

Tex. Crim. Proc. Code Ann. art. 42.12 (West)

### **JUDGE ORDERED COMMUNITY SUPERVISION**

Sec. 3. (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 suspend the imposition of the sentence and place the defendant on community supervision or impose a fine applicable to the offense and place the defendant on community supervision.

(b) In a felony case the minimum period of community supervision is the same as the minimum term of imprisonment applicable to the offense and the maximum period of community supervision is, subject to the extensions provided by Section 22:

(1) 10 years, for a felony other than a third degree felony described by Subdivision (2); and

(2) five years, for the following third degree felonies:

(A) a third degree felony under Title 7, Penal Code, other than an offense under Section 33.021(c), Penal Code; and

(B) a third degree felony under Chapter 481, Health and Safety Code.

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

(d) A judge may increase the maximum period of community supervision in the manner provided by Section 22(c) or 22A of this article.

(e) A defendant is not eligible for community supervision under this section if the defendant:

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

(2) is sentenced to serve a term of confinement under Section 12.35, Penal Code.

(f) The minimum period of community supervision for a felony described by Section 13B(b) is five years and the maximum period of supervision is 10 years.

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

(h) The minimum period of community supervision under this section 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.

Secs. 3a to 3f. [Blank].

## LIMITATION ON JUDGE ORDERED COMMUNITY SUPERVISION

Sec. 3g. (a) The provisions of Section 3 of this article do not apply:

(1) to a defendant adjudged guilty of an offense under:

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

(B) Section 19.03, Penal Code (Capital murder);

(C) Section 21.11(a)(1), Penal Code (Indecency with a child);

(D) Section 20.04, Penal Code (Aggravated kidnapping);

(E) Section 22.021, Penal Code (Aggravated sexual assault);

(F) Section 29.03, Penal Code (Aggravated robbery);

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

(i) Section 481.140, Health and Safety Code; or

(ii) 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;

(H) Section 22.011, Penal Code (Sexual assault);

(I) Section 22.04(a)(1), Penal Code (Injury to a child, elderly individual, or disabled individual), if the offense is punishable as a felony of the first degree and the victim of the offense is a child;

(J) Section 43.25, Penal Code (Sexual performance by a child);

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

(L) Section 43.05, Penal Code (Compelling prostitution);

(M) Section 20A.02, Penal Code (Trafficking of persons); or

(N) Section 30.02, Penal Code (Burglary), if the offense is punishable under Subsection (d) of that section and 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; or

(2) to a defendant when it is shown that a deadly weapon as defined in Section 1.07, Penal Code, was used or exhibited during the commission of a felony

offense or during immediate flight therefrom, and that the defendant used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited. On an affirmative finding under this subdivision, the trial court shall enter the finding in the judgment of the court. On an affirmative finding that the deadly weapon was a firearm, the court shall enter that finding in its judgment.

(b) If there is an affirmative finding under Subsection (a)(2) in the trial of a felony of the second degree or higher that the deadly weapon used or exhibited was a firearm and the defendant is granted community supervision, the court may order the defendant confined in the Texas Department of Criminal Justice for not less than 60 and not more than 120 days. At any time after the defendant has served 60 days in the custody of the department, the sentencing judge, on his own motion or on motion of the defendant, may order the defendant released to community supervision. The department shall release the defendant to community supervision after he has served 120 days.

### **JURY RECOMMENDED COMMUNITY SUPERVISION**

Sec. 4. (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) 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 Section 3(b) or 3(c) of this article, as appropriate.

(c) A judge may increase the maximum period of community supervision in the manner provided by Section 22(c) or Section 22A of this article.

(d) A defendant is not eligible for community supervision under this section 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 Section 15(a);

(3) does not file a sworn motion under Subsection (e) of this section or for whom the jury does not enter in the verdict a finding that the information contained in the motion is true;

(4) 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 one of those subsections;

- (5) is convicted of an offense listed in Section 3g(a)(1)(C), (E), or (H), if the victim of the offense was younger than 14 years of age at the time the offense was committed;
- (6) is convicted of an offense listed in Section 3g(a)(1)(D), if the victim of the offense was younger than 14 years of age at the time the offense was committed and the actor committed the offense with the intent to violate or abuse the victim sexually;
- (7) is convicted of an offense listed in Section 3g(a)(1)(J), (L), or (M); or
- (8) is adjudged guilty of an offense under Section 19.02, Penal Code.
- (e) A defendant is eligible for community supervision under this section only if 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 the jury enters in the verdict a finding that the information in the defendant's motion is true.
- (f) The minimum period of community supervision under this section 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.