, Penal Code; or
- (B) criminal attempt of a felony under Section 21.11, 22.011, or 22.021, Penal Code; and

(2) the judge makes an affirmative finding that:

- (A) drug or alcohol abuse significantly contributed to the commission of the offense or violation of a condition of community supervision, as applicable; and
- (B) the defendant is a suitable candidate for treatment, as determined by the suitability criteria established by the Texas Board of Criminal Justice under Section 493.009(b), Government Code.

(d) If a judge requires as a condition of community supervision that the defendant serve a term of confinement and treatment in a substance abuse felony punishment facility under this article, the judge shall also require as a condition of community supervision that on release from the facility the defendant:

- (1) participate in a drug or alcohol abuse continuum of care treatment plan; and
 - (2) pay a fee in an amount established by the judge for residential aftercare required as part of the treatment plan.
- (e) The Department of State Health Services shall develop the continuum of care treatment plan described by Subsection (d)(1).
- (f) The clerk of a court that collects a fee imposed under Subsection (d)(2) shall deposit the fee to be sent to the comptroller as provided by Subchapter B, Chapter 133, Local Government Code, and the comptroller shall deposit the fee into the general revenue fund. If the clerk does not collect a fee imposed under Subsection (d)(2), the clerk is not required to file any report required by the comptroller that relates to the collection of the fee. In establishing the amount of a fee under Subsection (d)(2), the judge shall consider fines, fees, and other necessary expenses for which the defendant is obligated. The judge may not:
- (1) establish the fee in an amount that is greater than 25 percent of the defendant's gross income while the defendant is a participant in residential aftercare; or
 - (2) require the defendant to pay the fee at any time other than a time at which the defendant is both employed and a participant in residential aftercare.

Formerly Art. 42.12, §14(a)-(e).

ART. 42A.304. COMMUNITY SERVICE

- (a) A judge may require as a condition of community supervision that the defendant work a specified number of hours at one or more community service projects for one or more organizations approved by the judge and designated by the department. The judge may not require the defendant to work at a community service project if, as determined and noted on the community supervision order by the judge:
- (1) the defendant is physically or mentally incapable of participating in the project;
 - (2) participating in the project will cause a hardship to the defendant or to the defendant's dependents;
 - (3) the defendant is to be confined in a substance abuse felony punishment facility as a condition of community supervision; or
 - (4) there is other good cause shown.
- (b) The amount of community service work ordered by the judge may not exceed:
- (1) 1,000 hours for an offense classified as a first degree felony;
 - (2) 800 hours for an offense classified as a second degree felony;
 - (3) 600 hours for:
 - (A) an offense classified as a third degree felony; or
 - (B) an offense under Section 30.04, Penal Code, classified as a Class A misdemeanor;
 - (4) 400 hours for an offense classified as a state jail felony;
 - (5) 200 hours for:
 - (A) an offense classified as a Class A misdemeanor, other than an offense described by Subdivision (3)(B); or
 - (B) a misdemeanor for which the maximum permissible confinement, if any, exceeds six months or the maximum permissible fine, if any, exceeds \$4,000; and
 - (6) 100 hours for:

- (A) an offense classified as a Class B misdemeanor; or
- (B) a misdemeanor for which the maximum permissible confinement, if any, does not exceed six months and the maximum permissible fine, if any, does not exceed \$4,000.

- (c) A defendant required to perform community service under this article is not a state employee for the purposes of Chapter 501 or 504, Labor Code.
- (d) If the court makes an affirmative finding under Article 42.014, the judge may order the defendant to perform community service under this article at a project designated by the judge that primarily serves the person or group who was the target of the defendant. If the judge orders community service under this subsection, the judge shall order the defendant to perform not less than:
- (1) 300 hours of service if the offense is classified as a felony; or
 - (2) 100 hours of service if the offense is classified as a misdemeanor.
- (e) A defendant required to perform community service under this article after conviction of an offense under Section 352.082, Local Government Code, shall perform 60 hours of service. The community service must consist of picking up litter in the county in which the defendant resides or working at a recycling facility if a program for performing that type of service is available in the community in which the court is located.
- (f) The judge may order a defendant to make a specified donation to a nonprofit food bank or food pantry in the community in which the defendant resides instead of requiring the defendant to work a specified number of hours at one or more community service projects under Subsection (a).

Formerly Art. 42.12, §16(a)-(f).

ART. 42A.305. COMMUNITY OUTREACH

- (a) This article applies only to a defendant placed on community supervision for an offense involving the possession, manufacture, or delivery of a controlled substance under Chapter 481, Health and Safety Code.
- (b) If a judge orders a defendant to whom this article applies to perform community service, the judge may authorize the defendant to perform not more than 30 hours of community outreach under this article instead of performing hours of community service.
- (c) Community outreach under this article must consist of working with a secondary school at the direction of the judge to educate students on the dangers and legal consequences of possessing, manufacturing, or delivering a controlled substance.
- (d) A secondary school is not required to allow a defendant to perform community outreach at that school.
- (e) The judge may not authorize the defendant to perform hours of community outreach under this article instead of performing hours of community service if:
- (1) the defendant is physically or mentally incapable of participating in community outreach; or
 - (2) the defendant is subject to registration as a sex offender under Chapter 62.

Formerly Art. 42.12, §16(g).

ART. 42A.306. SUPERVISION OF DEFENDANT FROM OUT OF STATE

A judge who receives a defendant for supervision as authorized by Section 510.017, Government Code, may impose on the defendant any term of community supervision authorized by this chapter.

Formerly Art. 42.12, §19(c).

ART. 42A.307. ORCHIECTOMY PROHIBITED

A judge may not require a defendant to undergo an orchietomy as a condition of community supervision.

Formerly Art. 42.12, §11(f).

Subchapter H. Mandatory Conditions Generally**ART. 42A.351. EDUCATIONAL SKILL LEVEL**

(a) If the judge or jury places a defendant on community supervision, the judge shall require the defendant to demonstrate to the court whether the defendant has an educational skill level that is equal to or greater than the average educational skill level of students who have completed the sixth grade in public schools in this state.

(b) If the judge determines that the defendant has not attained the educational skill level described by Subsection (a), the judge shall require as a condition of community supervision that the defendant attain that level of educational skill, unless the judge also determines that the defendant lacks the intellectual capacity or the learning ability to ever achieve that level of educational skill.

Formerly Art. 42.12, §11(c).

ART. 42A.352. DNA SAMPLE

A judge granting community supervision to a defendant convicted of a felony shall require as a condition of community supervision that the defendant provide a DNA sample under Subchapter G, Chapter 411, Government Code, for the purpose of creating a DNA record of the defendant, unless the defendant has already submitted the required sample under other state law.

Formerly Art. 42.12, §11(j).

Subchapter I. Conditions Applicable to Certain Intoxication Offenses**ART. 42A.401. CONFINEMENT AS CONDITION OF COMMUNITY SUPERVISION FOR CERTAIN INTOXICATION OFFENSES**

(a) A judge granting community supervision to a defendant convicted of an offense under Chapter 49, Penal Code, shall require as a condition of community supervision that the defendant submit to:

- (1) not less than 72 hours of continuous confinement in county jail if the defendant was punished under Section 49.09(a), Penal Code;
- (2) not less than five days of confinement in county jail if the defendant was punished under Section 49.09(a), Penal Code, and was subject to Section 49.09(h), Penal Code;

(3) not less than 10 days of confinement in county jail if the defendant was punished under Section 49.09(b), Penal Code;

(4) not less than 30 days of confinement in county jail if the defendant was convicted of an offense under Section 49.07, Penal Code; or

(5) a term of confinement of not less than 120 days if the defendant was convicted of an offense under Section 49.08, Penal Code.

(b) If a sentence of confinement is imposed on the revocation of community supervision, the term of confinement served under Subsection (a) may not be credited toward completion of the sentence imposed.

Formerly Art. 42.12, §13(a)-(b).

ART. 42A.402. DRUG OR ALCOHOL DEPENDENCE EVALUATION AND REHABILITATION

(a) A judge granting community supervision to a defendant convicted of an offense under Chapter 49, Penal Code, shall require as a condition of community supervision that the defendant submit to an evaluation by a supervision officer or by a person, program, or facility approved by the Department of State Health Services for the purpose of having the facility prescribe and carry out a course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition.

(b) If the director of a facility to which a defendant is referred under Subsection (a) determines that the defendant is not making a good faith effort to participate in a program of rehabilitation, the director shall notify the judge who referred the defendant to the facility of that determination.

(c) If a judge requires as a condition of community supervision that the defendant participate in a prescribed course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition, the judge shall require that the defendant pay for all or part of the cost of the rehabilitation based on the defendant's ability to pay. The judge, in the judge's discretion, may credit against the fine assessed the cost paid by the defendant. In determining a defendant's ability to pay the cost of rehabilitation under this subsection, the judge shall consider whether the defendant has insurance coverage that will pay for rehabilitation.

(d) A judge who grants community supervision to a defendant convicted of an offense under Sections 49.04-49.08, Penal Code, shall require, if the defendant has not submitted to an evaluation under Article 42A.257 before receiving community supervision, that the defendant submit to the evaluation as a condition of community supervision. If the evaluation indicates to the judge that the defendant needs treatment for drug or alcohol dependency, the judge shall require the defendant to submit to that treatment as a condition of community supervision in a program or facility that:

- (1) is approved or licensed by the Department of State Health Services; or
- (2) complies with standards established by the community justice assistance division of the Texas Department of Criminal Justice, after consultation by the division with the Department of State Health Services.

Formerly Art. 42.12, §13(a)(2), (c), (d) & (f).

ART. 42A.403. EDUCATIONAL PROGRAM FOR CERTAIN INTOXICATION OFFENDERS; WAIVER OR EXTENSION OF TIME

(a) A judge who places on community supervision a defendant convicted of an offense under Sections 49.04-49.08, Penal Code, shall require as a condition of community supervision that the defendant attend and successfully complete, before the 181st day after the date community supervision is granted, an educational program designed to rehabilitate persons who have driven while intoxicated that is jointly approved by:

- (1) the Department of State Health Services;
- (2) the Department of Public Safety;
- (3) the traffic safety section of the traffic operations division of the Texas Department of Transportation; and
- (4) the community justice assistance division of the Texas Department of Criminal Justice.

(b) This article does not apply to a defendant if a jury recommends community supervision for the defendant and also recommends that the defendant's driver's license not be suspended.

(c) If the defendant by a motion in writing shows good cause, the judge may:

- (1) waive the educational program requirement; or
- (2) to enable the defendant to successfully complete the program, grant an extension of time that expires not later than the first anniversary of the beginning date of the defendant's community supervision.

(d) In determining good cause, the judge may consider but is not limited to:

- (1) the defendant's school and work schedule;
- (2) the defendant's health;
- (3) the distance that the defendant must travel to attend an educational program; and
- (4) the fact that the defendant resides out of state, does not have a valid driver's license, or does not have access to transportation.

(e) The judge shall set out the finding of good cause for waiver in the judgment.

Formerly Art. 42.12, §13(h).

ART. 42A.404. EDUCATIONAL PROGRAM FOR CERTAIN REPEAT INTOXICATION OFFENDERS; WAIVER

(a) The judge shall require a defendant who is punished under Section 49.09, Penal Code, to attend and successfully complete as a condition of community supervision an educational program for repeat offenders that is approved by the Department of State Health Services.

(b) The judge may waive the educational program requirement only if the defendant by a motion in writing shows good cause. In determining good cause, the judge may consider:

- (1) the defendant's school and work schedule;
- (2) the defendant's health;
- (3) the distance that the defendant must travel to attend an educational program; and
- (4) whether the defendant resides out of state or does not have access to transportation.

(c) The judge shall set out the finding of good cause in the judgment.

Formerly Art. 42.12, §13(j).

ART. 42A.405. RULES FOR AND ADMINISTRATION OF EDUCATIONAL PROGRAMS

(a) The Health and Human Services Commission shall adopt rules for the educational program under Article 42A.404.

(b) The Department of State Health Services shall:

- (1) publish the jointly approved rules for the educational program under Article 42A.403; and
- (2) monitor, coordinate, and provide training to persons providing the educational programs under this subchapter.

(c) The Department of State Health Services is responsible for the administration of the certification of approved educational programs.

(d) The Department of State Health Services may charge a nonrefundable application fee for the initial certification of approval or for a renewal of the certification.

Formerly Art. 42.12, §13(h) & (j).

ART. 42A.406. EFFECT OF EDUCATIONAL PROGRAM REQUIREMENTS ON DRIVING RECORD AND LICENSE

(a) If a defendant is required as a condition of community supervision to attend an educational program under Article 42A.403 or 42A.404, or if the court waives the educational program requirement under Article 42A.403, the court clerk shall immediately report that fact to the Department of Public Safety, on a form prescribed by the department, for inclusion in the defendant's driving record. If the court grants an extension of time in which the defendant may complete the educational program under Article 42A.403, the court clerk shall immediately report that fact to the Department of Public Safety on a form prescribed by the department. The clerk's report under this subsection must include the beginning date of the defendant's community supervision.

(b) On the defendant's successful completion of an educational program under Article 42A.403 or 42A.404, the defendant's instructor shall give notice to the Department of Public Safety for inclusion in the defendant's driving record and to the community supervision and corrections department. The community supervision and corrections department shall forward the notice to the court clerk for filing.

(c) If the Department of Public Safety does not receive notice that a defendant required to complete an educational program has successfully completed the program within the period required by the judge under this subchapter, as shown on department records, the department, as provided by Sections 521.344(e) and (f), Transportation Code, shall:

- (1) revoke the defendant's driver's license; or
 - (2) prohibit the defendant from obtaining a license.
- (d) The Department of Public Safety may not reinstate a license revoked under Subsection (c) as the result of an educational program requirement imposed under Article 42A.403 unless the defendant whose license was revoked applies to the department for reinstatement of the license and pays to the department a reinstatement fee of \$100. The Department of Public Safety shall remit all fees collected under this subsection to the comptroller for deposit in the general revenue fund.

Formerly Art. 42.12, §13(h) & (j).

**ART. 42A.407. SUSPENSION OF DRIVER'S
LICENSE**

(a) A jury that recommends community supervision for a defendant convicted of an offense under Sections 49.04-49.08, Penal Code, may recommend that any driver's license issued to the defendant under Chapter 521, Transportation Code, not be suspended. This subsection does not apply to a defendant punished under Section 49.09(a) or (b), Penal Code, and subject to Section 49.09(h), Penal Code.

(b) Notwithstanding Sections 521.344(d)-(i), Transportation Code, if under Article 42A.404 the judge requires a defendant punished under Section 49.09, Penal Code, to attend an educational program as a condition of community supervision, or waives the required attendance for the program, and the defendant has previously been required to attend such an educational program, or the required attendance at the program had been waived, the judge shall order the suspension of the defendant's driver's license for a period determined by the judge according to the following schedule:

(1) not less than 90 days or more than one year, if the defendant is convicted under Sections 49.04-49.08, Penal Code;

(2) not less than 180 days or more than two years, if the defendant is punished under Section 49.09(a) or (b), Penal Code; or

(3) not less than one year or more than two years, if the defendant is convicted of a second or subsequent offense under Sections 49.04-49.08, Penal Code, committed within five years of the date on which the most recent preceding offense was committed.

(c) If the Department of Public Safety receives notice that a defendant has been required to attend a subsequent educational program under Article 42A.403 or 42A.404, although the previously required attendance had been waived, but the judge has not ordered a period of suspension, the department shall:

(1) suspend the defendant's driver's license; or

(2) issue an order prohibiting the defendant from obtaining a license for a period of one year.

(d) The judge shall suspend the defendant's driver's license for a period provided under Subchapter O, Chapter 521, Transportation Code, if:

(1) a judge revokes the community supervision of the defendant for:

(A) an offense under Section 49.04, Penal Code; or

(B) an offense involving the operation of a motor vehicle under Section 49.07, Penal Code; and

(2) the license has not previously been ordered by the judge to be suspended, or the suspension was previously probated.

(e) The suspension of a defendant's driver's license under Subsection (d) shall be reported to the Department of Public Safety as provided under Section 521.347, Transportation Code.

(f) Notwithstanding any other provision of this subchapter or other law, a judge who places on community supervision a defendant who was younger than 21 years of age at the time of the offense and was convicted for an offense under Sections 49.04-49.08, Penal Code, shall order that the defendant's driver's license be suspended for 90 days beginning on the date the defendant is placed on community supervision.

Formerly Art. 42.12, §13(g), (k)-(n).

**ART. 42A.408. USE OF IGNITION INTERLOCK
DEVICE**

(a) In this article, "ignition interlock device" means a device that uses a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol is detected in the breath of the operator.

(b) The court may require as a condition of community supervision that a defendant placed on community supervision after conviction of an offense under Sections 49.04-49.08, Penal Code, have an ignition interlock device installed on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant and that the defendant not operate any motor vehicle that is not equipped with that device.

(c) The court shall require as a condition of community supervision that a defendant described by Subsection (b) have an ignition interlock device installed on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant and that the defendant not operate any motor vehicle unless the vehicle is equipped with that device if:

(1) it is shown on the trial of the offense that an analysis of a specimen of the defendant's blood, breath, or urine showed an alcohol concentration level of 0.15 or more at the time the analysis was performed;

(2) the defendant is placed on community supervision after conviction of an offense under Sections 49.04-49.06, Penal Code, for which the defendant is punished under Section 49.09(a) or (b), Penal Code; or

(3) the court determines under Subsection (d) that the defendant has one or more previous convictions under Sections 49.04-49.08, Penal Code.

(d) Before placing on community supervision a defendant convicted of an offense under Sections 49.04-49.08, Penal Code, the court shall determine from criminal history record information maintained by the Department of Public Safety whether the defendant has one or more previous convictions under any of those sections. A previous conviction may not be used for purposes of restricting a defendant to the operation of a motor vehicle equipped with an ignition interlock device under Subsection (c) if:

(1) the previous conviction was a final conviction under Section 49.04, 49.045, 49.05, 49.06, 49.07, or 49.08, Penal Code, and was for an offense committed before the beginning of the 10-year period preceding the date of the instant offense for which the defendant was convicted and placed on community supervision; and

(2) the defendant has not been convicted of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.07, or 49.08, Penal Code, committed within the 10-year period preceding the date of the instant offense for which the defendant was convicted and placed on community supervision.

(e) Notwithstanding any other provision of this subchapter or other law, a judge who places on community supervision a defendant who was younger than 21 years of age at the time of the offense and was convicted for an offense under Sections 49.04-49.08, Penal Code, shall require as a condition of community supervision that the defendant not operate any motor vehicle unless the vehicle is equipped with an ignition inter-

lock device.

(f) The court shall require the defendant to obtain an ignition interlock device at the defendant's own cost before the 30th day after the date of conviction unless the court finds that to do so would not be in the best interest of justice and enters its findings on record. The court shall require the defendant to provide evidence to the court within the 30-day period that the device has been installed on the appropriate vehicle and order the device to remain installed on that vehicle for a period the length of which is not less than 50 percent of the supervision period. If the court determines the defendant is unable to pay for the ignition interlock device, the court may impose a reasonable payment schedule not to exceed twice the length of the period of the court's order.

(g) The Department of Public Safety shall approve ignition interlock devices for use under this article. Section 521.247, Transportation Code, applies to the approval of a device under this article and the consequences of that approval.

(h) Notwithstanding any other provision of this subchapter, if a defendant is required to operate a motor vehicle in the course and scope of the defendant's employment and if the vehicle is owned by the employer, the defendant may operate that vehicle without installation of an approved ignition interlock device if the employer has been notified of that driving privilege restriction and if proof of that notification is with the vehicle. The employment exemption does not apply if the business entity that owns the vehicle is owned or controlled by the defendant.

Formerly Art. 42.12, §13(i) & (n).

ART. 42A.409. COMMUNITY SUPERVISION FOR ENHANCED PUBLIC INTOXICATION OFFENSE

(a) On conviction of an offense punishable as a Class C misdemeanor under Section 49.02, Penal Code, for which punishment is enhanced under Section 12.43(c), Penal Code, based on previous convictions under Section 49.02 or 42.01, Penal Code, the court may suspend the imposition of the sentence and place the defendant on community supervision if the court finds that the defendant would benefit from community supervision and enters its finding on the record. The judge may suspend in whole or in part the imposition of any fine imposed on conviction.

(b) All provisions of this chapter applying to a defendant placed on community supervision for a misdemeanor apply to a defendant placed on community supervision under Subsection (a), except that the court shall require the defendant as a condition of community supervision to:

- (1) submit to diagnostic testing for addiction to alcohol or a controlled substance or drug;
- (2) submit to a psychological assessment;
- (3) if indicated as necessary by testing and assessment, participate in an alcohol or drug abuse treatment or education program; and
- (4) pay the costs of testing, assessment, and treatment or education, either directly or as a court cost.

Formerly Art. 42.12, §15A.

Subchapter J. Conditions Applicable to Sex

Offenders

ART. 42A.451. SEX OFFENDER REGISTRATION; DNA SAMPLE

A judge granting community supervision to a defendant required to register as a sex offender under Chapter 62 shall require that the defendant, as a condition of community supervision:

- (1) register under that chapter; and
- (2) submit a DNA sample to the Department of Public Safety under Subchapter G, Chapter 411, Government Code, for the purpose of creating a DNA record of the defendant, unless the defendant has already submitted the required sample under other state law.

Formerly Art. 42.12, §11(e).

ART. 42A.452. TREATMENT, SPECIALIZED SUPERVISION, OR REHABILITATION

A judge who grants community supervision to a sex offender evaluated under Article 42A.258 may require the sex offender as a condition of community supervision to submit to treatment, specialized supervision, or rehabilitation according to offense-specific standards of practice adopted by the Council on Sex Offender Treatment. On a finding that the defendant is financially able to make payment, the judge shall require the defendant to pay all or part of the reasonable and necessary costs of the treatment, supervision, or rehabilitation.

Formerly Art. 42.12, §11(i).

ART. 42A.453. CHILD SAFETY ZONE

(a) In this article, "playground," "premises," "school," "video arcade facility," and "youth center" have the meanings assigned by Section 481.134, Health and Safety Code.

(b) This article applies to a defendant placed on community supervision for an offense under:

- (1) Section 20.04(a)(4), Penal Code, if the defendant committed the offense with the intent to violate or abuse the victim sexually;
- (2) Section 20A.02, Penal Code, if the defendant:
 - (A) trafficked the victim with the intent or knowledge that the victim would engage in sexual conduct, as defined by Section 43.25, Penal Code; or
 - (B) benefited from participating in a venture that involved a trafficked victim engaging in sexual conduct, as defined by Section 43.25, Penal Code;
- (3) Section 21.08, 21.11, 22.011, 22.021, or 25.02, Penal Code;
- (4) Section 30.02, Penal Code, punishable under Subsection (d) of that section, if the defendant committed the offense with the intent to commit a felony listed in Subdivision (1) or (3); or
- (5) Section 43.05(a)(2), 43.25, or 43.26, Penal Code.

(c) If a judge grants community supervision to a defendant described by Subsection (b) and the judge determines that a child as defined by Section 22.011(c), Penal Code, was the victim of the offense, the judge shall establish a child safety zone applicable to the defendant by requiring as a condition of community supervision that the defendant:

- (1) not:

- (A) supervise or participate in any program that:
- (i) includes as participants or recipients persons who are 17 years of age or younger; and
 - (ii) regularly provides athletic, civic, or cultural activities; or
- (B) go in, on, or within 1,000 feet of a premises where children commonly gather, including a school, day-care facility, playground, public or private youth center, public swimming pool, or video arcade facility; and
- (2) attend psychological counseling sessions for sex offenders with an individual or organization that provides sex offender treatment or counseling as specified or approved by the judge or the defendant's supervision officer.
- (d) Notwithstanding Subsection (c)(1), a judge is not required to impose the conditions described by Subsection (c)(1) if the defendant is a student at a primary or secondary school.
- (e) At any time after the imposition of a condition under Subsection (c)(1), the defendant may request the court to modify the child safety zone applicable to the defendant because the zone as created by the court:
- (1) interferes with the defendant's ability to attend school or hold a job and consequently constitutes an undue hardship for the defendant; or
 - (2) is broader than is necessary to protect the public, given the nature and circumstances of the offense.
- (f) A supervision officer for a defendant described by Subsection (b) may permit the defendant to enter on an event-by-event basis into the child safety zone from which the defendant is otherwise prohibited from entering if:
- (1) the defendant has served at least two years of the period of community supervision;
 - (2) the defendant enters the zone as part of a program to reunite with the defendant's family;
 - (3) the defendant presents to the supervision officer a written proposal specifying where the defendant intends to go within the zone, why and with whom the defendant is going, and how the defendant intends to cope with any stressful situations that occur;
 - (4) the sex offender treatment provider treating the defendant agrees with the supervision officer that the defendant should be allowed to attend the event; and
 - (5) the supervision officer and the treatment provider agree on a chaperon to accompany the defendant and the chaperon agrees to perform that duty.
- (g) Article 42A.051(b) does not prohibit a supervision officer from modifying a condition of community supervision by permitting a defendant to enter a child safety zone under Subsection (f).
- (h) Notwithstanding Subsection (c)(1)(B), a requirement that a defendant not go in, on, or within 1,000 feet of certain premises does not apply to a defendant while the defendant is in or going immediately to or from a:
- (1) community supervision and corrections department office;
 - (2) premises at which the defendant is participating in a program or activity required as a condition of community supervision;
 - (3) residential facility in which the defendant is required to reside as a condition of community supervision, if the facility was in operation as a residence for defendants on com-

- munity supervision on June 1, 2003; or
- (4) private residence at which the defendant is required to reside as a condition of community supervision.
- (i) A supervision officer who under Subsection (c)(2) specifies a sex offender treatment provider to provide counseling to a defendant shall:
- (1) contact the provider before the defendant is released;
 - (2) establish the date, time, and place of the first session between the defendant and the provider; and
 - (3) request the provider to immediately notify the supervision officer if the defendant fails to attend the first session or any subsequent scheduled session.

Formerly Art. 42.12, §13B(a)-(i).

ART. 42A.454. CERTAIN INTERNET ACTIVITY PROHIBITED

- (a) This article applies only to a defendant who is required to register as a sex offender under Chapter 62, by court order or otherwise, and:
- (1) is convicted of or receives a grant of deferred adjudication community supervision for a violation of Section 21.11, 22.011(a)(2), 22.021(a)(1)(B), 33.021, or 43.25, Penal Code;
 - (2) used the Internet or any other type of electronic device used for Internet access to commit the offense or engage in the conduct for which the person is required to register under Chapter 62; or
 - (3) is assigned a numeric risk level of three based on an assessment conducted under Article 62.007.
- (b) If the court grants community supervision to a defendant described by Subsection (a), the court as a condition of community supervision shall prohibit the defendant from using the Internet to:
- (1) access material that is obscene, as defined by Section 43.21, Penal Code;
 - (2) access a commercial social networking site, as defined by Article 62.0061(f);
 - (3) communicate with any individual concerning sexual relations with an individual who is younger than 17 years of age; or
 - (4) communicate with another individual the defendant knows is younger than 17 years of age.
- (c) The court may modify at any time the condition described by Subsection (b)(4) if:
- (1) the condition interferes with the defendant's ability to attend school or become or remain employed and consequently constitutes an undue hardship for the defendant; or
 - (2) the defendant is the parent or guardian of an individual who is younger than 17 years of age and the defendant is not otherwise prohibited from communicating with that individual.

Formerly Art. 42.12, §13G(a)-(c).

ART. 42A.455. PAYMENT TO CHILDREN'S ADVOCACY CENTER

A judge who grants community supervision to a defendant charged with or convicted of an offense under Section 21.11 or 22.011(a)(2), Penal Code, may require the defendant to make one payment in an amount not to exceed \$50 to a chil-

dren's advocacy center established under Subchapter E, Chapter 264, Family Code.

Formerly Art. 42.12, §11(g).

Subchapter K. Conditions Applicable to Certain Other Offenses and Offenders

ART. 42A.501. COMMUNITY SUPERVISION FOR OFFENSE COMMITTED BECAUSE OF BIAS OR PREJUDICE

(a) A court granting community supervision to a defendant convicted of an offense for which the court has made an affirmative finding under Article 42.014 shall require as a term of community supervision that the defendant:

(1) serve a term of not more than one year imprisonment in the Texas Department of Criminal Justice if the offense is a felony other than an offense under Section 19.02, Penal Code; or

(2) serve a term of not more than 90 days confinement in jail if the offense is a misdemeanor.

(b) The court may not grant community supervision on its own motion or on the recommendation of the jury to a defendant convicted of an offense for which the court has made an affirmative finding under Article 42.014 if:

(1) the offense for which the court has made the affirmative finding is an offense under Section 19.02, Penal Code; or
(2) the defendant has been previously convicted of an offense for which the court made an affirmative finding under Article 42.014.

Formerly Art. 42.12, §13A(a)-(b).

ART. 42A.502. COMMUNITY SUPERVISION FOR CERTAIN VIOLENT OFFENSES; CHILD SAFETY ZONE

(a) In this article, "playground," "premises," "school," "video arcade facility," and "youth center" have the meanings assigned by Section 481.134, Health and Safety Code.

(b) A judge granting community supervision to a defendant convicted of an offense listed in Article 42A.054(a) or for which the judgment contains an affirmative finding under Article 42A.054(c) or (d) may establish a child safety zone applicable to the defendant, if the nature of the offense for which the defendant is convicted warrants the establishment of a child safety zone, by requiring as a condition of community supervision that the defendant not:

(1) supervise or participate in any program that:
(A) includes as participants or recipients persons who are 17 years of age or younger; and
(B) regularly provides athletic, civic, or cultural activities; or

(2) go in or on, or within a distance specified by the judge of, a premises where children commonly gather, including a school, day-care facility, playground, public or private youth center, public swimming pool, or video arcade facility.

(c) At any time after the imposition of a condition under Subsection (b), the defendant may request the judge to modify the child safety zone applicable to the defendant because the zone

as created by the judge:

(1) interferes with the defendant's ability to attend school or hold a job and consequently constitutes an undue hardship for the defendant; or

(2) is broader than is necessary to protect the public, given the nature and circumstances of the offense.

(d) This article does not apply to a defendant described by Article 42A.453.

Formerly Art. 42.12, §13D(a)-(d).

ART. 42A.503. COMMUNITY SUPERVISION FOR CERTAIN CHILD ABUSE OFFENSES; PROHIBITED CONTACT WITH VICTIM

(a) If the court grants community supervision to a defendant convicted of an offense described by Article 17.41(a), the court may require as a condition of community supervision that the defendant not:

(1) directly communicate with the victim of the offense; or
(2) go near a residence, school, or other location, as specifically described in the copy of terms and conditions, that is frequented by the victim.

(b) In imposing the condition under Subsection (a), the court may grant the defendant supervised access to the victim.

(c) To the extent that a condition imposed under this article conflicts with an existing court order granting possession of or access to a child, the condition imposed under this article prevails for a period specified by the court granting community supervision, not to exceed 90 days.

Formerly Art. 42.12, §14(a).

ART. 42A.504. COMMUNITY SUPERVISION FOR CERTAIN OFFENSES INVOLVING FAMILY VIOLENCE

(a) In this article:

(1) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(2) "Family violence center" has the meaning assigned by Section 51.002, Human Resources Code.

(b) If a judge grants community supervision to a defendant convicted of an offense under Title 5, Penal Code, that the court determines involves family violence, the judge shall require the defendant to pay \$100 to a family violence center that:

(1) receives state or federal funds; and
(2) serves the county in which the court is located.

(c) If the court grants community supervision to a defendant convicted of an offense involving family violence, the court may require the defendant, at the direction of the supervision officer, to:

(1) attend a battering intervention and prevention program or counsel with a provider of battering intervention and prevention services if the program or provider has been accredited under Section 4A, Article 42.141, as conforming to program guidelines under that article; or

(2) if the referral option under Subdivision (1) is not available, attend counseling sessions for the elimination of violent behavior with a licensed counselor, social worker, or other professional who has completed family violence intervention training that the community justice assistance divi-

sion of the Texas Department of Criminal Justice has approved, after consultation with the licensing authorities described by Chapters 152, 501, 502, 503, and 505, Occupations Code, and experts in the field of family violence.

(d) If the court requires the defendant to attend counseling or a program, the court shall require the defendant to begin attendance not later than the 60th day after the date the court grants community supervision, notify the supervision officer of the name, address, and phone number of the counselor or program, and report the defendant's attendance to the supervision officer. The court shall require the defendant to pay all the reasonable costs of the counseling sessions or attendance in the program on a finding that the defendant is financially able to make payment. If the court finds the defendant is unable to make payment, the court shall make the counseling sessions or enrollment in the program available without cost to the defendant. The court may also require the defendant to pay all or a part of the reasonable costs incurred by the victim for counseling made necessary by the offense, on a finding that the defendant is financially able to make payment. The court may order the defendant to make payments under this subsection for a period not to exceed one year after the date on which the order is entered.

Formerly Art. 42.12, §§11(h) & 14(c)-(c-2).

ART. 42A.505. COMMUNITY SUPERVISION FOR STALKING OFFENSE; PROHIBITED CONTACT WITH VICTIM

(a) If the court grants community supervision to a defendant convicted of an offense under Section 42.072, Penal Code, the court may require as a condition of community supervision that the defendant not:

- (1) communicate directly or indirectly with the victim; or
- (2) go to or near:
 - (A) the residence, place of employment, or business of the victim; or
 - (B) a school, day-care facility, or similar facility where a dependent child of the victim is in attendance.

(b) If the court requires the prohibition contained in Subsection (a)(2) as a condition of community supervision, the court shall specifically describe the prohibited locations and the minimum distances, if any, that the defendant must maintain from the locations.

Formerly Art. 42.12, §11(l)(1)-(2).

ART. 42A.506. COMMUNITY SUPERVISION FOR DEFENDANT WITH MENTAL IMPAIRMENT

If the judge places a defendant on community supervision and the defendant is determined to be a person with mental illness or a person with an intellectual disability, as provided by Article 16.22 or Chapter 46B or in a psychological evaluation conducted under Article 42A.253(a)(6), the judge may require the defendant as a condition of community supervision to submit to outpatient or inpatient mental health or intellectual disability treatment if:

- (1) the defendant's:
 - (A) mental impairment is chronic in nature; or
 - (B) ability to function independently will continue to deteriorate if the defendant does not receive mental health or intellectual disability services; and

(2) the judge determines, in consultation with a local mental health or intellectual disability services provider, that mental health or intellectual disability services, as appropriate, are available for the defendant through:

- (A) the Department of State Health Services or the Department of Aging and Disability Services under Section 534.053, Health and Safety Code; or
- (B) another mental health or intellectual disability services provider.

Formerly Art. 42.12, §11(d).

ART. 42A.507. COMMUNITY SUPERVISION FOR CERTAIN DEFENDANTS IDENTIFIED AS MEMBERS OF CRIMINAL STREET GANGS; ELECTRONIC MONITORING

(a) This article applies only to a defendant who:

- (1) is identified as a member of a criminal street gang in an intelligence database established under Chapter 61; and
- (2) has two or more times been previously convicted of, or received a grant of deferred adjudication community supervision or another functionally equivalent form of community supervision or probation for, a felony offense under the laws of this state, another state, or the United States.

(b) A court granting community supervision to a defendant described by Subsection (a) may, on the defendant's conviction of a felony offense, require as a condition of community supervision that the defendant submit to tracking under an electronic monitoring service or other appropriate technological service designed to track a person's location.

Formerly Art. 42.12, §13E(a)-(b).

ART. 42A.508. COMMUNITY SUPERVISION FOR CERTAIN ORGANIZED CRIME OFFENSES; RESTRICTIONS ON OPERATION OF MOTOR VEHICLE

A court granting community supervision to a defendant convicted of an offense under Chapter 71, Penal Code, may impose as a condition of community supervision restrictions on the defendant's operation of a motor vehicle, including specifying:

- (1) hours during which the defendant may not operate a motor vehicle; and
- (2) locations at or in which the defendant may not operate a motor vehicle.

Formerly Art. 42.12, §13F.

ART. 42A.509. COMMUNITY SUPERVISION FOR GRAFFITI OFFENSE

A court granting community supervision to a defendant convicted of an offense under Section 28.08, Penal Code, shall require as a condition of community supervision that the defendant perform:

- (1) at least 15 hours of community service if the amount of pecuniary loss resulting from the commission of the offense is \$50 or more but less than \$500; or
- (2) at least 30 hours of community service if the amount of pecuniary loss resulting from the commission of the offense is \$500 or more.

Formerly Art. 42.12, §11(k).

ART. 42A.510. COMMUNITY SUPERVISION FOR ENHANCED DISORDERLY CONDUCT OFFENSE

(a) On conviction of an offense punishable as a Class C misdemeanor under Section 42.01, Penal Code, for which punishment is enhanced under Section 12.43(c), Penal Code, based on previous convictions under Section 42.01 or 49.02, Penal Code, the court may suspend the imposition of the sentence and place the defendant on community supervision if the court finds that the defendant would benefit from community supervision and enters its finding on the record. The judge may suspend in whole or in part the imposition of any fine imposed on conviction.

(b) All provisions of this chapter applying to a defendant placed on community supervision for a misdemeanor apply to a defendant placed on community supervision under this article, except that the court shall require the defendant as a condition of community supervision to:

- (1) submit to diagnostic testing for addiction to alcohol or a controlled substance or drug;
- (2) submit to a psychological assessment;
- (3) if indicated as necessary by testing and assessment, participate in an alcohol or drug abuse treatment or education program; and
- (4) pay the costs of testing, assessment, and treatment or education, either directly or as a court cost.

Formerly Art. 42.12, §15A.

ART. 42A.511. COMMUNITY SUPERVISION FOR CERTAIN OFFENSES INVOLVING ANIMALS

If a judge grants community supervision to a defendant convicted of an offense under Section 42.09, 42.091, 42.092, or 42.10, Penal Code, the judge may require the defendant to attend a responsible pet owner course sponsored by a municipal animal shelter, as defined by Section 823.001, Health and Safety Code, that:

- (1) receives federal, state, county, or municipal funds; and
- (2) serves the county in which the court is located.

Formerly Art. 42.12, §11(m).

ART. 42A.512. COMMUNITY SUPERVISION FOR ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL

(a) In this article, "parent" means a natural or adoptive parent, managing or possessory conservator, or legal guardian. The term does not include a parent whose parental rights have been terminated.

(b) If a judge grants community supervision to a defendant who is convicted of or charged with an offense under Section 43.261, Penal Code, the judge may require as a condition of community supervision that the defendant attend and successfully complete an educational program described by Section 37.218, Education Code, or another equivalent educational program.

(c) The court shall require the defendant or the defendant's parent to pay the cost of attending an educational program under Subsection (b) if the court determines that the defendant or the defendant's parent is financially able to make payment.

Formerly Art. 42.12, §13H(a)-(c).

ART. 42A.513. COMMUNITY SUPERVISION FOR MAKING FIREARM ACCESSIBLE TO CHILD

(a) A court granting community supervision to a defendant convicted of an offense under Section 46.13, Penal Code, may require as a condition of community supervision that the defendant:

- (1) provide an appropriate public service activity designated by the court; or
- (2) attend a firearms safety course that meets or exceeds the requirements set by the National Rifle Association as of January 1, 1995, for a firearms safety course that requires not more than 17 hours of instruction.

(b) The court shall require the defendant to pay the cost of attending the firearms safety course under Subsection (a)(2).

Formerly Art. 42.12, §13C(a)-(b).

Subchapter L. State Jail Felony Community Supervision**ART. 42A.551. PLACEMENT ON COMMUNITY SUPERVISION; EXECUTION OF SENTENCE**

(a) Except as otherwise provided by Subsection (b) or (c), on conviction of a state jail felony under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.121(b)(3), or 481.129(g)(1), Health and Safety Code, that is punished under Section 12.35(a), Penal Code, the judge shall suspend the imposition of the sentence and place the defendant on community supervision.

(b) If the defendant has been previously convicted of a felony, other than a felony punished under Section 12.44(a), Penal Code, or if the conviction resulted from an adjudication of the guilt of a defendant previously placed on deferred adjudication community supervision for the offense, the judge may:

- (1) suspend the imposition of the sentence and place the defendant on community supervision; or
- (2) order the sentence to be executed.

(c) Subsection (a) does not apply to a defendant who:

- (1) under Section 481.1151(b)(1), Health and Safety Code, possessed more than five abuse units of the controlled substance;
- (2) under Section 481.1161(b)(3), Health and Safety Code, possessed more than one pound, by aggregate weight, including adulterants or dilutants, of the controlled substance; or
- (3) under Section 481.121(b)(3), Health and Safety Code, possessed more than one pound of marijuana.

(d) On conviction of a state jail felony punished under Section 12.35(a), Penal Code, other than a state jail felony listed in Subsection (a), subject to Subsection (e), the judge may:

- (1) suspend the imposition of the sentence and place the defendant on community supervision; or
- (2) order the sentence to be executed:

(A) in whole; or

(B) in part, with a period of community supervision to begin immediately on release of the defendant from confinement.

(e) In any case in which the jury assesses punishment, the judge must follow the recommendations of the jury in suspending the imposition of a sentence or ordering a sentence to

be executed. If a jury assessing punishment does not recommend community supervision, the judge must order the sentence to be executed in whole.

(f) A defendant is considered to be finally convicted if the judge orders the sentence to be executed under Subsection (d)(2), regardless of whether the judge orders the sentence to be executed in whole or only in part.

(g) The judge may suspend in whole or in part the imposition of any fine imposed on conviction.

Formerly Art. 42.12, §15(a)(1)–(3).

ART. 42A.552. REVIEW OF PRESENTENCE REPORT

Before imposing a sentence in a state jail felony case in which the judge assesses punishment, the judge shall:

(1) review the presentence report prepared for the defendant under Subchapter F; and
(2) determine whether the best interests of justice require the judge to:

(A) suspend the imposition of the sentence and place the defendant on community supervision; or

(B) order the sentence to be executed in whole or in part as provided by Article 42A.551(d).

Formerly Art. 42.12, §15(c)(1).

ART. 42A.553. MINIMUM AND MAXIMUM PERIODS OF COMMUNITY SUPERVISION; EXTENSION

(a) The minimum period of community supervision a judge may impose under this subchapter is two years. The maximum period of community supervision a judge may impose under this subchapter is five years, except that the judge may extend the maximum period of community supervision under this subchapter to not more than 10 years.

(b) A judge may extend a period of community supervision under this subchapter:

(1) at any time during the period of community supervision; or

(2) before the first anniversary of the date the period of community supervision ends, if a motion for revocation of community supervision is filed before the date the period of community supervision ends.

Formerly Art. 42.12, §15(b).

ART. 42A.554. CONDITIONS OF COMMUNITY SUPERVISION

(a) A judge assessing punishment in a state jail felony case may impose any condition of community supervision on the defendant that the judge could impose on a defendant placed on supervision for an offense other than a state jail felony.

(b) If the judge suspends the execution of the sentence or orders the execution of the sentence only in part as provided by Article 42A.551(d), the judge shall impose conditions of community supervision consistent with the recommendations contained in the presentence report prepared for the defendant under Subchapter F.

(c) Except as otherwise provided by this subsection, a judge who places a defendant on community supervision for an offense listed in Article 42A.551(a) shall require the defendant to

comply with substance abuse treatment conditions that are consistent with standards adopted by the Texas Board of Criminal Justice under Section 509.015, Government Code. A judge is not required to impose the substance abuse treatment conditions if the judge makes an affirmative finding that the defendant does not require imposition of the conditions to successfully complete the period of community supervision.

Formerly Art. 42.12, §15(c)(1)–(3).

ART. 42A.555. CONFINEMENT AS A CONDITION OF COMMUNITY SUPERVISION

(a) A judge assessing punishment in a state jail felony case may impose as a condition of community supervision that a defendant submit at the beginning of the period of community supervision to a term of confinement in a state jail felony facility for a term of:

(1) not less than 90 days or more than 180 days; or

(2) not less than 90 days or more than one year, if the defendant is convicted of an offense punishable as a state jail felony under Section 481.112, 481.1121, 481.113, or 481.120, Health and Safety Code.

(b) A judge may not require a defendant to submit to both the term of confinement authorized by this article and a term of confinement under Subchapter C or Article 42A.302.

Formerly Art. 42.12, §15(d).

ART. 42A.556. SANCTIONS IMPOSED ON MODIFICATION OF COMMUNITY SUPERVISION

If in a state jail felony case a defendant violates a condition of community supervision imposed under this chapter and after a hearing under Article 42A.751(d) the judge modifies the defendant's community supervision, the judge may impose any sanction permitted by Article 42A.752, except that if the judge requires a defendant to serve a term of confinement in a state jail felony facility as a modification of the defendant's community supervision, the minimum term of confinement is 90 days and the maximum term of confinement is 180 days.

Formerly Art. 42.12, §15(e).

ART. 42A.557. REPORT BY DIRECTOR OF FACILITY

The facility director of a state jail felony facility shall report to a judge who orders a defendant confined in the facility as a condition of community supervision or as a sanction imposed on a modification of community supervision under Article 42A.556 not less than every 90 days on the defendant's programmatic progress, conduct, and conformity to the rules of the facility.

Formerly Art. 42.12, §15(g).

ART. 42A.558. REVOCATION; OPTIONS REGARDING EXECUTION OF SENTENCE

(a) If in a state jail felony case a defendant violates a condition of community supervision imposed under this chapter and after a hearing under Article 42A.751(d) the judge revokes the defendant's community supervision, the judge shall dispose of the case in the manner provided by Article 42A.755.

(b) The court retains jurisdiction over the defendant for the period during which the defendant is confined in a state jail

felony facility. At any time after the 75th day after the date the defendant is received into the custody of a state jail felony facility, the judge on the judge's own motion, on the motion of the attorney representing the state, or on the motion of the defendant may suspend further execution of the sentence and place the defendant on community supervision under the conditions of this subchapter.

(c) When the defendant or the attorney representing the state files a written motion requesting the judge to suspend further execution of the sentence and place the defendant on community supervision, the clerk of the court, if requested to do so by the judge, shall request a copy of the defendant's record while confined from the facility director of the state jail felony facility in which the defendant is confined or, if the defendant is confined in county jail, from the sheriff. On receipt of the request, the facility director or the sheriff shall forward a copy of the record to the judge as soon as possible.

(d) When the defendant files a written motion requesting the judge to suspend further execution of the sentence and place the defendant on community supervision, the defendant shall immediately deliver or cause to be delivered a copy of the motion to the office of the attorney representing the state. The judge may deny the motion without holding a hearing but may not grant the motion without holding a hearing and providing the attorney representing the state and the defendant the opportunity to present evidence on the motion.

Formerly Art. 42.12, §15(f)(1)-(3).

ART. 42A.559. CREDITS FOR TIME SERVED

(a) For purposes of this article, "diligent participation" includes:

- (1) successful completion of an educational, vocational, or treatment program;
- (2) progress toward successful completion of an educational, vocational, or treatment program that was interrupted by illness, injury, or another circumstance outside the control of the defendant; and
- (3) active involvement in a work program.

(b) A defendant confined in a state jail felony facility does not earn good conduct time for time served in the facility but may be awarded diligent participation credit in accordance with Subsection (f).

(c) A judge:

- (1) may credit against any time a defendant is required to serve in a state jail felony facility time served in a county jail from the time of the defendant's arrest and confinement until sentencing by the trial court; and
- (2) shall credit against any time a defendant is required to serve in a state jail felony facility time served before sentencing in a substance abuse felony punishment facility operated by the Texas Department of Criminal Justice under Section 493.009, Government Code, or other court-ordered residential program or facility as a condition of deferred adjudication community supervision, but only if the defendant successfully completes the treatment program in that facility.

(d) A judge shall credit against any time a defendant is subsequently required to serve in a state jail felony facility after revocation of community supervision time served after sentencing:

(1) in a state jail felony facility; or

(2) in a substance abuse felony punishment facility operated by the Texas Department of Criminal Justice under Section 493.009, Government Code, or other court-ordered residential program or facility if the defendant successfully completes the treatment program in that facility.

(e) For a defendant who has participated in an educational, vocational, treatment, or work program while confined in a state jail felony facility, not later than the 30th day before the date on which the defendant will have served 80 percent of the defendant's sentence, the Texas Department of Criminal Justice shall report to the sentencing court the number of days during which the defendant diligently participated in any educational, vocational, treatment, or work program. The contents of a report submitted under this subsection are not subject to challenge by a defendant.

(f) A judge, based on the report received under Subsection (e), may credit against any time a defendant is required to serve in a state jail felony facility additional time for each day the defendant actually served in the facility while diligently participating in an educational, vocational, treatment, or work program. A time credit under this subsection may not exceed one-fifth of the amount of time the defendant is originally required to serve in the facility. A defendant may not be awarded a time credit under this subsection for any period during which the defendant is subject to disciplinary action. A time credit under this subsection is a privilege and not a right.

Formerly Art. 42.12, §15(h)(1)-(6).

ART. 42A.560. MEDICAL RELEASE

(a) If a defendant is convicted of a state jail felony and the sentence is executed, the judge sentencing the defendant may release the defendant to a medically suitable placement if the judge determines that the defendant does not constitute a threat to public safety and the Texas Correctional Office on Offenders with Medical or Mental Impairments:

(1) in coordination with the Correctional Managed Health Care Committee, prepares a case summary and medical report that identifies the defendant as:

- (A) being a person who is elderly or terminally ill or a person with a physical disability;
- (B) being a person with mental illness or an intellectual disability; or
- (C) having a condition requiring long-term care; and

(2) in cooperation with the community supervision and corrections department serving the sentencing court, prepares for the defendant a medically recommended intensive supervision and continuity of care plan that:

- (A) ensures appropriate supervision of the defendant by the community supervision and corrections department; and
- (B) requires the defendant to remain under the care of a physician at and reside in a medically suitable placement.

(b) The Texas Correctional Office on Offenders with Medical or Mental Impairments shall submit to a judge who releases a defendant to an appropriate medical care facility under Subsection (a) a quarterly status report concerning the defendant's medical and treatment status.

(c) If a defendant released to a medically suitable placement

under Subsection (a) violates the terms of that release, the judge may dispose of the matter as provided by Articles 42A.556 and 42A.558(a).

Formerly Art. 42.12, §15(i)–(k) (SB 909, 2007).

ART. 42A.561. MEDICAL RELEASE

(a) If a defendant is convicted of a state jail felony and the sentence is executed, the judge sentencing the defendant may release the defendant to a medical care facility or medical treatment program if the Texas Correctional Office on Offenders with Medical or Mental Impairments:

(1) identifies the defendant as:

(A) being a person who is elderly or terminally ill or a person with a physical disability;

(B) being a person with mental illness or an intellectual disability; or

(C) having a condition requiring long-term care; and

(2) in cooperation with the community supervision and corrections department serving the sentencing court, prepares for the defendant a medically recommended intensive supervision plan that:

(A) ensures appropriate supervision of the defendant; and

(B) requires the defendant to remain under the care of a physician at the facility or in the program.

(b) If a defendant released to a medical care facility or medical treatment program under Subsection (a) violates the terms of that release, the judge may dispose of the matter as provided by Articles 42A.556 and 42A.558(a).

Formerly Art. 42.12, §15(i)–(j) (HB 431, 2007).

Subchapter M. Community Corrections Facilities

ART. 42A.601. DEFINITION

In this subchapter, “community corrections facility” has the meaning assigned by Section 509.001, Government Code.

Formerly Art. 42.12, §18(a).

ART. 42A.602. MAXIMUM TERM OR TERMS OF CONFINEMENT

(a) If a judge requires as a condition of community supervision or participation in a drug court program established under Chapter 123, Government Code, or former law that the defendant serve a term of confinement in a community corrections facility, the term may not exceed 24 months.

(b) A judge who requires as a condition of community supervision that the defendant serve a term of confinement in a community corrections facility may not impose a subsequent term of confinement in a community corrections facility or jail during the same supervision period that, if added to the terms previously imposed, exceeds 36 months.

Formerly Art. 42.12, §18(b) & (h).

ART. 42A.603. EFFECT OF REVOCATION ON CREDIT FOR TIME SPENT IN FACILITY

A defendant granted community supervision under this chapter and required as a condition of community supervision to serve a term of confinement under this subchapter may not

earn good conduct credit for time spent in a community corrections facility or apply time spent in the facility toward completion of a prison sentence if the community supervision is revoked.

Formerly Art. 42.12, §18(c).

ART. 42A.604. EVALUATION OF DEFENDANT’S BEHAVIOR AND ATTITUDE

(a) As directed by the judge, the community corrections facility director shall file with the community supervision and corrections department director or administrator of a drug court program, as applicable, a copy of an evaluation made by the facility director of the defendant’s behavior and attitude at the facility. The community supervision and corrections department director or program administrator shall examine the evaluation, make written comments on the evaluation that the director or administrator considers relevant, and file the evaluation and comments with the judge who granted community supervision to the defendant or placed the defendant in a drug court program. If the evaluation indicates that the defendant has made significant progress toward compliance with court-ordered conditions of community supervision or objectives of placement in the drug court program, as applicable, the judge may release the defendant from the community corrections facility. A defendant who served a term in the facility as a condition of community supervision shall serve the remainder of the defendant’s community supervision under any terms and conditions the court imposes under this chapter.

(b) Not later than 18 months after the date on which a defendant is granted community supervision under this chapter and required as a condition of community supervision to serve a term of confinement under this subchapter, the community corrections facility director shall file with the community supervision and corrections department director a copy of an evaluation made by the facility director of the defendant’s behavior and attitude at the facility. The community supervision and corrections department director shall examine the evaluation, make written comments on the evaluation that the director considers relevant, and file the evaluation and comments with the judge who granted community supervision to the defendant. If the report indicates that the defendant has made significant progress toward court-ordered conditions of community supervision, the judge shall modify the judge’s sentence and release the defendant in the same manner as provided by Subsection (a). If the report indicates that the defendant would benefit from continued participation in the community corrections facility program, the judge may order the defendant to remain at the community corrections facility for a period determined by the judge. If the report indicates that the defendant has not made significant progress toward rehabilitation, the judge may revoke community supervision and order the defendant to serve the term of confinement specified in the defendant’s sentence.

Formerly Art. 42.12, §18(d)–(e).

ART. 42A.605. PLACEMENT IN COMMUNITY SERVICE PROJECT

If ordered by the judge who placed the defendant on community supervision, a community corrections facility director

shall attempt to place a defendant as a worker in a community service project of a type described by Article 42A.304.

Formerly Art. 42.12, §18(f).

ART. 42A.606. CONFINEMENT REQUIRED; EXCEPTIONS

A defendant participating in a program under this subchapter must be confined in the community corrections facility at all times except for time spent:

- (1) attending and traveling to and from:
 - (A) an education or rehabilitation program as ordered by the court; or
 - (B) a community service project;
- (2) away from the facility for purposes described by this subchapter; and
- (3) traveling to and from work, if applicable.

Formerly Art. 42.12, §18(g).

ART. 42A.607. DISPOSITION OF SALARY

If a defendant who is required as a condition of community supervision to serve a term of confinement under this subchapter is not required by the judge to deliver the defendant's salary to the restitution center director, the employer of the defendant shall deliver the salary to the director. The director shall deposit the salary into a fund to be given to the defendant on release after the director deducts:

- (1) the cost to the center for the defendant's food, housing, and supervision;
- (2) the necessary expense for the defendant's travel to and from work and community service projects, and other incidental expenses of the defendant;
- (3) support of the defendant's dependents; and
- (4) restitution to the victims of an offense committed by the defendant.

Formerly Art. 42.12, §18(i).

Subchapter N. Payments; Fees

ART. 42A.651. PAYMENT AS CONDITION OF COMMUNITY SUPERVISION

(a) A judge may not order a defendant to make a payment as a term or condition of community supervision, except for:

- (1) the payment of fines, court costs, or restitution to the victim; or
- (2) a payment ordered as a condition that relates personally to the rehabilitation of the defendant or that is otherwise expressly authorized by law.

(b) A defendant's obligation to pay a fine or court cost as ordered by a judge is independent of any requirement to pay the fine or court cost as a condition of the defendant's community supervision. A defendant remains obligated to pay any unpaid fine or court cost after the expiration of the defendant's period of community supervision.

Formerly Art. 42.12, §11(b) & (b-1).

ART. 42A.652. MONTHLY FEE

(a) Except as otherwise provided by this article, a judge who grants community supervision to a defendant shall set a fee of not less than \$25 and not more than \$60 to be paid each

month during the period of community supervision by the defendant to:

- (1) the court of original jurisdiction; or
- (2) the court accepting jurisdiction of the defendant's case, if jurisdiction is transferred under Article 42A.151.

(b) The judge may make payment of the monthly fee a condition of granting or continuing the community supervision. The judge may waive or reduce the fee or suspend a monthly payment of the fee if the judge determines that payment of the fee would cause the defendant a significant financial hardship.

(c) A court accepting jurisdiction of a defendant's case under Article 42A.151 shall enter an order directing the defendant to pay the monthly fee to that court instead of to the court of original jurisdiction. To the extent of any conflict between an order issued under this subsection and an order issued by a court of original jurisdiction, the order entered under this subsection prevails.

(d) A judge who receives a defendant for supervision as authorized by Section 510.017, Government Code, may require the defendant to pay the fee authorized by this article.

(e) A judge may not require a defendant to pay the fee under this article for any month after the period of community supervision has been terminated by the judge under Article 42A.701.

(f) A judge shall deposit any fee received under this article in the special fund of the county treasury, to be used for the same purposes for which state aid may be used under Chapter 76, Government Code.

Formerly Art. 42.12, §19(a), (a-1), (b), (c) & (g).

ART. 42A.653. ADDITIONAL MONTHLY FEE FOR CERTAIN SEX OFFENSES

(a) A judge who grants community supervision to a defendant convicted of an offense under Section 21.08, 21.11, 22.011, 22.021, 25.02, 43.25, or 43.26, Penal Code, shall require as a condition of community supervision that the defendant pay to the defendant's supervision officer a community supervision fee of \$5 each month during the period of community supervision.

(b) A fee imposed under this article is in addition to court costs or any other fee imposed on the defendant.

(c) A community supervision and corrections department shall deposit a fee collected under this article to be sent to the comptroller as provided by Subchapter B, Chapter 133, Local Government Code. The comptroller shall deposit the fee in the sexual assault program fund under Section 420.008, Government Code.

(d) If a community supervision and corrections department does not collect a fee imposed under this article, the department is not required to file any report required by the comptroller that relates to the collection of the fee.

Formerly Art. 42.12, §19(e) & (f).

ART. 42A.654. FEES DUE ON CONVICTION

For the purpose of determining when fees due on conviction are to be paid to any officer, the placement of a defendant on community supervision is considered a final disposition of the case, without the necessity of waiting for the termination of the period of community supervision.

Formerly Art. 42.12, §19(d).

ART. 42A.655. ABILITY TO PAY

The court shall consider the defendant's ability to pay in ordering the defendant to make any payments under this chapter.

Formerly Art. 42.12, §11(b).

***Subchapter O. Reduction or Termination of
Community Supervision Period***

ART. 42A.701. REDUCTION OR TERMINATION OF COMMUNITY SUPERVISION PERIOD

(a) At any time after the defendant has satisfactorily completed one-third of the original community supervision period or two years of community supervision, whichever is less, the judge may reduce or terminate the period of community supervision.

(b) On completion of one-half of the original community supervision period or two years of community supervision, whichever is more, the judge shall review the defendant's record and consider whether to reduce or terminate the period of community supervision, unless the defendant:

- (1) is delinquent in paying required costs, fines, fees, or restitution that the defendant has the ability to pay; or
- (2) has not completed court-ordered counseling or treatment.

(c) Before reducing or terminating a period of community supervision or conducting a review under this article, the judge shall notify the attorney representing the state and the defendant or, if the defendant has an attorney, the defendant's attorney.

(d) If the judge determines that the defendant has failed to satisfactorily fulfill the conditions of community supervision, the judge shall advise the defendant in writing of the requirements for satisfactorily fulfilling those conditions.

(e) On the satisfactory fulfillment of the conditions of community supervision and the expiration of the period of community supervision, the judge by order shall:

- (1) amend or modify the original sentence imposed, if necessary, to conform to the community supervision period; and
- (2) discharge the defendant.

(f) If the judge discharges the defendant under this article, the judge may set aside the verdict or permit the defendant to withdraw the defendant's plea. A judge acting under this subsection shall dismiss the accusation, complaint, information, or indictment against the defendant. A defendant who receives a discharge and dismissal under this subsection is released from all penalties and disabilities resulting from the offense of which the defendant has been convicted or to which the defendant has pleaded guilty, except that:

- (1) proof of the conviction or plea of guilty shall be made known to the judge if the defendant is convicted of any subsequent offense; and
- (2) if the defendant is an applicant for or the holder of a license under Chapter 42, Human Resources Code, the Department of Family and Protective Services may consider the fact that the defendant previously has received community supervision under this chapter in issuing, renewing, denying, or revoking a license under Chapter 42, Human Resources Code.

(g) This article does not apply to a defendant convicted of:

- (1) an offense under Sections 49.04-49.08, Penal Code;
- (2) an offense the conviction of which requires registration as a sex offender under Chapter 62; or
- (3) a felony described by Article 42A.054.

Formerly Art. 42.12, §20(a) & (b).

**ART. 42A.702. TIME CREDITS FOR
COMPLETION OF CERTAIN CONDITIONS OF
COMMUNITY SUPERVISION**

(a) This article applies only to a defendant who:

- (1) is granted community supervision, including deferred adjudication community supervision, for an offense punishable as a state jail felony or a felony of the third degree, other than an offense:

- (A) included as a "reportable conviction or adjudication" under Article 62.001(5);
- (B) involving family violence as defined by Section 71.004, Family Code;
- (C) under Section 20.03 or 28.02, Penal Code; or
- (D) under Chapter 49, Penal Code;

- (2) is not delinquent in paying required costs, fines, or fees; and

- (3) has fully satisfied any order to pay restitution to a victim.

(b) A defendant described by Subsection (a) is entitled to receive any combination of time credits toward the completion of the defendant's period of community supervision in accordance with this article if the court ordered the defendant as a condition of community supervision to:

- (1) make a payment described by Subsection (c);
- (2) complete a treatment or rehabilitation program described by Subsection (d); or
- (3) earn a diploma, certificate, or degree described by Subsection (e).

(c) A defendant is entitled to time credits toward the completion of the defendant's period of community supervision for the full payment of court costs, fines, attorney's fees, and restitution as follows:

- (1) court costs: 15 days;
- (2) fines: 30 days;
- (3) attorney's fees: 30 days; and
- (4) restitution: 60 days.

(d) A defendant is entitled to time credits toward the completion of the defendant's period of community supervision for the successful completion of treatment or rehabilitation programs as follows:

- (1) parenting class or parental responsibility program: 30 days;
- (2) anger management program: 30 days;
- (3) life skills training program: 30 days;
- (4) vocational, technical, or career education or training program: 60 days; and
- (5) alcohol or substance abuse counseling or treatment: 90 days.

(e) A defendant is entitled to time credits toward the completion of the defendant's period of community supervision for earning the following diplomas, certificates, or degrees:

- (1) a high school diploma or high school equivalency certificate: 90 days; and

(2) an associate's degree: 120 days.

(f) A defendant's supervision officer shall notify the court if one or more time credits under this article, cumulated with the amount of the original community supervision period the defendant has completed, allow or require the court to conduct a review of the defendant's community supervision under Article 42A.701. On receipt of the notice from the supervision officer, the court shall conduct the review of the defendant's community supervision to determine if the defendant is eligible for a reduction or termination of community supervision under Article 42A.701, taking into account any time credits to which the defendant is entitled under this article in determining if the defendant has completed, as applicable:

- (1) the lesser of one-third of the original community supervision period or two years of community supervision; or
- (2) the greater of one-half of the original community supervision period or two years of community supervision.

(g) A court may order that some or all of the time credits to which a defendant is entitled under this article be forfeited if, before the expiration of the original period or a reduced period of community supervision, the court:

- (1) after a hearing under Article 42A.751(d), finds that a defendant violated one or more conditions of community supervision; and
- (2) modifies or continues the defendant's period of community supervision under Article 42A.752 or revokes the defendant's community supervision under Article 42A.755.

Formerly Art. 42.12, §20A(a)-(g).

Subchapter P. Revocation and Other Sanctions

ART. 42A.751. VIOLATION OF CONDITIONS OF COMMUNITY SUPERVISION; DETENTION AND HEARING

(a) At any time during the period of community supervision, the judge may issue a warrant for a violation of any condition of community supervision and cause a defendant convicted under Section 43.02, Penal Code, Chapter 481, Health and Safety Code, or Sections 485.031 through 485.035, Health and Safety Code, or placed on deferred adjudication community supervision after being charged with one of those offenses, to be subject to:

- (1) the control measures of Section 81.083, Health and Safety Code; and
- (2) the court-ordered-management provisions of Subchapter G, Chapter 81, Health and Safety Code.

(b) At any time during the period of community supervision, the judge may issue a warrant for a violation of any condition of community supervision and cause the defendant to be arrested. Any supervision officer, police officer, or other officer with the power of arrest may arrest the defendant with or without a warrant on the order of the judge to be noted on the docket of the court. Subject to Subsection (c), a defendant arrested under this subsection may be detained in the county jail or other appropriate place of confinement until the defendant can be taken before the judge for a determination regarding the alleged violation. The arresting officer shall immediately report the arrest and detention to the judge.

(c) Without any unnecessary delay, but not later than 48 hours

after the defendant is arrested, the arresting officer or the person with custody of the defendant shall take the defendant before the judge who ordered the arrest for the alleged violation of a condition of community supervision or, if the judge is unavailable, before a magistrate of the county in which the defendant was arrested. The judge or magistrate shall perform all appropriate duties and may exercise all appropriate powers as provided by Article 15.17 with respect to an arrest for a new offense, except that only the judge who ordered the arrest for the alleged violation may authorize the defendant's release on bail. The defendant may be taken before the judge or magistrate under this subsection by means of an electronic broadcast system as provided by and subject to the requirements of Article 15.17.

(d) If the defendant has not been released on bail as permitted under Subsection (c), on motion by the defendant, the judge who ordered the arrest for the alleged violation of a condition of community supervision shall cause the defendant to be brought before the judge for a hearing on the alleged violation within 20 days of the date the motion is filed. After a hearing without a jury, the judge may continue, extend, modify, or revoke the community supervision.

(e) A judge may revoke without a hearing the community supervision of a defendant who is imprisoned in a penal institution if the defendant in writing before a court of record in the jurisdiction where the defendant is imprisoned:

- (1) waives the defendant's right to a hearing and to counsel;
- (2) affirms that the defendant has nothing to say as to why sentence should not be pronounced against the defendant; and
- (3) requests the judge to revoke community supervision and to pronounce sentence.

(f) In a felony case, the state may amend the motion to revoke community supervision at any time before the seventh day before the date of the revocation hearing, after which time the motion may not be amended except for good cause shown. The state may not amend the motion after the commencement of taking evidence at the revocation hearing.

(g) The judge may continue the revocation hearing for good cause shown by either the defendant or the state.

(h) The court may not revoke the community supervision of a defendant if, at the revocation hearing, the court finds that the only evidence supporting the alleged violation of a condition of community supervision is the uncorroborated results of a polygraph examination.

(i) In a revocation hearing at which it is alleged only that the defendant violated the conditions of community supervision by failing to pay compensation paid to appointed counsel, community supervision fees, or court costs, the state must prove by a preponderance of the evidence that the defendant was able to pay and did not pay as ordered by the judge.

(j) The court may order a community supervision and corrections department to obtain information pertaining to the factors listed under Article 42.037(h) and include that information in the presentence report required under Article 42A.252(a) or a separate report, as the court directs.

(k) A defendant has a right to counsel at a hearing under this article. The court shall appoint counsel for an indigent defendant in accordance with the procedures adopted under Article 26.04.

(l) A court retains jurisdiction to hold a hearing under Subsection (d) and to revoke, continue, or modify community supervision, regardless of whether the period of community supervision imposed on the defendant has expired, if before the expiration of the supervision period:

- (1) the attorney representing the state files a motion to revoke, continue, or modify community supervision; and
- (2) a *capias* is issued for the arrest of the defendant.

Formerly Art. 42.12, §21(a)-(e).

**ART. 42A.752. CONTINUATION OR
MODIFICATION OF COMMUNITY SUPERVISION
AFTER VIOLATION**

(a) If after a hearing under Article 42A.751(d) a judge continues or modifies community supervision after determining that the defendant violated a condition of community supervision, the judge may impose any other conditions the judge determines are appropriate, including:

- (1) a requirement that the defendant perform community service for a number of hours specified by the court under Article 42A.304, or an increase in the number of hours that the defendant has previously been required to perform under that article in an amount not to exceed double the number of hours permitted by that article;
- (2) an extension of the period of community supervision, in the manner described by Article 42A.753;
- (3) an increase in the defendant's fine, in the manner described by Subsection (b); or
- (4) the placement of the defendant in a substance abuse felony punishment program operated under Section 493.009, Government Code, if:

(A) the defendant is convicted of a felony other than:

- (i) a felony under Section 21.11, 22.011, or 22.021, Penal Code; or
- (ii) criminal attempt of a felony under Section 21.11, 22.011, or 22.021, Penal Code; and

(B) the judge makes an affirmative finding that:

- (i) drug or alcohol abuse significantly contributed to the commission of the offense or violation of a condition of community supervision, as applicable; and
- (ii) the defendant is a suitable candidate for treatment, as determined by the suitability criteria established by the Texas Board of Criminal Justice under Section 493.009(b), Government Code.

(b) A judge may impose a sanction on a defendant described by Subsection (a)(3) by increasing the fine imposed on the defendant. The original fine imposed on the defendant and an increase in the fine imposed under this subsection may not exceed the maximum fine for the offense for which the defendant was sentenced. The judge shall deposit money received from an increase in the defendant's fine under this subsection in the special fund of the county treasury to be used for the same purposes for which state aid may be used under Chapter 76, Government Code.

(c) If the judge imposes a sanction under Subsection (a)(4), the judge shall also impose a condition requiring the defendant on successful completion of the program to participate in a drug or alcohol abuse continuum of care treatment plan.

Formerly Art. 42.12, §22(a), (b) & (d).

**ART. 42A.753. EXTENSION OF COMMUNITY
SUPERVISION AFTER VIOLATION**

(a) On a showing of good cause, the judge may extend a period of community supervision under Article 42A.752(a)(2) as frequently as the judge determines is necessary, but the period of community supervision in a first, second, or third degree felony case may not exceed 10 years and, except as otherwise provided by Subsection (b), the period of community supervision in a misdemeanor case may not exceed three years.

(b) The judge may extend the period of community supervision in a misdemeanor case for any period the judge determines is necessary, not to exceed an additional two years beyond the three-year limit provided by Subsection (a), if:

- (1) the defendant fails to pay a previously assessed fine, cost, or restitution; and
- (2) the judge determines that extending the supervision period increases the likelihood that the defendant will fully pay the fine, cost, or restitution.

(c) A court may extend a period of community supervision under Article 42A.752(a)(2):

- (1) at any time during the supervision period; or
- (2) before the first anniversary of the date the supervision period ends, if a motion for revocation of community supervision is filed before the date the supervision period ends.

Formerly Art. 42.12, §22(c).

**ART. 42A.754. AUTHORITY TO REVOKE
COMMUNITY SUPERVISION**

Only the court in which the defendant was tried may revoke the defendant's community supervision unless the judge has transferred jurisdiction of the case to another court under Article 42A.151.

Formerly Art. 42.12, §10(a).

**ART. 42A.755. REVOCATION OF COMMUNITY
SUPERVISION**

(a) If community supervision is revoked after a hearing under Article 42A.751(d), the judge may:

- (1) proceed to dispose of the case as if there had been no community supervision; or
- (2) if the judge determines that the best interests of society and the defendant would be served by a shorter term of confinement, reduce the term of confinement originally assessed to any term of confinement not less than the minimum prescribed for the offense of which the defendant was convicted.

(b) The judge shall enter in the judgment in the case the amount of restitution owed by the defendant on the date of revocation.

(c) Except as otherwise provided by Subsection (d), no part of the period that the defendant is on community supervision may be considered as any part of the term that the defendant is sentenced to serve.

(d) On revocation, the judge shall credit to the defendant time served as a condition of community supervision in a substance abuse felony punishment facility operated by the Texas Department of Criminal Justice under Section 493.009, Government Code, or other court-ordered residential program or

facility, but only if the defendant successfully completes the treatment program in that facility.

(e) The right of the defendant to appeal for a review of the conviction and punishment, as provided by law, shall be accorded the defendant at the time the defendant is placed on community supervision. When the defendant is notified that the defendant's community supervision is revoked for a violation of the conditions of community supervision and the defendant is called on to serve a sentence in a jail or in the Texas Department of Criminal Justice, the defendant may appeal the revocation.

Formerly Art. 42.12, §23(a) & (b).

ART. 42A.756. DUE DILIGENCE DEFENSE

For the purposes of a hearing under Article 42A.751(d), it is an affirmative defense to revocation for an alleged violation based on a failure to report to a supervision officer as directed or to remain within a specified place that no supervision officer, peace officer, or other officer with the power of arrest under a warrant issued by a judge for that alleged violation contacted or attempted to contact the defendant in person at the defendant's last known residence address or last known employment address, as reflected in the files of the department serving the county in which the order of deferred adjudication community supervision was entered.

Formerly Art. 42.12, §24.

ART. 42A.757. EXTENSION OF COMMUNITY SUPERVISION FOR CERTAIN SEX OFFENDERS

(a) If a defendant is placed on deferred adjudication community supervision after being convicted of an offense under Section 21.11, 22.011, or 22.021, Penal Code, at any time during the period of community supervision, the judge may extend the period of community supervision as provided by this article.

(b) At a hearing at which the defendant is provided the same rights as are provided to a defendant at a hearing under Article 42A.751(d), the judge may extend the defendant's supervision period for a period not to exceed 10 additional years if the judge determines that:

(1) the defendant has not sufficiently demonstrated a commitment to avoid future criminal behavior; and

(2) the release of the defendant from supervision would endanger the public.

(c) A judge may extend a period of community supervision under this article only once.

(d) A judge may extend a period of community supervision for a defendant under both Article 42A.752(a)(2) and this article.

(e) The prohibition in Article 42A.753(a) against a period of community supervision in a felony case exceeding 10 years does not apply to a defendant for whom community supervision is increased under this article or under both Article 42A.752(a)(2) and this article.

Formerly Art. 42.12, §22A(a)-(c).

Enacted effective Jan. 1, 2017 (HB 2299, §1.01). Section 3.01 of HB 2299 provides: "Article 42.12, Code of Criminal Procedure, is repealed." Section 4.01 of HB 2299 provides: "This Act is enacted under Section 43, Article III, Texas Constitution. This Act is intended as a codification only, and no substantive change in the law is intended by this Act."

The following sections of Art. 42.12 were also amended in the 2015 legislative session and remain effective despite the repeal of Art. 42.12 by HB 2299 under the savings provisions of Tex. Gov't Code §311.031(c)-(d) (protecting new laws from being rolled into non-substantive code revisions).

ART. 42.12. COMMUNITY SUPERVISION

Sec. 5. Deferred Adjudication; Community Supervision

(a-1) Before placing a defendant on deferred adjudication community supervision under this section, the court shall inform the defendant of the defendant's right to receive or petition the court for an order of nondisclosure of criminal history record information under Subchapter E-1, Chapter 411 [Section 411.081], Government Code, as applicable, unless the defendant is ineligible for an order [to pursue that right] because of:

- (1) the nature of the offense for which the defendant is placed on deferred adjudication community supervision; or
- (2) the defendant's criminal history.

[Now see Art. 42A.106(b)]

(c-1) A judge who dismisses the proceedings against a defendant and discharges the defendant under Subsection (c):

(1) shall[~~s~~]

~~[(1)]~~ provide the defendant with a copy of the order of dismissal and discharge; and

(2) if the judge determines that the defendant is or may become eligible for an order of nondisclosure of criminal history record information under Subchapter E-1, Chapter 411, Government Code, shall, as applicable;

(A) grant an order of nondisclosure of criminal history record information to the defendant;

(B) inform the defendant of the defendant's eligibility to receive an order of nondisclosure of criminal history record information without a petition and the earliest date on which the defendant is eligible to receive the order; or

(C) [s] inform the defendant of the defendant's eligibility to petition the court for an order of nondisclosure of criminal history record information [under Section 411.081, Government Code,] and the earliest date the defendant is eligible to file the petition for the order [of nondisclosure].

[Now see Art. 42A.111(e)]

(k) If a judge places on deferred adjudication community supervision a defendant charged with a misdemeanor other than a misdemeanor under Chapter 20, 21, 22, 25, 42, 43, 46, or 71, Penal Code, the judge shall make an affirmative finding of fact and file a statement of that affirmative finding with the papers in the case if the judge determines that it is not in the best interest of justice that the defendant receive an automatic order of nondisclosure under Section 411.072, Government Code.

Amendments to (a-1) & (c-1) and addition of (k) effective Sept. 1, 2015 (SB 1902, §16). Section 32 of SB 1902 provides: "The changes in law made by this Act apply only to the issuance of an order of nondisclosure of criminal history record information for an offense

committed on or after the effective date of this Act. The issuance of an order of nondisclosure of criminal history record information for an offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

Sec. 11. Basic Conditions of Community Supervision

(a) The judge of the court having jurisdiction of the case shall determine the conditions of community supervision and may, at any time during the period of community supervision, alter or modify the conditions. The judge may impose any reasonable condition that is designed to protect or restore the community, protect or restore the victim, or punish, rehabilitate, or reform the defendant. Conditions of community supervision may include, but shall not be limited to, the conditions that the defendant shall:

* * *

(11) If the judge determines that the defendant has financial resources that enable the defendant to offset in part or in whole the costs of the legal services provided to the defendant in accordance with Article 1.051(c) or (d), including any expenses and costs, reimburse ~~Reimburse~~ the county in which the prosecution was instituted for the costs of the legal services in an amount that the judge finds the defendant is able to pay, except that the defendant may not be ordered to pay an amount that exceeds:

(A) the actual costs, including any expenses and costs, paid by the county for the legal services provided by an appointed attorney; [compensation paid to appointed counsel for defending the defendant in the case, if counsel was appointed]; or

(B) if the defendant was represented by a public defender's office, the actual [in an] amount, including any expenses and costs, that would have otherwise been paid to an appointed attorney had the county not had a public defender's office;

[Now see Art. 42A.301]

* * *

(b)(1) A judge may not order a defendant to make any payments as a term or condition of community supervision, except for:

(A) finest, court costs, and restitution to the victim;

(B) reimbursement of a county as described by Subsection (a)(11); [5] and

(C) other conditions related personally to the rehabilitation of the defendant or otherwise expressly authorized by law.

(2) A judge may not impose a condition of community supervision requiring a defendant to reimburse a county for the costs of legal services as described by Subsection (a)(11) if the defendant has already satisfied that obligation under Article 26.05(g).

(3) The court shall consider the ability of the defendant to make payments before [in] ordering the defendant to make payments under this article.

[Now see Arts. 42A.108, .110]

* * *

(n)(1) If a judge grants community supervision to a defendant

younger than 18 years of age convicted of an alcohol-related offense under Section 106.02, 106.025, 106.04, 106.041, 106.05, or 106.07, Alcoholic Beverage Code, or Section 49.02, Penal Code, or an offense involving possession of a controlled substance or marihuana under Section 481.115, 481.1151, 481.116, 481.1161, 481.117, 481.118, or 481.121, Health and Safety Code, the judge may require the defendant as a condition of community supervision to attend, as appropriate, an alcohol awareness program approved under Section 106.115, Alcoholic Beverage Code, or a drug education program that is designed to educate persons on the dangers of drug abuse and is approved by the Department of State Health Services in accordance with Section 521.374, Transportation Code.

(2) If a judge requires a defendant as a condition of community supervision to attend an alcohol awareness program or drug education program described by Subdivision (1), unless the judge determines that the defendant is indigent and unable to pay the cost, the judge shall require the defendant to pay the cost of attending the program. The judge may allow the defendant to pay the cost of attending the program in installments during the term of community supervision.

Amendments to (a)(11) & (b) effective Sept. 1, 2015 (HB 3633, §2). See effective note following Art. 26.05.

Addition of (n) effective Sept. 1, 2015 (HB 642, §3).

Sec. 13. DWI Community Supervision

* * *

Subsection (b) as amended by SB 1070 effective Sept. 1, 2015:

(h) If a person convicted of an offense under Sections 49.04–49.08, Penal Code, is placed on community supervision, the judge shall 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 [Texas Commission on Alcohol and Drug Abuse], the Department of Public Safety, the Traffic Safety Section of the Texas Department of Transportation, and the community justice assistance division of the Texas Department of Criminal Justice designed to rehabilitate persons who have driven while intoxicated. The executive commissioner of the Health and Human Services [Texas] Commission [on Alcohol and Drug Abuse] shall publish the jointly approved rules and the Department of State Health Services shall monitor, coordinate, and provide training to persons providing the educational programs. The Department of State Health Services [Texas Commission on Alcohol and Drug Abuse] 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. The judge may waive the educational program requirement or may grant an extension of time to successfully complete the program that expires not later than one year after the beginning date of the person's community supervision, however, if the defendant by a motion in writing shows good cause. In determining good cause,

the judge may consider but is not limited to: the defendant's school and work schedule, the defendant's health, the distance that the defendant must travel to attend an educational program, and the fact that the defendant resides out of state, has no valid driver's license, or does not have access to transportation. The judge shall waive the educational program requirement if the defendant successfully completes equivalent education at a residential treatment facility under Subsection (o). The judge shall 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 [in the judgment]. 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), the court clerk shall immediately report that fact to the Department of Public Safety, on a form prescribed by the department, for inclusion in the person's driving record. If the court grants an extension of time in which the person may complete the program, the court clerk shall immediately report that fact to the Department of Public Safety on a form prescribed by the department. The report must include the beginning date of the person's community supervision. Upon the person's successful completion of the educational program, the person's instructor shall give notice to the Department of Public Safety for inclusion in the person's driving record and to the community supervision and corrections department. The community supervision and corrections department shall then forward the notice to the court clerk for filing. 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, the director of the residential treatment facility shall give notice to the Department of Public Safety for inclusion in the person's driving record. If the Department of Public Safety does not receive notice that a defendant required to complete an educational program has successfully completed the program within the period required by this section, as shown on department records, the department shall revoke the defendant's driver's license, permit, or privilege or prohibit the person from obtaining a license or permit, as provided by Sections 521.344(e) and (f), Transportation Code. The Department of Public Safety may not reinstate a license suspended under this subsection unless the person whose license was suspended makes application to the department for reinstatement of the person's license and pays to the department a reinstatement fee of \$100. The Department of Public Safety shall remit all fees collected under this subsection to the comptroller for deposit in the general revenue fund. This subsection does not apply to a defendant if a jury recommends community supervision for the defendant and also recommends that the defendant's driver's license not be suspended.

[Now see Arts. 42A.403, .405--.406]

Subsection (h) as amended by SB 202, §1.224, effective Sept. 1, 2017:

(h) If a person convicted of an offense under Sections 49.04-49.08, Penal Code, is placed on community supervision, the judge shall 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 Texas Department of Licensing and Regulation [~~Commission on Alcohol and Drug Abuse~~], the Department of Public Safety, the Traffic Safety Section of the Texas Department of Transportation, and the community justice assistance division of the Texas Department of Criminal Justice designed to rehabilitate persons who have driven while intoxicated. The Texas Department of Licensing and Regulation [~~Commission on Alcohol and Drug Abuse~~] shall publish the jointly approved rules and shall monitor, coordinate, and provide training to persons providing the educational programs. The Texas Department of Licensing and Regulation [~~Commission on Alcohol and Drug Abuse~~] 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. The judge may waive the educational program requirement or may grant an extension of time to successfully complete the program that expires not later than one year after the beginning date of the person's community supervision, however, if the defendant by a motion in writing shows good cause. In determining good cause, the judge may consider but is not limited to: the defendant's school and work schedule, the defendant's health, the distance that the defendant must travel to attend an educational program, and the fact that the defendant resides out of state, has no valid driver's license, or does not have access to transportation. The judge shall set out the finding of good cause for waiver in the judgment. 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, the court clerk shall immediately report that fact to the Department of Public Safety, on a form prescribed by the department, for inclusion in the person's driving record. If the court grants an extension of time in which the person may complete the program, the court clerk shall immediately report that fact to the Department of Public Safety on a form prescribed by the department. The report must include the beginning date of the person's community supervision. Upon the person's successful completion of the educational program, the person's instructor shall give notice to the Department of Public Safety for inclusion in the person's driving record and to the community supervision and corrections department. The community supervision and corrections department shall then forward the notice to the court clerk for filing. If the Department of Public Safety does not receive notice that a defendant required to complete an educational program has successfully completed the program within the period required by this section, as shown on department records, the department shall revoke the defendant's driver's license, permit, or privilege or prohibit the person from obtaining a license or permit, as provided by Sections 521.344(e) and (f), Transportation Code. The Department of Public Safety may not reinstate a license suspended under this subsection unless the person whose license was suspended makes application to the department for reinstatement of the person's license and pays to the department a reinstatement fee of \$100. The Department of Public Safety shall remit all fees collected under this subsection to the comptroller for deposit in the general revenue fund. This subsection does not apply to a defendant if a jury recommends community supervision for the defendant and also recommends that the defendant's driver's license not be suspended.

[Now see Arts. 42A.403, .405–.406]

Subsection (j) as amended by SB 1070 effective Sept. 1, 2015:

(j) The judge shall require a defendant who is punished under Section 49.09, Penal Code, as a condition of community supervision, to attend and successfully complete an educational program for repeat offenders approved by the Department of State Health Services [~~Texas Commission on Alcohol and Drug Abuse~~]. The executive commissioner of the Health and Human Services [~~Texas~~] Commission [~~on Alcohol and Drug Abuse~~] shall adopt rules and the Department of State Health Services shall monitor, coordinate, and provide training to persons providing the educational programs. The Department of State Health Services [~~Texas Commission on Alcohol and Drug Abuse~~] 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. The judge may waive the educational program requirement [~~only~~] if the defendant by a motion in writing shows good cause. In determining good cause, the judge may consider the defendant's school and work schedule, the defendant's health, the distance that the defendant must travel to attend an educational program, and whether the defendant resides out of state or does not have access to transportation. The judge shall waive the educational program requirement if the defendant successfully completes equivalent education at a residential treatment facility under Subsection (o). The judge shall 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 [in the judgment]. If a defendant is required, as a condition of community supervision, to attend an educational program, the court clerk shall immediately report that fact to the Department of Public Safety, on a form prescribed by the department, for inclusion in the defendant's driving record. The report must include the beginning date of the defendant's community supervision. On the defendant's successful completion of the educational program for repeat offenders, the defendant's instructor shall give notice to the Department of Public Safety for inclusion in the defendant's driving record and to the community supervision and corrections department. The community supervision and corrections department shall then forward the notice to the court clerk for filing. If the Department of Public Safety does not receive notice that a defendant required to complete an educational program has successfully completed the program for repeat offenders within the period required by the judge, as shown on department records, the department shall revoke the defendant's driver's license, permit, or privilege or prohibit the defendant from obtaining a license or permit, as provided by Sections 521.344(e) and (f), Transportation Code.

[Now see Arts. 42A.404–.406]

Subsection (j) as amended by SB 202 effective Sept. 1, 2017:

(j) The judge shall require a defendant who is punished under Section 49.09, Penal Code, as a condition of community supervision, to attend and successfully complete an educational pro-

gram for repeat offenders approved by the Texas Department of Licensing and Regulation [~~Commission on Alcohol and Drug Abuse~~]. The Texas Commission of Licensing and Regulation [~~on Alcohol and Drug Abuse~~] shall adopt rules and shall monitor, coordinate, and provide training to persons providing the educational programs. The Texas Department of Licensing and Regulation [~~Commission on Alcohol and Drug Abuse~~] 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. The judge may waive the educational program requirement only if the defendant by a motion in writing shows good cause. In determining good cause, the judge may consider the defendant's school and work schedule, the defendant's health, the distance that the defendant must travel to attend an educational program, and whether the defendant resides out of state or does not have access to transportation. The judge shall set out the finding of good cause in the judgment. If a defendant is required, as a condition of community supervision, to attend an educational program, the court clerk shall immediately report that fact to the Department of Public Safety, on a form prescribed by the department, for inclusion in the defendant's driving record. The report must include the beginning date of the defendant's community supervision. On the defendant's successful completion of the educational program for repeat offenders, the defendant's instructor shall give notice to the Department of Public Safety for inclusion in the defendant's driving record and to the community supervision and corrections department. The community supervision and corrections department shall then forward the notice to the court clerk for filing. If the Department of Public Safety does not receive notice that a defendant required to complete an educational program has successfully completed the program for repeat offenders within the period required by the judge, as shown on department records, the department shall revoke the defendant's driver's license, permit, or privilege or prohibit the defendant from obtaining a license or permit, as provided by Sections 521.344(e) and (f), Transportation Code.

[Now see Arts. 42A.404–.406]

Subsection (o) as enacted by SB 1070, effective Sept. 1, 2015:

(o) A judge shall 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. The Department of State Health Services shall approve equivalent education provided at substance abuse treatment facilities and the executive commissioner of the Health and Human Services Commission shall adopt rules to implement this subsection. 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 the Texas Department of Criminal Justice under Section 493.009, 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, Health and Safety Code.

Subsection (o) as enacted by HB 2246, effective Sept. 1, 2015:

(o) Notwithstanding any other provision of this section, a defendant whose license is suspended for an offense under Sections 49.04-49.08, Penal Code, may operate a motor vehicle during the period of suspension if the defendant:

(1) obtains and uses an ignition interlock device as provided by Subsection (i) for the entire period of the suspension; and
(2) applies for and receives an occupational driver's license with an ignition interlock designation under Section 521.2465, Transportation Code.

Amendments to (h) & (j) and addition of (o) effective Sept. 1, 2015 (SB 1070, §1). Section 4(a) of SB 1070 provides: "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."

Amendments to (h) & (j) substituting "Department of Licensing & Regulation" for "Commission on Alcohol and Drug Abuse" effective Sept. 1, 2017 (SB 202, §1.224).

Addition of (o) effective Sept. 1, 2015 (HB 2246, §1). Section 10 of HB 2246 provides: "The change in law made by this Act applies only to a person whose driver's license is suspended on or after the effective date of this Act, regardless of whether the underlying incident giving rise to the suspension occurred before, on, or after that date."

Sec. 13G. Prohibitions on Internet Access for Certain Sex Offenders

(a) This section applies only to a person who is required to register as a sex offender under Chapter 62, by court order or otherwise, and:

(1) is convicted of or receives a grant of deferred adjudication community supervision for a violation of Section 21.11, 22.011(a)(2), 22.021(a)(1)(B), 33.021, or 43.25, Penal Code;
 (2) used the Internet or any other type of electronic device used for Internet access to commit the offense or engage in the conduct for which the person is required to register under Chapter 62; or
 (3) is assigned a numeric risk level of two or three based on an assessment conducted under Article 62.007.

(b) If the court grants community supervision to a defendant described by Subsection (a), the court as a condition of community supervision shall:

(1) prohibit the defendant from using the Internet to:
(A) [~~(+)~~] access material that is obscene as defined by Section 43.21, Penal Code;
(B) [~~(-)~~] access a commercial social networking site, as defined by Article 62.0061(f);
(C) [~~(-)~~] communicate with any individual concerning sexual relations with an individual who is younger than 17 years of age; or
(D) [~~(+)~~] communicate with another individual the defendant knows is younger than 17 years of age; and

(2) to ensure the defendant's compliance with Subdivision (1), require the defendant to submit to regular inspection or monitoring of each electronic device used by the defendant to access the Internet.

(c) The court may modify at any time the condition described by Subsection (b)(1)(D) [~~(+)(4)~~] if:

(1) the condition interferes with the defendant's ability to attend school or become or remain employed and consequently constitutes an undue hardship for the defendant; or
 (2) the defendant is the parent or guardian of an individual who is younger than 17 years of age and the defendant is not otherwise prohibited from communicating with that individual.

[Now see Art. 42A.454]

Amended effective Sept. 1, 2015 (HB 372, §1).

Sec. 15. Procedures Relating to State Jail Felony Community Supervision

* * *

(h)(1) A defendant confined in a state jail felony facility does not earn good conduct time for time served in the facility but may be awarded diligent participation credit in accordance with Subdivision (6) or (7).

(2) A judge:

(A) may credit against any time a defendant is required to serve in a state jail felony facility time served by the defendant in a county jail from the time of the defendant's arrest and confinement until sentencing by the trial court; and

(B) shall credit against any time a defendant is required to serve in a state jail felony facility time served by the defendant in a substance abuse treatment facility operated by the Texas Department of Criminal Justice under Section 493.009, Government Code, or other court-ordered residential program or facility as a condition of deferred adjudication community supervision before sentencing, but only if the defendant successfully completes the treatment program in that facility.

(3) A judge shall credit against any time a defendant is subsequently required to serve in a state jail felony facility after revocation of community supervision any time served after sentencing by the defendant:

(A) in a state jail felony facility; or

(B) in a substance abuse treatment facility operated by the Texas Department of Criminal Justice under Section 493.009, Government Code, or another court-ordered residential program or facility if the defendant successfully completes the treatment program in that facility.

(4) For purposes of Subdivisions (5) and (6), "diligent participation" includes:

(A) successful completion of an educational, vocational, or treatment program;

(B) progress toward successful completion of an educational, vocational, or treatment program that was interrupted by illness, injury, or another circumstance outside the control of the defendant; and

(C) active involvement in a work program.

(5) For a defendant who has participated in an educational, vocational, treatment, or work program while confined in a state jail felony facility, [~~not later than the 30th day before~~]

~~the date on which the defendant will have served 80 percent of the defendant's sentence,] the Texas Department of Criminal Justice shall record [~~report to the sentencing court~~] the number of days during which the defendant diligently participated in any educational, vocational, treatment, or work program. [~~The contents of a report submitted under this subdivision are not subject to challenge by a defendant.~~]~~

(6) For a defendant with a judgment that contains a finding under Article 42.0199 that the defendant is presumptively entitled to diligent participation credit and who has not been the subject of disciplinary action while confined in the state jail felony facility, the department shall [A judge, based on the report received under Subdivision (5), may] credit against any time the [a] defendant is required to serve in a state jail felony facility additional time for each day the defendant actually served in the facility while diligently participating in an educational, vocational, treatment, or work program.

(7) For a defendant with a judgment that contains a finding under Article 42.0199 that the defendant is not presumptively entitled to diligent participation credit or who has been the subject of disciplinary action while confined in the state jail felony facility, the department shall, not later than the 30th day before the date on which the defendant will have served 80 percent of the defendant's sentence, report to the sentencing court the record of the number of days under Subdivision (5). The contents of a report submitted under this subdivision are not subject to challenge by a defendant. A judge, based on the report, may credit against any time a defendant is required to serve in a state jail felony facility additional time for each day the defendant actually served in the facility while diligently participating in an educational, vocational, treatment, or work program.

(8) A time credit under Subdivision (6) or (7) [this subdivision] may not exceed one-fifth of the amount of time the defendant is originally required to serve in the facility. A defendant may not be awarded a credit under Subdivision (6) or (7) [this subdivision] for any period during which the defendant is subject to disciplinary status [action]. A time credit under Subdivision (6) or (7) [this subdivision] is a privilege and not a right.

[Now see Art. 42A.559]

Amendments to (h) effective Sept. 1, 2015 (HB 1546, §2). See effective note following Art. 42.0199.

Sec. 16. Community Service

(f) In lieu of requiring a defendant to work a specified number of hours at a community service project or projects under Subsection (a), the judge may order a defendant to make a specified donation to:

(1) a nonprofit food bank or food pantry in the community in which the defendant resides;

(2) a charitable organization engaged primarily in performing charitable functions for veterans in the community in which the defendant resides; or

(3) in a county with a population of less than 50,000, another nonprofit organization that:

(A) is exempt from taxation under Section 501(a) of the Internal Revenue Code of 1986 because it is listed in Section 501(c)(3) of that code; and

(B) provides services or assistance to needy individuals and families in the community in which the defendant resides.

(h) In this section:

(1) "Charitable organization" has the meaning assigned by Section 2252.906, Government Code.

(2) "Veteran" has the meaning assigned by Section 434.022, Government Code.

[Now see Art. 42A.304(f)]

Amendments to (f) and addition of (h) effective Sept. 1, 2015 (HB 583, §1).

Sec. 21. Violation of Community Supervision: Detention and Hearing

(b-2) If the defendant has not been released on bail as permitted under Subsection (b-1), on motion by the defendant the judge who ordered the arrest for the alleged violation of a condition of community supervision shall cause the defendant to be brought before the judge for a hearing on the alleged violation within 20 days of filing of the [said] motion, and after a hearing without a jury, may either continue, extend, modify, or revoke the community supervision. A judge may revoke the community supervision of a defendant who is imprisoned in a penal institution without a hearing if the defendant, in writing before a court of record or a notary public in the jurisdiction where imprisoned, waives the defendant's [his] right to a hearing and to counsel, affirms that the defendant [he] has nothing to say as to why sentence should not be pronounced against the defendant [him], and requests the judge to revoke community supervision and to pronounce sentence. In a felony case, the state may amend the motion to revoke community supervision any time up to seven days before the date of the revocation hearing, after which time the motion may not be amended except for good cause shown, and in no event may the state amend the motion after the commencement of taking evidence at the hearing. The judge may continue the hearing for good cause shown by either the defendant or the state.

(c) The court may not revoke the community supervision of a defendant if, at the community supervision revocation hearing, the court finds that the only evidence supporting the alleged violation of a condition of community supervision is the uncorroborated results of a polygraph examination. In a community supervision revocation hearing at which it is alleged only that the defendant violated the conditions of community supervision by failing to pay [compensation paid to appointed counsel,] community supervision fees[5] or court costs or by failing to pay the costs of legal services as described by Section 11(a)(11), the state must prove by a preponderance of the evidence that the defendant was able to pay and did not pay as ordered by the judge. The court may order a community su-

pervision and corrections department to obtain information pertaining to the factors listed under Article 42.037(h) and include that information in the report required under Section 9(a) or a separate report, as the court directs.

* * *

[Now see Art. 42A.751]

Amendments to (b-2) effective Sept. 1, 2015 (HB 518, §1).

Amendments to (c) effective Sept. 1, 2015 (HB 3633, §3). See effective note following Art. 26.05.