

LEGISLATION AFFECTING

**Texas Department of Criminal Justice-
Community Justice Assistance Division
(TDCJ-CJAD)**

AND

**Community Supervision and Corrections Departments
(CSCDs)**

84th LEGISLATIVE SESSION

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Introduction

The following information regarding legislation enacted during the 84th Legislative Session is limited to information affecting either TDCJ-CJAD or CSCDs.

Some of the enacted bills also contain information outside the scope of this presentation. Additional information regarding the legislation is available at the Texas Legislature Online website at www.legis.state.tx.us. The website allows users to search for bills by number, subject, author, sponsor, committee, or keyword and provides copies of the bill text, the committee's bill analysis, fiscal note, witness lists, House Research Organization's bill analysis, and enrolled summary.

Conditions and Court Costs

House Bill 583: Donation Condition; Fees

Effective Date: September 1, 2015

House Bill 583 authorizes a judge to order a person to make a donation to a veteran's charity in the county in which the person resides, in lieu of requiring a specified number of community service hours. In counties with a population of less than 50,000, a judge may alternatively order a person to make a donation to a nonprofit organization that provides services or assistance to needy individuals and families in the county.

Bill Impact: Persons may be required to make a donation to a veteran's charity (or other nonprofit in a small county) as a condition of their community supervision. The option to require a donation was previously limited to nonprofit food banks or pantries.

House Bill 941: Fees and DNA Records

Effective Date: September 1, 2015

House Bill 941 expands the category of convictions to which DNA testing applies to include certain felonies and misdemeanors. Under Section 42.12(11)(j), Code of Criminal Procedure, every person granted community supervision for a felony conviction already must provide a DNA sample. While 42.12(11)(j) requires a DNA sample for persons granted community supervision for felony convictions, there is no provision automatically requiring a DNA sample for those granted community supervision for misdemeanor convictions.

The misdemeanors requiring a DNA sample are: Sections 21.07 (Public Lewdness), 21.08 (Indecent Exposure), 22.07 (Terroristic Threat), 25.04 (Enticing a Child), 43.03 (Promotion of Prostitution), 43.24 (Sale, Distribution, or Display of Harmful Material to a Minor), Penal Code.

Bill Impact: Any person granted community supervision for a felony conviction will still submit a DNA sample, but a person convicted for a misdemeanor in the expanded category will now also be required to submit a DNA sample, whether granted community supervision or not. The changes in the law apply to offenses committed after September 1, 2015.

House Bill 2159: Restitution

Effective Date: September 1, 2015

House Bill 2159 requires the payment of restitution as a condition of community supervision for offenses involving family violence* committed in the presence of a child under the age of 15 where the defendant knew or should have known the child was present. After placement on community supervision, the court must determine from the PSI or other evidence whether a child witness was present, and if found, after considering the financial circumstances of the defendant, must order restitution for the payment of medical, psychiatric, and psychological care for the

child witness, and specify manner of payment. Restitution must be delivered to the CSCD for transfer to the victim.

Bill Impact: The changes in the law apply to offenses committed after September 1, 2015. A CSO completing a PSI for an offense that potentially involved family violence will need to address whether a child witness was present and if the offender knew or should have known the child was present at the time of the offense. A CSCD supervising a person ordered to pay restitution will be responsible for collecting the payment and transferring it to the victim.

*Family violence means (1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonable places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself; (2) abuse by a member of a family or household toward a child of the family or household; or (3) dating violence.

Intoxication Offenses

House Bill 642: Alcohol/Drug Education Condition; Fees Effective Date: September 1, 2015

House Bill 642 permits a judge to require a person under 18 years of age with an intoxication offense, as a condition of community supervision, to attend and complete an alcohol awareness or drug education program, or drug and alcohol driving awareness program, approved by the Department of State Health Services. The bill requires a judge to order the person to pay the cost of attending the program, unless the person is found to be indigent or unable to pay the cost.

Bill Impact: Applies to persons aged 17 years old who are sentenced to community supervision for drug or alcohol offenses. These persons may be required to attend, complete, and pay for alcohol awareness programs as a condition of community supervision.

Application is limited to the following offenses: Sections 106.02 (Purchase of Alcohol by Minor), 106.025 (Attempt to Purchase Alcohol by Minor), 106.04 (Consumption of Alcohol by Minor), 106.041 (Driving/ Operating Watercraft Under Influence of Alcohol by Minor), 106.05 (Poss'n. of Alcohol by Minor), 106.07 (Misrepresentation of Age by Minor), Alcoholic Beverage Code; Section 49.02 (Public Intoxication), Penal Code; Sections 481.115, 481.1151, 481.116, 481.1161, 481.117, 481.118, (Poss'n of Substance in Penalty Group 1, 1-A, 2, 2-A, 3, or 4), 481.121 (Poss'n of Marihuana), Health and Safety Code.

House Bill 2246: Ignition Interlock Devices Effective date: September 1, 2015

House Bill 2246 entitles a person whose driver's license has been suspended following a conviction for an intoxication offense to operate a vehicle during the entire period of suspension by obtaining an occupational driver's license after proving financial responsibility and installing an ignition interlock device on every vehicle they operate. The person can only apply for the license with the clerk of the court in which the person was convicted, and may not have been issued more than one post-conviction occupational license in the 10 years preceding the

application. Once obtained, a person with the occupational license may not be subject to restrictions on time, reason, or location of travel.

Bill Impact: HB 2246 requires a CSCD, if ordered by a court of record, to supervise persons who are awarded an occupational driver's license with an ignition interlock designation. Applies to a person whose license is suspended after the effective date for a conviction for the following intoxication offenses: Sections 49.04 (Driving), 49.05 (Flying), 49.06 (Boating), 49.065 (Assembling or Operating Amusement Ride), 49.07 (Assault), Section 49.08 (Manslaughter).

Senate Bill 1070: Educational Requirements

Effective Date: September 1, 2015

Senate Bill 1070 requires a judge to waive a community supervision condition requiring a person to attend and successfully complete a DWI rehabilitation educational program if the person successfully completes equivalent education while confined to a substance abuse residential treatment facility. A substance abuse treatment facility includes a substance abuse treatment facility or felony punishment facility operated by TDCJ, a community corrections facility, or a chemical dependency treatment facility. The bill requires the director of the residential treatment facility, upon release of the person and at the request of the court clerk, to give notice to the DPS for inclusion in the person's driving record.

Bill Impact: The law applies to those convicted and placed on community supervision after September 1, 2015 for the following intoxication offenses: Sections 49.04 (Driving), 49.05 (Flying), 49.06 (Boating), 49.065 (Assembling or Operating Amusement Ride), 49.07 (Assault), Section 49.08 (Manslaughter), 49.09 (Repeat Offender), Penal Code. Substance abuse treatment facilities, including community corrections facilities, will need to ensure equivalent education programs are approved by the Department of State Health Services.

Sex Offenders

House Bill 372: Restrictions and Monitoring

Effective Date: September 1, 2015

House Bill 372 adds a person assigned a risk level of two to the group of persons upon whom the court must impose Internet restrictions as a condition of community supervision. A person with the restrictions may not use the Internet to: access material that is obscene; access a commercial social networking site; communicate with any individual concerning sexual relations with an individual who is under 17; or communicate with another individual the defendant knows is under 17. Additionally, the court must now require the person to submit to regular inspection of each electronic device used by the person to access the Internet.

A person who is required to register as a sex offender and is granted community supervision (including deferred adjudication) must comply with the Internet restrictions if they are assigned a numerical risk level of two or three.

Bill Impact: Previously, a person required to register as a sex offender was required to comply with Internet restrictions if the person: (1) committed an offense under Sections 21.11 (Indecency with a Child), 22.011(a)(2) (Sexual Assault), 22.021(a)(1)(b) (Aggravated Sexual Assault), 33.021 (Online Solicitation of a Minor), or 43.25 (Sexual Performance by a Child), Penal Code; (2) used the Internet to commit the offense or engage in the conduct for which the person is required to register; or (3) was assigned a numeric risk level of three.

Under the changes in the law, a person assigned a numeric risk level of two also must comply with Internet restrictions, and anyone subject to Internet restrictions is required to submit to inspection of any device used to access the Internet. The effect is retroactive, and anyone with a risk level of two must have the condition added to their probation restrictions.

Human Resources

House Bill 786: Rights of Nursing Employees

Effective date: September 1, 2015

House Bill 786 creates a right for public employees to express breast milk in the workplace and requires public employers (including political subdivisions) to make certain accommodations for those employees.

A public employer is required to have a policy stating that the employer supports the practice of expressing breast milk and that it will make reasonable accommodations for the needs of employees who express breast milk.

A public employer is required to provide a reasonable amount of break time for an employee to express breast milk each time the employee has need, and to provide a place for the employee to express breast milk, other than a multi-user bathroom, that is shielded from view and free from intrusion from other employees and the public.

A public employer is prohibited from discriminating against, suspending, or terminating the employment of an employee because the employee asserted her right to express breast milk in the workplace.

Bill Impact: CSCDs must amend human resource policies contained in their administrative manual (37 Tex. Admin. Code § 163.21) to allow employees reasonable break time and to provide a private place for expressing breast milk.

House Bill 1151: Sexual Harassment Protection for Interns

Effective date: September 1, 2015

House Bill 1151 establishes sexual harassment protection for unpaid interns. An employer commits an unlawful employment practice if the employer's agents or supervisors know or should know that the conduct constituting sexual harassment is occurring and fail to take immediate and appropriate corrective action.

Bill Impact: CSCDs may need to revise applicable policies related to sexual harassment and discourteous conduct of a sexual nature to ensure protection is granted to unpaid interns.

Handguns

House Bill 1376: Licensing; Probation Officers

Effective date: September 1, 2015

House Bill 1376 extends the streamlined process for obtaining a handgun license by judges and district attorneys to community supervision officers. A community supervision officer can establish handgun proficiency by obtaining a sworn statement from a handgun proficiency instructor that indicates that the person demonstrated proficiency in the use of handguns during the 12-month period preceding the date of the application for the license. The fee for issuance or renewal of a handgun license is reduced to \$25 for community supervision officers.

Bill Impact: Community supervision officers will be able to participate in a streamlined process for obtaining a handgun license with reduced fees.

Victims

House Bill 1293: Confidentiality; Stalking

Effective date: September 1, 2015

House Bill 1293 provides for the confidentiality of identifying information of persons who were the victims of stalking, if the victim elects to use a pseudonym to be used in all public files and records.

Bill Impact: CSCDs must ensure that any records containing identifying information of a victim of stalking who has elected a pseudonym remain confidential.

CSCD Administration

House Bill 1930: Strategic Planning

Effective date: September 1, 2015

House Bill 1930 replaces “community justice plans” with “strategic plans” and requires CSCDs to provide summaries of their programs and services. Allows judges, rather than the community justice council, to recommend expenditures of funds for community correctional facilities. Makes the creation of a community justice council optional, and requires the local CSCD, rather than the community justice council, to submit the strategic plan.

Bill Impact: CSCDs are required to provide summaries of planned programs and services. While a community justice council was previously required to be established, their creation is now optional, and determined by the commissioners court, rather than the judges of a county.

Offender

House Bill 518: Revocation; Hearing Waiver

Effective date: September 1, 2015

House Bill 518 allows a person on community supervision who is incarcerated in a penal institution to use a notary public to waive his right to a revocation hearing and to counsel, without requiring appearance in court.

Bill Impact: Previously, a judge could revoke a person's community supervision following an alleged violation without a hearing if the defendant waived the right to a hearing and counsel before a court of record. A law librarian may act as notary public in certain circumstances.

House Bill 1908: Continuity of Care

Effective date: September 1, 2015

House Bill 1908 expands the scope of the memorandum of understanding, regarding the continuity of care for offenders with mental impairments, to ensure that, subject to available resources: (1) each person with a mental impairment is identified and qualified for the continuity of care system; and (2) adults with severe and persistent mental illness who are experiencing significant functional impairment due to mental disorder are served.

Bill Impact: Eligibility was previously limited to persons suffering from bipolar, major depressive, or schizoaffective disorders, but now includes individuals with high clinical need and high risk of recidivism, regardless of a specific diagnosis, to be subject to the continuity of care system if they have any diagnosed mental health disorder that is severe or persistent in nature.

House Bill 2645: GPS Monitoring; New Offense

Effective date: September 1, 2015

House Bill 2645 adds removing, attempting to remove, or tampering with the normal function of a global positioning monitoring system (GPS) to the list of offenses a person can commit in violation of a condition of bond or protective order issued in a family violence, sexual assault or abuse, or stalking case.

Bill Impact: This applies to persons who are subject to a condition of bond requiring GPS monitoring for family violence, sexual assault or abuse, or stalking cases, as well as those who become subject to the GPS condition of bond after the effective date.

Senate Bill 1474: Veterans Treatment Court Program

Effective date: September 1, 2015

Senate Bill 1474 changes the name of the “veterans court program” to “veterans treatment court program” and amends provisions regarding program eligibility. Eligibility is expanded to include veterans or current service members who suffer from a brain injury, mental disorder, or military sexual trauma* that occurred during or resulted from military service and affected the criminal conduct at issue. Additionally, any veteran whose participation in a veterans treatment court program is likely to achieve public safety through rehabilitation is eligible to participate. The veterans treatment court program may allow participants to comply with their ordered treatment plans or court obligations through videoconferencing or other internet-based communication.

The bill also provides for transfer of participants between veterans treatment court programs and for placement of persons into programs where the person works or resides, if the county of offense does not have a program. The person must agree to abide by all rules, requirements, and instructions of the program accepting the transfer.

*Military sexual trauma means any sexual assault or sexual harassment that occurs while the victim is a member of the United States Armed Forces performing the person’s regular duties.

Bill Impact: The changes apply to a person who enters a veterans court treatment program after the effective date of the bill, regardless of when the offense was committed. The option to transfer also applies to current participants.

Miscellaneous

House Bill 2299: Reorganization of Community Supervision Statutes

Effective date: January 1, 2017

House Bill 2299 provides a complete reorganization of the Code of Criminal Procedure statutes on community supervision. Chapter 42A will replace Chapter 42.12, and all conforming amendments will be changed to reflect the replacement of Chapter 42.12 with Chapter 42A.

Bill Impact: CJAD and CSCDs should be aware of the upcoming reorganization of Chapter 42.12 in the Code of Criminal Procedure occurring on January 1, 2017.