

# **STATE SENTENCING ALTERNATIVES**

Including Texas Intermediate Sanctions Bench Manual  
Community Justice Assistance Division  
Texas Department of Criminal Justice

**JUDGE LARRY GIST**  
Senior Criminal District Judge  
Beaumont

State Bar Of Texas  
**31<sup>ST</sup> ANNUAL ADVANCED CRIMINAL LAW COURSE**  
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**CHAPTER 29**



**BIOGRAPHY - JUDGE LARRY GIST**  
**January, 2005**

**EDUCATION;** Bishop Byrne High School; BBA University of Notre Dame; J.D. University of Texas Law School; Texas Judicial College; National Judicial College; Trial Advocacy Institute, Harvard Law School; National Institute of Trial Advocacy, University of Notre Dame Law School; College of the State Bar of Texas; College of Advanced Judicial Studies, Texas Judicial Center.

**EMPLOYMENT;** Assistant Criminal District Attorney, Jefferson County, Texas (9 yrs.); Assistant State's Attorney, Texas Court of Criminal Appeals (1 yr.); Judge, Criminal District Court of Jefferson County, Texas (20 yrs.). Presently Senior Criminal District Judge (10 yrs.).

**ADMITTED TO PRACTICE;** Supreme Court of Texas and all Texas Courts; United States Supreme Court; United States District Courts, Eastern District of Texas.

**PROFESSIONAL;** Board Certified Specialist in Criminal Law, Texas State Bar Board of Legal Specialization; Chairman, Texas Board of Criminal Justice Judicial Advisory Council; Chairman, Criminal Law Section, State Bar of Texas; Penal Code Committee Chairman, Texas Punishment Standards Commission; Member, Texas Punishment & Sentencing Commission; Member, Texas Recidivism Task Force; Chairman, State Jail Judicial Task Force; Member, Governor's Code of Criminal Procedure Revision Committee; Director, International Comparative Criminal Law Course; Chairman, Judicial Advisory Board, Texas Association for Court Administration; Director, State Bar Advanced Criminal Law Course; Member, Judicial Advisory Council, National Organization For Victim Assistance; Adv. Board Member, Crime Prevention Institute; Editor, Criminal Law Journal, State Bar of Texas; Qualified Master, Mehaffy Inn of Court; Board Member & Chairman, Judicial Section, American Probation & Parole Association; Advisory Board, Texas Capital Litigation Assistance Project.

**FACULTY;** National Judicial College; Texas Judicial College; State Bar of Texas Advanced Criminal Law Course; Adjunct Professor, South Texas College of Law and Lamar University; International Comparative Criminal Law Course; Lecturer at Oxford University & Cambridge University, England; Westminster Law School, London, England; Munich University Law School, Munich, Germany. Consultant, National Institute of Justice, U.S. Department of Justice; Frequent lecturer to local, state, national and international groups and conferences on criminal law issues.

**PUBLICATIONS;** Branch's Annotated Texas Penal Statutes; Texas Court Administration; Punishment Alternatives, National Judicial College Course Book; Punishment & Sentencing, Texas Judicial College Course Book; Texas Sentencing, State Bar of Texas Advanced Criminal Law Course Book; Capital Murder: Michael Lockhart, A Perfect Gentleman; Texas Roulette Justice, An Analysis of Sentencing Discretion, Problems In Criminal Trial Advocacy; Texas Capital Punishment; South Texas Law Review: Regular contributor Texas Prosecutor monthly magazine: Voice For The Defense monthly magazine, Texas Corrections Journal, and Texas Probation Journal. Contributing Editor, Texas State Trooper monthly magazine.

**AWARDS;** Chris Marshall Distinguished Faculty Award, Tex. District & County Attorneys Assn; Twice received Outstanding Professor Award, South Texas College of Law; Knights of Columbus Outstanding Jurist Award; Criminal Justice Center, Sam Houston State University Award of Merit; Justice Charles Barrow Award, Texas Association for Court Administration; President's Award, Texas Corrections Association; Eagle Scout; National Boy Scouts of America Silver Beaver Award; State Bar of Texas Outstanding Judge Award; Jefferson County Outstanding Young Lawyer; Media Excellence Award, Press Club of Southeast Texas; Judge Clarence Stevenson Distinguished Service Award, Texas Corrections Association; 1st Texas State Jail named the Larry Gist Unit by the Texas Board of Criminal Justice.

**CIVIC;** Active in numerous civic, charitable and religious organizations. Director, YMCA; Director, Mental Health Association; Chairman, Beaumont Senior Citizens Association; President, Beaumont Kiwanis Club; Director, Texas Public Affairs Network; Cubmaster, Assistant Scoutmaster and Scoutmaster, Boy Scouts of America. Member, Eagle Scout Board of Review, Executive Committee and Camping Committee Chairman, 3 Rivers Council, Boy Scouts of America.

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## STATE SENTENCING ALTERNATIVES

### I. FOREWORD

In response to requests from the Texas trial judiciary concerning community corrections sanctioning options and resources in Texas, the Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD) authorized the publication of this manual. The document is a collaborative effort between Texas State University, San Marcos and the TDCJ-CJAD, and was developed under the guidance of the Judicial Advisory Council. It is intended to be accessible to all components of the criminal justice system involved in fashioning appropriate correctional strategies for offenders eligible for community corrections alternatives. The primary audience for this volume is trial court judges, both District Court and County Court at Law. It is the intention of the TDCJ-CJAD that the manual be accessible to prosecutors, community corrections officials, defense attorneys, crime victims, defendants, and any other citizen with an interest in the broad array of alternatives to conventional incarceration in Texas today. The manual is provided in hard copy to all District and County Courts at Law with jurisdiction over criminal matters. It will also be accessible via the TCDJ-CJAD website and available on compact disc. The publication of this manual was one of several recommendations by the Technical Violations Committee (March 2001), which included members from all facets of the justice system, including the courts, community supervision and corrections departments, and the state agency. In addition to the publication of this manual, the committee report recommended a significant increase in funding for diversion from institutional incarceration and predicted a 10% decrease in revocations of offenders in community corrections as one result. The Technical Violations Committee Report may be accessed through the TDCJ-CJAD website:

<http://www.tdcj.state.tx.us/publications/cjad/tech-violations-rprt.pdf>.

This manual will indicate possible intermediate services and sanctions that may be imposed in lieu of incarceration, either as a direct sentence or in response to technical violations of the conditions of probation. It is intended to be a quick reference for basic information on community corrections alternatives across the state so that the resources available may be fully and efficiently utilized. The existing programs and sentencing alternatives in Texas are a progressive, appropriate response to the diverse needs of the offender population. In addition, the manual includes a concise summary of the characteristics of programs

and supervision practices that are known to reduce recidivism and protect the public by reducing the likelihood of technical violations or further criminal behavior. For purposes of simplicity, the generic and well-understood term “**Probation**” is used interchangeably with the term “**Community Supervision**” throughout this manual. The legislative decision to employ the terms **Community Supervision, Community Corrections, Texas Department of Criminal Justice-Community Justice Assistance Division (TCDJ-CJAD), Community Supervision Officers, etc.** is well understood. It is the TDCJ-CJAD’s intent to update this publication on a regular basis. The task of accurately yet succinctly providing relevant, timely information about a dynamic justice system as diverse, vast, and complex as that in Texas has been a challenge. It is our sincere hope that this manual will be a useful resource that can be refined and improved in the future.

### II. INTRODUCTION AND PURPOSE OF MANUAL CONTINUUM OF TEXAS COMMUNITY CORRECTIONS SANCTIONS

This manual is designed to provide a readily accessible source of concise information about community corrections sentencing alternatives and sanctions. This manual is provided to all Texas trial courts with jurisdiction over felony cases or Class A and B misdemeanors, and will also be available to all officers of the courts participating in sentencing dialogue and recommendations. Community-based sanctions are used to enforce court orders and divert offenders from imprisonment. Community supervision provides a broad continuum of progressively rigorous sanctions ranging from pre-trial programs including drug-courts to placement in a community corrections facility. Most departments also have specialized caseloads (sex offenders, youthful offenders, mentally impaired offenders, etc.) supervised by officers specializing in a particular type of offender, as well as other programs which will be described in more detail in this manual. In Texas there is a strong commitment to provide a continuum of sanctions that effectively balance risk management (controlling offenders through surveillance, intensive monitoring or enforcing limits) with risk reduction (addressing those characteristics of the offender that contribute to future criminal behavior through strategies such as changing anti-social thinking through cognitive interventions; job-skills training; or substance abuse, sex offender, and other treatment). In addition, Community Supervision and Corrections Departments (CSCDs) provide victim services including collection of victim restitution and arrange for offenders to perform community service restitution. According to the **House Committee on Corrections Interim Report 2002**, community supervision is a cost-effective alternative

for many offenders. According to the report, “When public safety and justice goals permit, community supervision provides a way of monitoring offenders, enforcing court orders with sanctions, and intervening with treatment programs when appropriate. Community supervision costs the state about \$1.01 per day per offender on direct supervision for basic supervision and another \$1.14 for specialized supervision and residential and nonresidential treatment programs when averaged across all offenders under direct supervision. The total state cost of \$2.15 per offender on community supervision compares to costs of about \$40 per day for prison and about \$32 per day for state jail.” The report adds, “In FY 2001, 37 percent of prison intakes and 41 percent of state jail intakes were revocations of community supervision. It is estimated that the 20,709 felons revoked to prison or state jail during FY 2001 will ultimately cost the state \$547 million in direct incarceration costs during the period of their incarcerations.” Revocation of probation, particularly felony revocation that results in prison for technical violations (non-compliance with the conditions of probation such as: missing appointments, not paying fees and fines, with no new crime committed), has been of particular concern to the TDCJ-CJAD and the Technical Violations Committee. As previously noted in the forward of this manual, the March 2001 report on technical violations is available from TDCJ-CJAD

<http://www.tdcj.state.tx.us/publications/cjad/tech-violations-rprt.pdf>.

The intent of this manual is to provide a concise summary of community supervision options that may be appropriate in lieu of incarceration in response to technical violations of the conditions of supervision, or as a direct sentence. Chapter 2 addresses eligibility for probation supervision and the authority of judges and juries in granting it. Basic conditions in Article 42.12 of the Texas Code of Criminal Procedure are reviewed along with discussion of additional conditions that may be lawfully imposed by a trial court. In many jurisdictions, twenty or more conditions of community supervision are imposed. Conditions may require additional fees and participation in hundreds of hours of programs. The elements of Pre-sentence Investigation reports are summarized. Reduction or termination of probation is addressed. The chapter then moves to information about various options available to the trial court when there is non-compliance with one or more terms of the conditions of probation. Motions to revoke probation, detention of the defendant pending hearing, the revocation hearing due process requirements, continuation, and modification are addressed. Chapter 3 reviews **non-residential** (non-Community Corrections Facility) probation sentencing options in Texas. Topics included are the functions of pre-trial services in pre-trial release and

supervision of alleged offenders, deferred adjudication, specialized caseload supervision of several types, intensive supervision probation, electronic monitoring, community service restitution, day reporting centers, DWI probation, shock probation, and supervision for the mentally ill. Chapter 4 addresses **residential community corrections facilities** (CCFs) sentencing alternatives. Such facilities are restitution centers, court residential treatment centers, substance abuse treatment facilities, intermediate sanction facilities, boot camps, and residential alternatives for the mentally or developmentally disabled offender. Additional information on programs in state jails and Substance Abuse Felony Punishment Facilities (SAFPFs) is provided, although these two options are not funded or supervised by the TDCJ-CJAD.

Chapter 5 provides a summary of **drug courts** and **substance abuse programs**, including Treatment Alternative to Incarceration Program (TAIP) and a set of progressive sanctions and progressively more intense services. More detailed information on SAFPFS is provided. Finally, a chart summarizing all options is provided to assist the court in determining into which program to place the defendant.

Chapter 6 provides a summary by Professor Edward Latessa, Ph.D., University of Cincinnati, and associates on research indicating “what works” in reducing recidivism in high-risk offenders. Throughout the manual, hyperlinks (such as the link to the Report on Technical Violations *supra*) guide the reader to in-depth treatises on probation and intermediate sanctions. Abundant information about specific correction programs and initiatives in Texas are available at the Texas Department of Criminal Justice webpage at <http://www.tdcj.state.tx.us/publications/publications-ome.htm#Community%20Justice%20Assistance%20Division>.

The Bureau of Justice Statistics is an excellent source for statistical information on population trends in institutional and community corrections. The recent report “Probation and Parole in the United States, 2001” (<http://www.ojp.usdoj.gov/bjs/pub/pdf/ppus01.pdf>) is representative.

The manual provides a continuum of sanctions. Provided by the TDCJ-CJAD, the following chart illustrates the continuum as the severity of sanction progresses from pre-trial release to incarceration programs.

### III. TEXAS COMMUNITY SUPERVISION CONTINUUM OF SANCTIONS

**INCARCERATION**  
**ARREST**  
**COMMUNITY BASED**  
 Pretrial Release

(Bond &  
other)  
Pretrial Diversion  
Drug Courts  
Batterer Intervention  
Prevention Program  
Regular Community Supervision  
Specialized Caseloads

#### **BALANCING RISK REDUCTION & RISK MANAGEMENT**

Cognitive Intervention  
Substance Abuse Treatment  
SAFPP - Aftercare  
Mentally Impaired Caseloads  
Employment  
High Risk/High Need  
Day Resource Centers  
Cultural, Gender, Youth Specific  
Intensive Supervision Program  
Surveillance  
Project Spotlight  
Gang Caseloads  
Sex Offender  
Electronic Monitoring  
Urinalysis testing  
Court Residential Treatment Centers  
Substance Abuse Treatment Facilities  
Mentally Impaired Facility  
Local Boot Camps  
Intermediate Sanction Facilities  
Restitution Centers  
Residential CCFs  
Residential Contracts  
State Jails  
State Boot Camps

#### **SAFPP**

#### **TREATMENT ALTERNATIVE TO INCARCERATION PROGRAM**

#### **VICTIM SERVICES**

#### **COMMUNITY SERVICE RESTITUTION**

Day Reporting Centers

#### **IV. ELIGIBILITY AND AUTHORITY TO IMPOSE, MODIFY, AND REVOKE PROBATION INTRODUCTION**

This chapter presents, in graphic format to the extent feasible, a general review of probation eligibility in Texas, including judge and jury authority when sentencing offenders to different types of community supervision. Also addressed are procedures for modification, extension and revocation of probation. This chapter includes references to the applicable provisions of the Texas Code of Criminal Procedure and the Texas Local Government Code. Community

supervision is the placement of a defendant by the court under a continuum of programs and sanctions with conditions imposed by the court for a specified period.

#### **TCCP Art. 42.12 §2(2).**

#### **Eligibility for Community Supervision:**

Both felony and misdemeanor offenders may be placed on community supervision by both judge and jury. The maximum period of community supervision for a felony is ten years. **TCCP Art. 42.12 §3(b)**. The maximum period of community supervision for a misdemeanor is two years.

#### **TCCP Art. 42.12 §3(c).**

**Eligibility for Community Supervision from a Judge:** Subject to certain restrictions explained below, a judge may suspend the imposition of the sentence in a felony or a misdemeanor case and place the defendant on community supervision.

#### **Ineligibility for Community Supervision from a Judge:**

**1. Felony Offenses** - A defendant is not eligible for community supervision from a judge if:

- a. The defendant is sentenced to a term of imprisonment that exceeds ten years; or,
- b. The defendant is sentenced to a term of confinement under **Section 12.35 of the Penal Code** (the State Jail Felony section).

**2. 3G Offenses** – A Judge may not grant regular community supervision if the defendant is adjudged guilty of murder, capital murder, indecency with a child by contact, aggravated kidnapping, aggravated sexual assault, aggravated robbery, certain drug offenses committed within a drug free zone, sexual assault of a child, or when a deadly weapon is used during the commission of the offense. **TCCP Art.42.12 §3g**.

#### **Eligibility for Community Supervision from a Jury:**

In order to receive community supervision from the jury, the defendant must file a sworn motion stating that the defendant has not been previously convicted of a felony offense, and the jury must find that the motion is true. If these two conditions are met, the jury may recommend to the judge that the judge suspend the imposition of the sentence and place the defendant on community supervision. If the jury so recommends, the judge is required to follow the recommendation of the jury and place the defendant on community supervision. The provisions of **Section 3G of Article 42.12** do not apply to jury recommended community supervision. **TCCP Art. 42.12 §4**.

**Ineligibility for Community Supervision from a Jury:** A defendant is not eligible for community supervision from a jury if:

- a. The defendant is sentenced to more than ten years confinement;
- b. The defendant is found guilty of a State Jail Felony;
- c. The defendant has a prior felony conviction; or,
- d. The defendant is guilty of certain drug offenses committed within a drug free zone.

**TCCP Art. 42.12 §4.**

**Eligibility for Deferred Adjudication from a Judge:** Subject to certain restrictions explained below, the judge may grant deferred adjudication for a misdemeanor or felony offense **including aggravated (3G) offenses.** **TCCP Art. 42.12 §5.**

**Ineligibility for Deferred Adjudication from a Judge:** A judge cannot grant deferred adjudication if the defendant is charged with an alcohol related driving offense or certain drug offenses. A judge may not grant deferred adjudication for the offenses of indecency with a child, sexual assault, or aggravated sexual assault if the defendant has previously been placed on community supervision for one of these offenses. **TCCP Art.**

**42.12 §5 (d).**

**Ineligibility for Deferred Adjudication from a Jury:** The jury cannot recommend deferred adjudication for any offense. **TCCP Art. 42.12 §5.**

**A. Summary Of Authority To Grant/Recommend Community Supervision Authority Of Judge**

- A. May not grant community supervision for capital murder or aggravated (3G) offenses.

**TCCP Art. 42.12 §3g.**

- B. May grant community supervision to a defendant convicted of a State Jail Felony.

**TCCP Art. 42.12 §15.**

**House Bill 2668** (Effective for dispositions after 9-1-03)

\*Must grant community supervision for defendant with no prior felony convictions for State Jail offenses under section 481.115(b), 481.115(b)(1), 481.116(b), 481.121(b)(3) or 481.129(g)(1), Health & Safety Code.

- C. May grant deferred adjudication for aggravated (3G) offenses.

**TCCP Art. 42.12 §5.**

- D. May grant community supervision to defendants with prior felony convictions.

**TCCP Art. 42.12 §3.**

- E. May not grant community supervision to a defendant for an alcohol related driving offense.

**TCCP Art. 42.12 §5.**

- F. Must grant community supervision when recommended by a jury.

**TCCP Art. 42.12 §4(a).**

- G. May impose incarceration for a term of 60-120 days if jury recommended community supervision and a deadly weapon is used.

**TCCP Art. 42.12 §3g(b).**

**AUTHORITY OF JURY**

- A. May grant community supervision for aggravated (3G) offenses.

**TCCP Art. 42.12 §4.**

- B. May not grant community supervision to a defendant convicted of a State Jail Felony.

**TCCP Art. 42.12 §4.**

- C. May not grant deferred adjudication for any offenses.

**TCCP Art. 42.12 §5.**

- D. May not grant community supervision to a defendant with prior felony convictions.

**TCCP Art. 42.12 §4.**

**B. Pre-Sentence Investigation Reports**

**Definition:** An investigation of an offender's criminal history, family history, work history, and risks and needs, conducted by a community supervision officer. The resulting Pre-Sentence Investigation Report (PSI) is considered by the court prior to sentencing. **TCCP Art. 42.12 §9(a).**

**Felony Offenses:** A PSI is not required for a felony offense if the PSI is waived by the Defendant and (1) punishment is to be assessed by the jury; (2) the defendant is convicted of capital murder; (3) the only punishment available is prison; or, (4) a plea bargain exists where the punishment is prison and the judge intends to follow the agreement. **TCCP Art. 42.12 §9(g).**

**Misdemeanor Offenses:** A PSI is not required for a misdemeanor offense if the Defendant waives the PSI or the judge determines there is sufficient information to sentence the defendant without the necessity of a report. **TCCP Art. 42.12 §9(b).**

**Disclosure of PSI to the Defendant:** The Court is required to permit the defendant or the defense attorney to review and comment on the PSI and, with approval of the judge, to introduce testimony or other information alleging a factual inaccuracy in the report. **TCCP Art. 42.12 §9(e).**

**Note:** The statute is silent as to timing of disclosure of the PSI and whether the defendant is entitled to a copy of the PSI before sentencing. Breach of statutory mandate that presentence investigation

report contains possible supervisory plan options, in case adjudication were deferred, was subject to harmless error analysis, where record disclosed data from which reviewing court could gauge likelihood that error contributed to defendant’s punishment. *Calcote v. State*, 931 S.W.2d, (Tex.App.-Houston [1 Dist.],1996 668). State would not be held to have improperly failed to disclose allegedly exculpatory evidence contained in co-defendant’s presentence investigation report, where defendant’s counsel had copy of entire report for unspecified period of time, and allegedly exculpatory evidence contained in the report was brought out at trial through testimony of codefendant. *Long v. State*, 659 S.W. 2d 84. (Tex. App. 14 Dist. 1983).

**Disclosure of PSI to the State:** The Court is required to permit the attorney for the State to review any information in the PSI made available to the defendant.

**TCCP Art. 42.12 §9(f).**

**Alcohol or Drug Abuse:** If the Court determines that alcohol or drug abuse may have contributed to the commission of the offense, the Court is required to direct that an evaluation be conducted to determine if treatment is appropriate and to report that evaluation to the Court. **TCCP Art. 42.12 §9(h).**

**Victim Impact Statement:** A crime victim has the opportunity to prepare a Victim Impact Statement describing the effect of the crime on the victim. If a victim impact statement is prepared, the Court is required to consider it before the imposition of sentence. If the defendant is sentenced to community supervision, the victim impact statement is forwarded to the supervising department and becomes part of the case file. **TCCP Art. 56.03 §(e).**

**Sex Offenders:** A judge is required to request an evaluation to determine the appropriateness and course of conduct necessary for the treatment, specialized supervision or rehabilitation a sex offender. **TCCP Art. 42.12 §9, 11, 13(b)**

**NOTE: PRE-SENTENCE INVESTIGATIONS – OFFENDERS WITH MENTAL IMPAIRMENT:** TCCP Art. 42.12 SEC. 9(i) requires the Court to order a psychological evaluation on defendants that to the Court appear to have a mental impairment. Cases in which competency or insanity are raised can be reversed and remanded if a psychological evaluation is not included in the Pre- Sentence Investigation report. *Garrett v State* 818 S.W.2d 227.

**C. Felony Community Supervision Punishment Ranges, Sanctions And Alternatives Offense**

**FIRST DEGREE FELONY**

- \*3 to 99 Years or Life
- \*Up to \$10,000 Fine

**SECOND DEGREE FELONY**

- \* 2 to 20 Years Confinement
- \*Up To \$10,000 Fine

**THIRD DEGREE FELONY**

- \*2 to 10 Years Confinement
- \*Up To \$10,000 Fine

**STATE JAIL FELONY**

- \*180 Days to 2 Years Confinement
- \*Up to \$10,000 Fine
- \*Convict as a SJ Felony, Punish as a Class A Misdemeanor TEX. PEN. CODE § 12.44(a)
- \*Reduce and Punish as a Class A Misdemeanor TEX. PEN. CODE § 12.44 (b)

**COMMUNITY SUPERVISION TERM**

- \*Finding of Guilt 5-10 Years
- \*Deferred Up to 10 Years
- \*Finding of Guilt 2-10 Years
- \*Deferred Up to 10 Years
- \*Finding of Guilt 2 – 10 Years
- \*Deferred Up to 10 Years
- \*Finding of Guilt 2 – 5 Years
- \*Deferred Up to 10 Years
- \*Mandatory Community Supervision for Defendants with No Prior Felony Convictions for State Jail Offenses Under Section 481.115 (b), 481.115 (b) (1), 481.116 (b), 481.121 (b) (3), or 481.129 (g) (1), Health and Safety Code (Effective for Dispositions After September 1, 2003)

**SANCTIONS AND ALTERNATIVES**

**CUSTODY SANCTIONS**

- \*1st, 2nd & 3rd Degree Felonies; Up to 180 Days in Jail; Condition of CS
- \*State Jail Felonies; Up to 90 Days in Jail; Condition of CS
- \*90 – 180 Days Up Front Condition
- \*90 – 365 Days Up Front Condition; Drug Delivery PG 1, 1A or 2
- \*60 – 120 Days ID TDCJ 3g Offense Granted CS by a Jury

**REVOCAATION**

**CUSTODY**

**ALTERNATIVES**

- \*1st, 2nd & 3rd Degree Felonies, Up to 180 Days in Jail; Condition of CS
- \*Original and Alternative Sanctions Cannot Exceed 180 Days
- \*State Jail Felonies; 90 – 180 Days in State Jail; Condition of CS

ADDITIONAL FINE ALTERNATIVES

- \*State Jail, 1st, 2nd & 3rd Degree Felonies
- \*The Court on Finding of a Violation Can Increase the Fine up to the Statutory Maximum for the Offense, 42.12 Section 22(a) (3) TCCP

TERM EXTENSION ALTERNATIVES

- \*Up to 10 Years Total; 42.12 Section 22(a) (2) TCCP
- \*Sex Offender; Up to Additional 10 Years; 42.12 Section 22(A) TCCP

SUBSTANCE ABUSE INTERVENTION/RELAPSE ALTERNATIVES

- \*Amend Conditions of CS Consistent with Options for Substance Abuse Treatment Referrals for Outpatient – Residential or SAFFP
- \*Placement Specialized Caseload
- \*Mandatory Treatment for State Jail Controlled Substance Cases Unless the Court Makes an Affirmative Finding Contrary (09/01/03)

ADDITIONAL COMMUNITY SERVICE RESTITUTION ALTERNATIVES

- \*To Retire Unpaid Financial Obligations Alleged in a Motion to Revoke
- \*To Sanction Technical Violations; 42.12 Section 22 (a) (1)

COMMENTS: No Deferred Adjudication for Intoxication Assault, Intoxication Manslaughter, Repeat Indecency with a Child, Sexual Assault, Agg. Sexual Assault if defendant has a prior community supervision for one of these offenses; 481.134 (c), (d), (e) or (f) offenses for previously convicted persons under those subsections; TCCP Art. 42.12 Section 3g Exclusions – Court cannot grant community supervision on finding of guilt for the following: Murder (offense after 08/31/93), Capitol Murder, Indecency w/ a Child (contact) (offense after 08/31/93), Aggravated Kidnapping, Aggravated Sexual Assault, Aggravated Robbery, Sexual Assault (offense after 08/31/99), any felony with affirmative deadly weapon finding, Chapter 481 Health and Safety Code with increased punishment under Section 481.134 (c), (d), (e) or (f) if defendant has been previously convicted under more subsections.

**D. Misdemeanor Community Supervision Punishment Ranges, Sanctions And Alternatives Offense**

CLASS A MISDEMEANOR  
 \*Confinement in County Jail Not to

Exceed 1 Year and/ or Fine Up to \$4,000

CLASS B MISDEMEANOR

\*Confinement in County Jail Not to Exceed 180 Days and/or Fine Up to \$2,000

CLASS C MISDEMEANOR

**COMMUNITY SUPERVISION TERM**  
 Up to 2 Years  
 Up to 2 Years  
 Not Subject to CS

**SANCTIONS AND ALTERNATIVES**

**CUSTODY SANCTIONS**

\*Up to 30 Days in Jail as a Condition of CS  
**REVOCATION CUSTODY ALTERNATIVES**

\*Up to 30 Days in Jail as a Condition of CS  
 \*Original and Subsequent Sanction Cannot Exceed 30 Days

**ADDITIONAL FINE ALTERNATIVES**

\*The Court on Finding of a Violation Can Increase the Fine up to the Statutory Maximum for the Offense

**TERM EXTENSION ALTERNATIVES**

\*Up to a Total of 3 Years When Extension is Added to Original CS Term, 42.12 Section 22(c)

\*If Fine, Court Costs and Restitution are Unpaid an Additional 2 Years Can Be Imposed for a Total of 5 Years CS from Date of Imposition of CS

SUBSTANCE ABUSE INTERVENTION/RELAPSE ALTERNATIVES

\*Amend Conditions of CS Consistent with Options for Treatment Referrals for Outpatient or Residential

\*Placement Specialized Caseload

**ADDITIONAL COMMUNITY SERVICE RESTITUTION ALTERNATIVES**

\*To Retire Unpaid Financial Obligations Alleged in a Motion to Revoke  
 \*To Sanction Technical Violations; 42.12 Section 22 (a) (1)

**COMMENTS:** No Deferred Adjudication for Driving While Intoxicated in a Motor Vehicle, Boat or Airplane.

No Early Termination for Misdemeanor Driving While Intoxicated in a Motor Vehicle, Boat or Airplane.

### **E. Conditions Of Community Supervision Basic Conditions of Community Supervision**

The Court having jurisdiction of the case is required to determine the terms and conditions of community supervision and may, at any time during the period of supervision, modify the conditions. The basic conditions of community supervision are listed in **TCCP Art. 42.12 §11.**

### **Conditions of Community Supervision for Intoxicated Driving Offenses**

Special conditions for intoxicated driving offenses include:

Minimum jail – not less than three (3) days confinement for a first offense; not less than five (5) days confinement for a second offense; and, not less than ten (10) days for a felony offense. If there is bodily injury as a result of the offense, a minimum of thirty (30) days of custody as a condition of probation. Vehicular involuntary manslaughter requires a minimum of 120 days in jail as a condition of probation. *Vasquez vs. State* 779 SW 2d the Court may impose a period of time greater than the minimum set by law under these provisions of statute, not to exceed the length of a custody provided by law; for misdemeanor, it is thirty (30) days; for a felony, it is one hundred eighty (180).

Counseling – mandatory drug and alcohol screening with counseling as recommended.

### **TCCP Art. 42.12 §13 (a-1).**

Education – the defendant shall attend and complete a DWI education program before the 181st day after sentence is imposed. The failure to successfully complete the program results in suspension of the defendant's driver's license.

### **TCCP Art. 42.12 §13 (a-2).**

Interlock device – Interlock device is discretionary for first offense but mandatory for subsequent offenses. The term of interlock is for at least 50% of the term of community supervision. **TCCP Art.**

### **42.12 §13 (k).**

### **Conditions of Community Supervision for Sex Offenses**

Special conditions for sex offenses include:

Child Safety Zone – The court must impose a “child safety zone” applicable to the defendant by ordering the defendant not to supervise or participate in any activity that regularly provides services to children or go within a specified distance of where children may be located.

### **TCCP Art. 42.12 §13B (a).**

Counseling – The Court must require the defendant to attend counseling. **TCCP Art. 42.12 §13B (a).**

Victim protection – The Court may prohibit victim contact. **TCCP Art. 42.12 §14.**

Registration: Exemption from registration for sex offenders is rare. The topic is addressed in **TCCP Art. 62.0105.** Chapter 62 addresses Sex Offender Registration. 22

### **F. Examples Of Conditions Of Supervision For Offenders Placed On Probation**

#### **Examples of Conditions of Supervision**

Commit no offense against the law.

Avoid injurious and vicious habits.

Avoid persons and places of disreputable or harmful character.

Report as directed.

Permit the supervising officer to visit at home or elsewhere.

Work at suitable employment.

Stay within a particular place (county).

Pay fine and fees.

Support all dependants.

Participate in any community based program.

Reimburse the county for appointed attorney.

Submit to alcohol and drug testing.

In misdemeanor theft cases, participate in victim/offender mediation.

Reimburse the general revenue fund for amounts paid to victim; if no funds paid to victim, pay one-time fee \$50 for misdemeanor and \$100 for felony.

Reimburse law enforcement for costs associated with storage, analysis and disposal of materials or substance seized in conjunction to offense.

Pay all or part of costs for victim counseling necessitated by offense.

Make one payment to Crimestoppers not to exceed \$50.

#### **Examples of Specialized Conditions of Community Supervision**

Stay in a community based facility.

Pay a percentage of income to dependants while in a community facility.

Attend counseling in a program or facility approved and licensed by the Texas Commission on Alcohol and Drug Abuse.  
 Submit to Electronic Monitoring.  
 Submit blood sample for DNA testing.  
 Provide public notice of offense.  
 Require Sex Offender Registration.  
 Require certain level of educational achievement.  
 Require payment to child advocacy center.  
 Impose time to be served in a county jail.  
 Installation of Ignition Interlock Device (DWI).  
 Suspension of drivers license.  
 Establishment of Child-Safety Zones to be avoided.

### G. Violation Of Conditions Of Community Supervision

- **Motion to Revoke**
- **Community Supervision**
- **Bail for Motion to Revoke Community Supervision**
- **Time of Hearing on the Motion to Revoke Community Supervision**
- **Procedure for Hearing on the Motion to Revoke Community Supervision**
- **Right to an Attorney**
- **Result of Hearing on Motion to Revoke Community Supervision**

**NOTE: INABILITY TO PAY FINES AND/OR FEES:** If inability to pay is the only allegation contained in the Motion to Revoke, inability to pay is an affirmative defense to revocation, which the defendant must prove by a preponderance of the evidence. Tex. Code Crim. Proc. Art. 42.12 §21 (c). For a thoughtful discussion of this topic see *Quisenberry v. State*, 88 S.W. 3d 745 (Tex., App.-Waco 2002) and *Watts v. State*, 645 S.W. 2d 461 (Tex. Crim. App.1983). Once a violation occurs, the violation is reported to the District Attorney and a Motion to Revoke may be filed by the state. This motion alleges that the defendant has violated any of the terms of community supervision. The Motion may include an arrest warrant authorizing the arrest of the defendant. After arrest, the defendant may be detained in the county jail pending a hearing. The Motion may also contain a Notice of Hearing that orders the defendant to appear at a certain time for hearing. If the defendant fails to appear, the judge has the option of issuing an arrest warrant. **TCCP Art. 42.12 § 21 (b).** There is no right to bail on a Motion to Revoke Community Supervision. If the defendant is not released on bail, upon motion of the defendant, the hearing must be conducted within twenty days from

the date the motion is filed. **TCCP Art. 42.12 § (b).** The hearing is conducted before the court without a jury. The trial judge is the sole trier of facts, the credibility of the witnesses, and the weight to be given to the evidence presented. The burden of proof is on the state to prove the allegations by a “preponderance of the evidence.” **TCCP Art. 42.12 § 21 (b).** *Jackson v. State*, 915 S. W.2d 104, 105 (Tex. App. – San Antonio 1995, no pet.). The defendant has the right to an attorney at the hearing. **TCCP Art. 42.12 §21 (d).**

### Ineffective Assistance of Counsel; Incompetence of Counsel:

Texas courts adhere to the 2- prong test for adequacy of representation articulated in *Strickland v. Washington*, 104 S. Ct. 2052 (1984); *Hernandez v., State*, 726 S.W. 2d 53,55 (Tex. Crim. App. 1986). Defendant must show (1) counsel fell below an objective standard of reasonableness and, (2) but for counsel’s unprofessional errors, the result of the proceeding would be different. After a hearing, the court may continue, extend, modify, or revoke the community supervision. If community supervision is revoked, the judge may proceed to dispose of the case as if there had been no community supervision. The judge may reduce but not extend, the original term of confinement to a term not less than the minimum prescribed for the offense of conviction. The judge must also enter the amount of restitution as of the date of revocation. **TCCP Art. 42.12 §21 (b), 22 and 23.**

### APPEAL

When probation is revoked after judicial hearing and confinement is imposed, defendant may appeal the revocation. **TCCP Art. 42.12 §23(b).**

### H. Violation Of Deferred Adjudication

- **Motion to Adjudicate Guilt**
- **Bail for a Motion to Adjudicate Guilt**
- **Time of Hearing on the Motion to**
- **Revoke Deferred**
- **Adjudication**
- **Procedure for Hearing on the**
- **Motion to Adjudicate Guilt**
- **Right to an Attorney**
- **Inability to Pay**
- **Results of Hearing and Right to Appeal**

Once a violation occurs, the violation is reported to the District Attorney, and a Motion to Adjudicate may be filed by the state. This is a motion alleging the defendant has violated any of the terms of the order of deferred adjudication. The Motion may include an arrest warrant authorizing the arrest of the defendant. After arrest, the defendant may be detained in the county jail pending a hearing. The Motion may also

contain a Notice of Hearing that orders the defendant to appear at a certain time for a hearing. If the defendant fails to appear, the judge has the option of issuing an arrest warrant. **TCCP Art. 42.12 §5 and 21.** When the defendant's adjudication of guilt has been deferred, the defendant is entitled to bail **under Article 1, § 11 of the Texas Constitution** pending an adjudication hearing. *Ex parte Laday* 594 S. W. 2d 102 (Tex. Crim. App – 1980). If the defendant is not released on bail, upon motion of the defendant, the hearing must be conducted within twenty days from the date the motion is filed. **TCCP Art. 42.12 §21(b).** The hearing is conducted before the court without a jury. The trial judge is the sole trier of facts, the credibility of witnesses, and the weight to be given to the evidence presented. The burden of proof is on the State to prove the allegations by a "preponderance of the evidence." **TCCP Art. 42.12 §5.** The defendant has the right to an attorney at hearing. **TCCP Art. 42.12 §5.** See comments on competency in Section 2.7 *supra*. See comments in 3.8 *supra* After a hearing, the Court may continue, extend, modify, or revoke the deferred adjudication. If revoked, the judge may proceed to dispose of the case as if there had been no community supervision. The judge is limited in the sentence imposed only by the relevant statutory limits. **TCCP Art. 42.12 §5** and *Schounmacher v. State*, 5 S. W. 3d 221, 223 (Tex. Crim. App. 1999). A defendant does not have the right to appeal the decision of the Court to adjudicate guilt. *Connolly v. State*, 983 S.W.2d 738, 739 (Tex. Crim. App. 1999).

### I. Imposing, Modifying, Or Revoking Community Supervision

The text in the columns below provide a summary of procedure and authority for placing an offender on community supervision: changing the terms and conditions of community supervision, transferring the offender to another court in Texas, or removing an offender from community supervision due to the offender violating the conditions of his or her supervision and/or committing a new crime. The only question presented in an appeal from an order revoking probation is whether the trial court abused its discretion, acting without guiding rules or principles. *Lloyd v. State*, 574 S.W. 2d 159,160 (Tex. Crim. App. 1978). Proof of any one of several alleged violations, by preponderance of evidence, is sufficient to support the order revoking probation. *Moses v. State*, 590 S.W. 2d 469.

**Authority:** Only the Court that tried and convicted the defendant may grant community supervision, impose or modify conditions of community supervision, or revoke or discharge a defendant from community supervision.

**TCCP Art. 42.12 §10 (a).** However, the Court that placed the defendant on community supervision

may authorize a community supervision officer or a magistrate judge to modify the terms of community supervision for the limited purpose of transferring the defendant to different programs with the community corrections department.

**TCCP Art. 42.12 §10 (d). Transfer:** Once a Defendant has been placed on community supervision, original jurisdiction of the case may be transferred to a court of the same rank in the state having geographical jurisdiction where the defendant is residing or where a violation of the conditions of community supervision occurs. **TCCP Art.**

### 42.12 §10 (b).

**Warrant for Arrest:** 1. Any court having jurisdiction where the defendant resides or violates a term of community supervision may issue a warrant for the defendant's arrest. However, action taken after arrest must take place by the court having jurisdiction of the case at the time that action is taken.

**TCCP Art. 42.12 §10 (c).**

2. This statute summarizes the authority of the court to issue an Order of Arrest for Violation of Probation.

**TCCP Art. 42.12 §21 (a).**

3. This statute sets out the provision to arrest an offender through a Docket Entry without a warrant of any offender under community supervision by the court.

**TCCP Art. 42.12 §21 (b).**

**INTERSTATE COMPACT FOR PROBATION & PAROLE SUPERVISION:** For assistance in arranging transfer of community supervision to other states and territories please visit the TDCJ-Programs and Services Division website: <http://www.tdcj.state.tx.us/pgm&svcs/pgms&svcsinstat.ecom.htm>

### J. Reduction Or Termination Of Community Supervision

- **Reduction of Community Supervision**
- **Reduction or Termination of**
- **Deferred Adjudication**
- **Termination of Community Supervision:**

A judge may reduce the period of community supervision after the defendant has completed one third of the original supervision period or two years, whichever is less, and has completed all of the terms and conditions of community supervision. **TCCP Art 42.12 § 20 (a).**

However, the court cannot reduce the term of community supervision for State Jail Felons or offenses committed under **Sections 49.04 to 49.08 of the Texas Penal Code** (intoxicated driving offenses) or if the conviction is for an offense for which, on conviction, the defendant is required to register as a

sex offender under **Chapter 62 of the Texas Penal Code. TCCP Art. 42.12 §20 (b)**. See *State v. Juvrud*, 96 S.W. 3d 550 (Tex. App. El Paso 2002)

The Court of Appeals, Ann Crawford McClure, J., held that: (1) the State's appeal did not implicate double jeopardy concerns, and (2) as an issue of first impression, the trial court had authority to terminate defendant's deferred adjudication community supervision, even though defendant had served less than two years. Reduction or termination of deferred adjudication community supervision is discretionary and can be done at anytime during the period of community supervision. When the Defendant satisfactorily completes all of the terms and conditions of community supervision and the period of supervision has expired, the judge shall discharge the defendant.

**TCCP Art. 42.12 §20 (a).**

## K. Forms

**Practitioners may access the Felony Judgment Forms (and others) listed below at:**

<http://www.courts.state.tx.us/jcit/FelonyForms/TableofContents.htm>

**The online forms are interactive and printable**

## STANDARD COMMUNITY SUPERVISION LEGAL FORMS

**Source: Office of Court Administration, State of Texas Office of Court Administration Numbered Felony Judgment Form**

### Community Supervision Numbered Forms

CS1N: ORDER OF DEFERRED ADJUDICATION; COMMUNITY SUPERVISION

CS2N: ADJUDICATION OF GUILT: POST-CONVICTION COMMUNITY SUPERVISION

CS3N: ORDER IMPOSING CONDITIONS OF COMMUNITY SUPERVISION

CS4N: JUDGMENT OF CONVICTION BY COURT; COMMUNITY SUPERVISION

CS5N: JUDGMENT OF CONVICTION BY JURY; COMMUNITY SUPERVISION BY COURT

CS6N: JUDGMENT OF CONVICTION BY JURY; COMMUNITY SUPERVISION BY JURY

CS7N: RETURN FROM INSTITUTIONAL DIVISION-TDCJ; ORDER FOR SHOCK COMMUNITY SUPERVISION

CS8N: RETURN FROM STATE JAIL DIVISION-TDCJ; ORDER FOR SHOCK COMMUNITY SUPERVISION

CS9N: RETURN FROM STATE BOOT CAMP; ORDER FOR COMMUNITY SUPERVISION

### Direct Sentence Numbered Forms

DS1N: ADJUDICATION OF GUILT; DIRECT SENTENCE

DS2N: JUDGMENT OF CONVICTION BY COURT; DIRECT SENTENCE

DS3N: JUDGMENT OF CONVICTION BY JURY; DIRECT SENTENCE BY COURT

DS4N: JUDGMENT OF CONVICTION BY JURY; DIRECT SENTENCE BY JURY

DS5N: JUDGMENT REVOKING COMMUNITY SUPERVISION; DIRECT SENTENCE

## V. NON-RESIDENTIAL (NON-CCF) SENTENCING ALTERNATIVES FOR COMMUNITY SUPERVISION INTRODUCTION

This chapter presents information about non-residential community corrections programs currently available in various regions of the state. The majority of the nearly quarter-million individuals under direct community supervision receive non-incarcerative, non-residential sanctions and services. The State of Texas funds these programs by formula and by discretionary grants, passed through TDCJ-CJAD to the CSCDs and are supplemented by payments by program participants. In some cases, county funding or federal grants also supplement the program. Each sentencing option is presented in a separate section and each contains the following information:

1. eligibility criteria;
2. the process by which the sentencing court may place a defendant in a particular program or impose a sanction;
3. options available to the court if the defendant fails to successfully complete or participate in the program/sanction as required;
4. legal citations as applicable;
5. TDCJ-CJAD Standards for CSCD and standards for using or developing a particular program or sanction;
6. the purposes and goal of the program or sanction; and,
7. hyperlinks to access more detailed information.

The spectrum of community corrections alternative sanctions in Texas and elsewhere has expanded in recent years to include many innovative programs. Some of the alternatives blur traditional distinctions between probation and institutionalization. Texas programs can be visualized as a continuum as was illustrated in the chart in Chapter 1. Non-residential probation programs described in this chapter are:

- \*Pre-trial Services
- \*Day Reporting and Day Resource Centers
- \*Programs For Mentally Impaired Offenders
- \*Specialized Caseloads, Resources And Programs
- \*Battering Intervention and Prevention Programs (BIPP)

- \*Intensive Supervision Probation (ISP),  
Surveillance, and Electronic Monitoring
- \*Sex Offender Programs
- \*Non-academic Educational Programs: Cognitive-  
Behavioral and Life Skills
- \*Community Service Restitution
- \*Victim Services

This chapter may also inform judges and others, such as Community Justice Councils and Task Forces, with responsibility for planning and implementing community corrections programs in their jurisdictions of options they may wish to evaluate and consider for future development.

#### A. Pre-Trial Services

Pre-trial services, including PSIs, other assessments, conditional release, supervision services and diversion programs, provide an opportunity for local criminal justice agencies to engage in collaborative ventures between several criminal justice entities designed to impact offenders at their initial entry into the system. The prosecutor's office, the county, and local community justice council play an integral role in the shaping and success of pre-trial programs in partnership with the CSCD. CSCDs often design pre-trial programs with a range of intensity within the community from regular reporting, payment of fees and fines, referrals to appropriate agencies and ordered classes/treatment, to intensive supervision with electronic monitoring. Generally, pre-trial services consists of one or both of the following:

- 1) Pre-trial conditional release and supervision is much like a traditional bond. The offender abides by the conditions of release and appears for trial wherein adjudication occurs or deferred adjudication is ordered for a conditional period. Pre-trial release and supervision offer county jails relief from lengthy proceedings and detentions. It is more economical than incarceration, and an offender is able to continue his/her employment. It affords magistrates a mechanism to conditionally release offenders, not normally considered for release, with stipulations of very close supervision.
- 2) Pre-trial diversion programs intervene in the prosecution of the offender, and both prosecution and conviction are deferred for a conditional period. Local criminal justice agencies must first agree on the program's agenda and proposed outcomes. Pre-trial diversion can afford youthful, first-time, nonviolent offenders an opportunity to be

diverted from the system by participation in court-ordered sanctions and services.

#### PRE-TRIAL SERVICES

Includes several areas: 1) Pre-Trial Conditional Release: a) Surety Bond with Conditions/Cash Bond with Conditions b) Personal Recognizance Bond with Conditions; the term is limited to one year and up to a \$500.00 pre-trial fee. There may be very few requirements for supervision or there may be many. Often, defendants are supervised by CSCDs; 2) Pre-trial Diversion: a) pre-indictment with prosecution suspended and b) after filing a complaint information or indictment. Often, defendants are supervised by CSCDs. Drug Court pre-indictment diversion programs may charge a fee of up to \$1,000 and have a length of up to 18 months.

#### ELIGIBILITY PLACEMENT MODIFICATION/ REVOCATION PROGRAMS STATUTORY AUTHORITY

**BAIL:** All felony and misdemeanor offenders are eligible for bail and pre-trial release except for capital offenses. Offenders qualify for unsupervised pre-trial release through personal recognizance, cash, or surety bond. Defendants are placed in pre-trial conditional release programs by written court order or bond releasing the defendant from custody and specifying the conditions of release. Pre-trial Diversion cases may be supervised by Pretrial Services. This may include a drug court. Noncompliance with conditions of release, particularly to make court appearances, violates the order, agreement or bond provisions. Courts may then impose additional, more stringent, conditions of supervision by pre-trial services or revoke the bond or other release agreement and issue a warrant (capias). In pre-indictment diversion programs, the defendant may be indicted for non-compliance with the diversion program. Pre-trial services conducts initial interviews and screening to provide information to the court or magistrate regarding the alleged offense severity, defendant's criminal history, previous record within the jurisdiction, eligibility for personal recognizance bond, and stability of ties to the community. Efforts to encourage court appearances are a central function.

**Texas Constituting Article 1, section 11.  
Code of Criminal Procedure, Chapter 17.  
(Bail)**

**V.T.C.A., Government Code Section 75.403.**  
(Harris County pre-trial services)

**V.T.C.A. Government Code Section 76.011.**  
(Authorize pre-trial services)

**V.T.C.A. Government Code Section 509.011.**  
(Payment of state aid)

**COMMENTARY:** Pre-trial services have expanded to include a number of functions including screening for bail eligibility, testing for controlled substances, substance abuse treatment, assessment, counseling, education programs, cognitive training, life skills instruction, supervision and assignment to community service, electronic monitoring, and community supervision for up to one year. Pre-trial services may assume responsibility for preparation of the **Pre-sentence Investigation Report (PSI)**. Pre-trial services may be offered by a **CSCD** or a separate entity created specifically for the provision of only pre-trial services.  
<http://www.tdcj.state.tx.us/publications/cjad/ptr97.pdf>

### **B. Day Reporting Centers (Drcs) And Day Resource Centers (Drss)**

A Day Reporting Center (DRC) is a highly structured, intensive supervision, non-residential option for high-risk offenders. They were originally called “day jails” due to the daily or very frequent face-to-face contact requirement. The CSO to whom the offender reports regularly is located at the site. Emphasis is placed on reducing risk of recidivism and protecting the community. DRCs are often combined with electronic monitoring, ignition interlock devices, and frequent urinalysis. Although risk-reduction, incapacitation and intensive supervision are emphasized, there is also a focus on rehabilitation. Several DRCs have an aftercare component for those being released from residential placements. The DRCs serve as brokers and/or providers for structured community sanctions and human service activities including: community service work, substance abuse services, literacy/GED, pre-employment sessions, job placement or referral, cognitive skills and basic life skills development, and other types of non-academic education. See

<http://www.tdcj.state.tx.us/publications/cjad/drc97.pdf>

A Day Resource Center (DRS) is a non-residential option for those who are assessed as having high needs. As distinguished from DRCs, the resource centers (DRS) are open to all offenders, regardless of risk level. It is generally not considered intensive supervision, and the supervising CSO may or may not be located at this center. The emphasis is not on intensive supervision or frequent reporting; therefore, utilization of the resource center is generally not a condition of community supervision. Specific components may be required, however, such as education or community service. Several DRSs have an aftercare component for those being released from residential placements. A principal objective of the Day Resource Center is education. Offenders mandated to achieve 6th grade skill levels are a primary target of these programs. In addition, Adult Basic Education, GED Preparatory Classes, and English as a Second

Language (ESL) would typically be provided. A large number of community service restitution hours are conducted under the umbrella of these centers. Individualized and group counseling sessions may occur within these centers. Additional training opportunities in cognitive, life skills and job search and retention skills are sometimes available to the community supervision population at these facilities. See

<http://www.tdcj.state.tx.us/publications/cjad/drs97.pdf>

### **DAY REPORTING CENTERS (DRCs) ELIGIBILITY PLACEMENT MODIFICATION/ REVOCATION PROGRAMS STATUTORY AUTHORITY**

Both felony and misdemeanor offenders are eligible for assignment to the DRC as a condition of community supervision. All levels of probation supervision are eligible. High-risk offenders are targeted. Eligibility typically includes the following offender characteristics: Less serious and/or non-violent offenses; History of chemical substance use/ abuse; Poor educational performance; Unstable or undeveloped community ties; Unstable/poor employment patterns. Offenders sentenced to Boot Camp or Shock Probation are eligible; Pre-trial diversion offenders are eligible if the local Community Justice Plan has so designated the Center. Defendants can be assigned to a DRC by: a written pre-trial intervention agreement; direct court order; or modification of an existing community supervision order.

#### **FAILURE TO SUCCESSFULLY**

COMPLETE assignment or to participate as required by the legal document imposing the condition is a violation of the community supervision or pre-trial intervention agreement. Results may include: decision to prosecute pre-trial intervention participant; extension of time to complete DRC requirements; placement on a more restrictive community supervision condition; or Motion to Revoke probation. A DRC is a facility to which offenders are assigned and required to report on a daily or other regular interval for a specific period of time to participate in counseling, treatment, social skill training, and/ or employment training. The retributive and incapacitative components of DRCs are derived from requirements such as daily contact with a community supervision officer, curfews, and substance abuse testing. Thus, they address public safety concerns and provide a structure to facilitate rehabilitation.

#### **TCCP Article 42.12 Section 11(a)(4-7).**

**COMMENTARY: Day Reporting Centers (DRC) are highly structured** non-residential facilities that offer programs for offenders with non-violent or less

serious offenses and offer multiple services characterized by close supervision. Both felonies and misdemeanors are eligible for assignment to these facilities. DRCs are tailored to meet needs of the local criminal justice system and the local employable or employed offender population. According to a 1999 TDCJ-CJAD Agency brief, there are six DRCs in Texas funded by the agency. They served 9,565 offenders in 1997. Day Reporting Centers are a type of Intensive Supervision. The DRC joins other control-oriented community supervision alternatives such as house arrest/electronic monitoring, drug testing, voice verification systems, etc., as a sentencing option. See <http://www.tdcj.state.tx.us/publications/cjad/drc97.pdf>

### C. Mentally Impaired Offenders

One of the most challenging issues in community corrections is that of the mentally impaired offender. It is estimated that about 20% of the population has a diagnosable mental health disorder and that this figure is much higher among subjects of the criminal justice system. The National Institute of Mental Health (NIMH) estimates that more than half of all mentally impaired people will be arrested. The Department of Justice has reported that 16% of offenders in prison or on community supervision have a serious mental illness. An additional 3% are considered mentally retarded or significantly developmentally delayed. Texas community supervision data is consistent with national data. In a 2002 study linking individuals under community supervision with the Mental Health/Mental Retardation (MHMR) database, a significant number of individuals, approaching 20%, were matched. These individuals and their families too often continue a downward spiral of criminal justice involvement, as most do not obtain a continuity of necessary care. There are few resources, and individuals may not know how to access what is available. Mentally impaired individuals are often unable to obtain private care because of limited financial resources. Besides general misunderstanding of these offenders, mismanagement of medication can result in side effects causing an inability to meet the requirements of supervision.

### Texas Initiative

Emerging from 77th legislative session, the FY 2002 mental health initiative as well as related funding is one of the most positive programs affecting community corrections. This initiative provides for direct linkage among CSCDs, the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOMI) and MHMR agencies. The primary method to address the issue for CSCDs is in the creation or expansion of specialized caseloads. The specialized CSOs receive specialized training, have reduced caseloads and intensive contact with offenders, and work directly with the case managers of MHMR to

ensure a continuity of services. The population targeted is the "Priority Population" identified by MHMR as being most in need. The initiative is partially funded through TDCJ-CJAD diversion program grants to CSCDs, TCOOMMI, and MHMR. The Texas Juvenile Probation Commission has additional partnership funding arrangements. Currently, 34 CSCDs, servicing 65 counties, are participating in this specialized caseload and case management initiative. They have signed Memorandums of Understanding (MOUs) with local MHMR groups and commenced providing specialized services early in FY 2002. The CSCDs are Angelina, Bexar, Brazoria, Brazos, Caldwell, Cameron, Collin, Dallas, Ector, El Paso, Fayette, Fort Bend, Grayson, Harris, Hidalgo, Hill, Hockley (regional), Hopkins, Hunt, Jack, Jefferson, Lavaca, McLennan, Montgomery, Nueces, Potter, San Patricio, Tarrant, Taylor, Tom Green, Travis, Van Zandt, Webb, Williamson.

### D. Specialized Caseloads

A primary strategy employed by TDCJ-CJAD and the local CSCDs is the utilization of specialized caseloads. Pursuant to this community corrections approach, specially trained community supervision officers develop unique expertise and supervise caseloads of 35-65 offenders with similar characteristics. Initially, in 1983, this approach was applied to DWI offenders. However, pursuant to the 1989 reforms initiated by House Bill 2335, CSCDs acquired greater flexibility in tailoring supervision strategies to address evolving community needs and circumstances. Currently TDCJ-CJAD provides financial assistance to support specialized caseload programs statewide. National and state research data indicates that specific populations may be best served for rehabilitation (risk/need reduction) and community protection (risk/community management) by specific strategies, including greater face-to-face and collateral agency or family contacts. Assessment should indicate that the person is at high risk of re-offending, and should be appropriate to the caseload specialization. The predominant caseloads are sex offenders, substance abusers, mentally impaired offenders, "high risk" offenders, youthful offenders, non-English speaking offenders, gang affiliates, family violence, culturally specific and intensive supervision. The community supervision officer receives specialized training in best practices for this population. TDCJ-CJAD is receptive to funding applications for other varieties of specialized caseloads if the local CSCD provides a justification in its Community Justice Plan. See <http://www.tdcj.state.tx.us/publications/cjad/scp97.pdf>

## ADDITIONAL CASELOADS, RESOURCES AND PROGRAMS

### **E. Battering Intervention And Prevention Project (Bipp)**

The 71st Legislature in 1989 articulated the state's formal stance against family violence by establishing the Battering Intervention and Prevention Project (BIPP). BIPP serves as the vehicle for educating the public, increasing the responsiveness of law enforcement, and ensuring the delivery of appropriate services to protect victims and to counsel batterers.

This program, administered by the TDCJ-CJAD, is authorized by TCCP Art. 42.141. Its purpose is to enhance public and professional awareness of the magnitude and dynamics of battering offenses and syndromes. The TDCJ-CJAD is authorized to contract with a nonprofit organization to deliver a variety of services to victims and defendants in an effort to maintain family coherence and break the cycle of domestic abuse.

By statute, the Texas Council on Family Violence (TCFV) and the TDCJ-CJAD must establish a committee composed of representatives from TCFV, TDCJ-CJAD, CSCDs, BIPP service providers and women's advocates to review all domestic violence programs applying for the available \$908,000 grant funding. Those entities awarded grant funds must follow the BIPP Guidelines developed by the representatives noted above.

The BIPP guidelines require that batterers intervention programs use a psycho-educational group format that should extend over at least eighteen weeks. The written educational curriculum used in these groups should, at minimum, include information on the nature of domestic violence, safety planning, attitude and belief changes, maintaining non-abusive behavior, and community service. Most family violence perpetrators are required by the court to attend intervention programs; therefore, most (90%) of program participants are referrals from the criminal justice system.

More complete information, including "Guidelines for the Battering Intervention and Prevention Program" effective December 1, 1999, are available at the TDCJ-CJAD website <http://www.tdcj.state.tx.us/publications/cjad/dmv97.pdf>

### **F. Intensive Supervision Probation (Isp), Surveillance And Electronic Monitoring**

Intensive supervision probation (ISP) and surveillance programs are highly structured specialized caseload programs considered to be among the most restrictive non-residential sanctions for offenders who have been assessed at high risk of recidivism and rearrest. These caseloads concentrate less on rehabilitation and more on managing behavior in the community so as to prevent further criminal behavior. ISP and surveillance are characterized by a ratio of few

offenders to each officer, more frequent face-to-face contact, and frequent urinalysis. Risk-reduction and incapacitative tools are used, such as electronic monitoring and increased field surveillance. In the case of surveillance programs, law enforcement collaboration is common. ISP, and, in some cases, surveillance programs incorporate rehabilitative contract or other services that address high need areas, such as unemployment, cognitive skills or substance abuse.

See <http://www.tdcj.state.tx.us/publications/cjad/survel97.pdf> and an overview of the concept of Intensive Supervision Programs (ISP) is located at <http://www.tdcj.state.tx.us/publications/cjad/isp97.pdf>.

### **ELECTRONIC MONITORING/ HOUSE ARREST ELIGIBILITY PLACEMENT MODIFICATION/ REVOCATION PROGRAMS STATUTORY AUTHORITY**

A court in a county served by a CSCD with an electronic monitoring program (EM) approved by the TDCJ-CJAD may require a defendant to serve all or part of a sentence of confinement in county jail or by submitting to EM and/or house arrest. The statute does not exclude felons, but it does apply as a sentencing alternative only for sentence of confinement in jail. Defendants are eligible if the jurisdiction's CSCD has an EM program approved by the TDCJ-CJAD; the court sentences the defendant to confinement in the county jail and suspends the sentence contingent upon participation in the EM program; the defendant is eligible for community supervision. The primary criterion for assignment to EM is RISK, and it is reserved for high risk offenders since EM is at the outer end of the spectrum of alternatives that allow the offender to remain in the community. A defendant may be required to participate in electronic monitoring by a written pre-trial intervention / deferred adjudication agreement; a direct court order; or an amended condition of the community supervision order. EM can be applied as an intermediate sanction at several stages of adjudication, such as:

Personal Recognizance Bond condition; Pre-trial Intervention condition; condition of community supervision (normally for high risk candidate); suspension of a sentence of jail confinement subject to EM participation; substitution of payment of fines and costs for indigents; a community corrections requirement for criminal nonsupport offenders. Failure to successfully complete this condition of community supervision violates the court order or pre-trial intervention agreement. Appropriate results include revocation of bond and issue of capias if EM is a condition of bail; prosecution of a defendant who had received deferred adjudication; extension of time in the EM program; placement in a community corrections

facility; Motion to Revoke. 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 individuals who are required to be at a predetermined location at certain times.

**TCCP. Art. 42.035;**

**TCCP Art. 42.12 §11(a)(17);** also

**TCCP Article 17.43 &44** (EM and home curfew as conditions of personal recognizance bond imposed by magistrate);

**TCCP Article 43.09(e)** to discharge fines and costs.

COMMENTARY: EM involves electronic supervision of an offender's activities within the community. It permits enforcement of curfews with a minimum of a community supervision officer's time. Offenders under EM would otherwise be incarcerated in jail or a residential facility. This type of community corrections sentencing alternative allows the maintenance of community and familial bonds, the continuation of self-support, and cost savings to the state. Electronic monitoring can be applied as a condition of pre-trial release in pre-trial services programs. The technology has grown quickly from an experimental program to a commonplace community corrections alternative. The courts have rejected privacy challenges to state utilization of these devices on the same analysis as other Fourth Amendment waivers associated with deferred adjudication and conviction of a criminal offense. Recent technological advances will permit CSCDs to employ Global Positioning Devices, which will accurately log the movements of subjects throughout the day. Some pilot programs already exist, notably in Dallas County. See <http://www.tdcj.state.tx.us/publications/cjad/elm97.pdf>

### **G. Sex Offender Intensive Supervision Programs**

Offenders are identified as sex offenders if they have a current conviction or deferred adjudication for a sex offense; have a prior conviction or deferred adjudication for a sex offense and have been ordered by the jurisdictional authority to participate in sex offender supervision or treatment. Sex offenders represent a continuing challenge to corrections. There is continuing professional debate about the effectiveness of treatment protocols for this population, but most recent literature agrees that a large majority of the population can be "managed" with a combination of cognitive therapy, individual therapy, polygraph or plethysmograph examinations, and self-management skills.

Approximately 6% (10,000+) of the felony community supervision population in Texas is categorized as sex offenders. Felony sex offenders on community supervision are statutorily defined in TCCP

Article 62. During FY 1997, for example, 7,971 sex offenders on community supervision received specialized supervision and/or treatment. As a standard condition of community supervision, almost half of the CSCDs require sex offenders to be screened and assessed to identify their treatment needs. Thirty-eight CSCDs had specialized sex offender caseloads. At least 113 of the 122 CSCDs (August, 1998) provided sex offender supervision, surveillance and/or treatment. This intensive supervision requires mandated registration and reporting and requires treatment by licensed therapists to reduce the risk of recidivism. See <http://www.tdcj.state.tx.us/pgm&svcs/pgms&svcs-sex-offender-mgt-grant.htm> and Article 62, Texas Code of Criminal Procedure.

### **H. Education And Employment**

For offenders assessed with skills below a completed six-grade level the TCCP Article 42.12, Section 1(c) requires participation in educational programs as a condition of community supervision. Please note that participation, not achievement, is statutorily imposed. Education programs appropriate for those under community supervision typically include an assessment of needs to form a baseline for evaluation of progress, and a length of participation sufficient to allow students to achieve goals. Successful approaches employ self-paced learning, individualized learning plans, student set goals, and non-traditional instructional methods.

Although there are a number of adult educational programs offered in or through CSCDs, nearly all CSCD educational programs are conducted in partnership with the Texas Education Agency's adult education programs. Educational programs are found in both residential and nonresidential settings. More detailed information on educational programs can be found in the TDCJ-CJAD Program Monograph 004, available upon request from the TDCJ-CJAD.

Criminal justice research indicates a significant relationship between crime and lack of employment. The main goal of employment programs conducted by CSCDs is long-term employment. The most effective programs synthesize academic and vocational skills, problem solving, cognitive skills, job preparedness, and job retention.

In Texas, an important means of offering employment programs is residential programs (Chapter 6). Many CCFs and contract residential service providers include employment services as a vital element of programming. The CCFs that most commonly provide employment services are restitution centers, substance abuse treatment facilities, and court residential treatment centers.

More than 2/3 of persons receiving employment services from CSCDs do so through non-residential programs. In recent years, CSCDs either developed in-

house programs, contracted with the Texas Workforce Commission, or developed some combination of job preparation and placement services. CSCDs without identifiable employment programs provide employment services as components of non-residential programs, such as specialized caseload programs or day reporting centers. More detailed information regarding employment programs is available from the agency or the TDCJ-CJAD Program Monograph 006. See <http://www.tdcj.state.tx.us/publications/cjad/educ97.pdf>

### I. Non-Academic Education

Non-academic education programs consist of a number of psycho-educational programs and classes that are instructive in various types of life skills. Some are mandatory and some are based on a referral by a community supervision officer who has assessed the offender. A number of these programs are contracted, but the majority are conducted “in-house” with trained community supervision and corrections department staff.

### J. Cognitive Behavioral Programs

The prevalence of cognitive and cognitive-behavioral psycho-educational instruction is stimulated by national research on “what works” in corrections to reduce recidivism. Cognitive programs focus on modifying anti-social attitudes and teaching pro-social skills through a variety of techniques, most notably in-class practice of appropriate methods of dealing with risky or crime invoking situations. On the strength of current research, these programs are now required programming in our CCFs and specialized caseloads. Chapter 6 of this manual discusses the concepts underlying “what works” in more detail.

### K. Community Service Restitution (Csr)

CSR is defined as a non-salaried service by an offender for a civic or nonprofit organization. CSR is a common community supervision program.

This is due partially to legislation mandating CSR for most offenders, and it is popular due to the versatility of CSR in promoting several concepts in criminal justice, such as *restorative* justice, and *retributive* justice. In the restorative sense, CSR promotes “making good” toward the victim and restoring society in general by positive contributions to victims and community. In the retributive sense, the offender pays a price similar to a fine as a just punishment. In addition, the offender may learn lifeskills and employment skills that aid in future employment. CSCDs may also use additional CSR in lieu of payment of other fees and fines for indigent offenders who would otherwise be in violation of their conditions of supervision.

TCCP Article 42.12 Section 16 states the Court “shall require as a condition of community supervision that the defendant work a specific number of hours of community service project or projects for organizations approved by the Judge or designated by the Department.”

The Court may exempt persons:

- \*Physically or mentally incapable of participating in the project;
- \*Who’s participation in the project will present a hardship on the defendant or the defendant’s dependents;
- \*Confined in a Substance Abuse Felony Punishment Facility as a condition of community supervision;
- \*Who there is a good cause not to require community service.

#### RANGE OF COMMUNITY SERVICE RESTITUTION BY SEVERITY OF OFFENSE

OFFENSE	RANGE
First-degree Felony	120 – 1000 hours
Second-degree Felony	240 – 800 hours
Third-degree Felony	140 – 600 hours
State Jail Felony	120 – 400 hours
Class A Misdemeanor	160 – 600 hours
Section 30.04 TPC/Burglary of a Vehicle	
Class A Misdemeanor	80 – 200 hours
Class B Misdemeanor	24 – 100 hours

Affirmative finding under TCCP Article 42.014 (Hate Crime): not less than 100 hours if the offense is a Misdemeanor  
Affirmative finding under TCCP Article 42.014 (Hate Crime): not less than 300 hours if the offense is a Felony. 41

CSR constitutes a separate financial sanction and impacts the offender’s employability and lifestyle. Generally, initially imposing the maximum as set by statute limits the Court’s ability to subsequently utilize additional CSR as an alternative sanction for technical violations.

#### COMMUNITY SERVICE RESTITUTION AS AN ALTERNATIVE SANCTION FOR TECHNICAL VIOLATIONS

\*Financial compliance – in instances where limitations of the offender have been demonstrated specific to the ability to pay financial sanctions set by the Court, such as fines and court costs, CSR is a viable option as a sanction for technical violations for failure to pay those items. TCCP Article 43.09 restricts CSR to retire financial obligations to no more than 16 hours per week unless the Court determines a hardship would be imposed on the defendant or the defendant’s dependents.

\*Other sanctionable technical violations.

## FAILURE TO COMPLETE COMMUNITY SERVICE RESTITUTION

Recommended alternative sanctions for failure to complete CSR: In instances where offenders refuse or do not comply with the Court's order to complete CSR, alternative to revocation for such violations include:

- \*Graduated jailing as provided under TCCP Article 42.12 Section 12,
- \*Placement in a CCF to discharge such CSR,
- \*Imposition of financial sanctions in lieu of CSR under provisions of TCCP Article 42.12 Section 22 (a)(3).

### L. Victim Services

Texas CSCDs have gradually become more involved in providing services to crime victims. One significant function is offering the victim the opportunity to contribute pertinent information for the PSI. CSCDs also notify the victim if a defendant is placed on community supervision for sexual assault, kidnapping, aggravated robbery, or any offense resulting in serious bodily injury. The victim receives notice that the defendant is under community supervision, the conditions of community supervision, and the date, time, and location of any hearing or proceeding to modify, revoke or terminate the community supervision. CSCDs may refer victims to other organizations that provide victim services such as the Texas Crime Victims Clearinghouse, the Crime Victims Compensation Division of the Attorney General's Office, and local services. Virtually every CSCD has a designated victims services coordinator. The TDCJ-CJAD itself first established a Victims Services Coordinator in 1993.

One of the most important victim-related functions of CSCDs is the recovery of restitution. In 2002, CSCDs collected approximately \$49,000,000 in victim restitution. The TDCJ-CJAD, as part of its continuing education function, sponsors periodic Victim Impact Panel programs to seek input from and provide information and services to crime victims. See TCCP Article 56.02(5-6); <http://www.tdcj.state.tx.us/publications/cjad/victim97.pdf>

## VI. RESIDENTIAL COMMUNITY CORRECTIONS SENTENCING ALTERNATIVES COMMUNITY CORRECTIONS FACILITIES (CCFs) INTRODUCTION

Non-residential alternatives may not be appropriate for various reasons, and community residential intermediate sanctions utilizing full or partial confinement may be selected. The decision to select a residential option may be based on the marginal performance or failure of the probationer in non-residential probation alternatives, perceived risk to the community, either at the time of sentencing or

during supervision, possible revocation action, severity of the underlying offense, previous criminal history, assessment of serious chemical dependency, employability, or a combination of these factors. CCFs offer an intermediate sanction alternative to imprisonment. They provide close supervision and confinement while permitting the probationer to retain some ties to the community and to remain under the supervision of the judicial district and CSCD. The placement of offenders in a particular CCF is not limited to jurisdictional offenders, but is open statewide as long as space is available. There may be waiting lists.

CCFs and County Correctional Centers (CCCs) are generic terms that describe residential community correctional facilities for offenders at regional and local levels of government in Texas. CCFs and CCCs may bear the same or similar titles; however, there are no CCCs in operation in Texas and none planned; therefore this chapter refers exclusively to CCFs.

The six primary CCFs for community supervision in Texas are the following:

- \*? **Restitution Centers (RC)**
- \***Court Residential Treatment Centers (CRTCs)**
- \***Substance Abuse Treatment Facilities (SATFs)**
- \***Intermediate Sanctions Facilities (ISFs)**
- \***Boot Camps (BCs)**
- \***Facilities For The Mentally Impaired Or Developmentally Disabled\***

*\*No CCFs of this type currently in operation; alternatively, see CRTCs that include this population* Although not CCFs, Substance Abuse Felony Punishment Facilities (SAFPFs) and State Jail Facilities are described at the end of this chapter since they are options available for those under community supervision.

### A. Summary Guide to CCFs

Target Populations: Most CCF programs accept only non-violent offenders; most do not accept pre-trial offenders (SMART in Travis County is the only exception); most focus on felony offenders; most accept primarily those assessed at a high-risk level.

The following is a description of each CCF facility found in the following internet website location: TDCJ - Community Assistance Division - Residential Facilities <http://www.tdcj.state.tx.us/cjad/cjad-residential.htm>

**Restitution Centers (RCs)** are facilities for offenders who are required by the courts to work to repay their victims and society. The centers target offenders who have problems holding a job or paying

court-ordered fees and who don't appear to have serious substance abuse problems.

The centers require offenders to obtain full-time employment and attend education, cognitive restructuring skills and life skills programs.

Restitution center residents must also perform community service restitution (CSR).

**Court Residential Treatment Centers (CRTCs)** treat offenders for substance abuse and alcohol dependency. The centers offer education, cognitive restructuring skills, and life skills training; they may offer vocational and employment services in the final phases of the program. The Lubbock center is the only Texas CRTC that accepts the indemnified target population of offenders who are substance abusers with mental impairments or emotional problems.

**Substance Abuse Treatment Facilities (SATFs)** provide treatment and rehabilitation to offenders with substance abuse problems. SATFs offer substance abuse counseling, education, cognitive restructuring skills, and life skills training. They may offer vocational training and in some cases include an employment component. (Travis, Nueces, Dallas, and Montgomery County CSCDs offer the employment component).

**Intermediate Sanction Facilities (ISFs)** are shorter-term detention facilities that target offenders who violate their community supervision. An ISF is an option to revoking an offender's supervision and sending him or her to prison. ISF services include education, cognitive restructuring skills, life skills training, and community service restitution.

**Boot Camps (BCs)** are highly structured residential punishment programs modeled after military basic training. They generally target young, first-time offenders and emphasize physical exercise, strict supervision and discipline. Besides offering education, cognitive restructuring skills, life skills training and possibly substance abuse education, the boot camps require offenders to make restitution to their victims and society. These camps are local and are operated by CSCDs; they are not the camps operated by the Institutional Division. Few BCs remain in Texas, as state and national research data indicates that this type of program's impact on recidivism reduction is significantly less than other programs.

## **B. Summary Guide To Residential Community Corrections Facilities (Ccfs)**

Most CCFs do not accept serious, sexual or violent offenders, but there are exceptions. Most give priority placement to felons but accept misdemeanants on a space-available basis.

### **FACILITY TYPE ELIGIBILITY PLACEMENT METHOD MODIFICATION/ REVOCATION PERIOD OF CONFINEMENT PROGRAMS**

### **STATUTORY AUTHORITY RESTITUTION CENTER (RC)**

Felony or Misdemeanor; \*must be able to work full time. Probation Condition; Amended Conditions; Court Order Increase term of confinement; Place in another CCF; Prosecute if pre-trial intervention; Impose more restrictive terms of probation; Revoke probation Not to exceed twenty-four months Focuses on repayment of fees, fines, restitution, child support; not the first choice for those whose primary problem is chemical dependency; cognitive restructuring skills training required; must obtain a job.

### **Government Code, Section 509.001 And 509.002. TCCP Art. 42.12, Section 18 (i).**

### **INTERMEDIATE SANCTION FACILITY (ISF)**

Felony or Misdemeanor; \*Must need a structured environment to succeed on community supervision; may be failing regular supervision and non-residential options. Probation Condition; Amended Conditions; Court Order Increase term of confinement; Place in another CCF; Prosecute if pre-trial intervention; Impose more restrictive terms of probation; Revoke probation Not to exceed twenty-four months. Shorter-term detention facilities, targets offenders who violate their community supervision; an option to revoking an offender's supervision and sending him/her to prison. ISF services include cognitive restructuring skills, education, community service.

### **Government Code, Section 509.001 And 509.002. TCCP, Article 42.12, Section 18(i).**

### **COURT RESIDENTIAL TREATMENT CENTER (CRTC)**

Felony or Misdemeanor; \*Assessed as having a substance abuse problem, Sub. Abuse may be combined with other mental impairment. Probation Condition; Amended Conditions; Court Order Prosecute if pre-trial intervention; Place in another CCF; Impose more restrictive terms of probation; Revoke probation Not to exceed twenty-four months Treats offenders for substance abuse and alcohol dependency. Offers education, cognitive, employment and life skills. Lubbock's center accepts substance-abusing offenders who also have mental impairments.

### **Government Code, Section 509.001 And 509.002. TCCP Art 42.12, Sec. 18.**

### **BOOT CAMP (LOCAL) (BC)**

Felony or Misdemeanor; \*Targets youthful, first-time offenders; must be physically able to participate in a strenuous physical regime. Few BCs remain in Texas, as research data indicates that Boot Camps' impact on recidivism reduction is significantly less than other residential programs in Texas. Probation Condition; Amended Conditions; Court Order Prosecute if pre-

trial intervention; Extend time in facility; Impose more restrictive terms of probation; Place in another CCF; Revoke probation Not to exceed twenty-four months Highly structured residential punishment programs modeled after military basic training. Targets young, first-time offenders and emphasizes physical exercise, strict supervision and discipline; includes education, cognitive restructuring skills, life skills training and community service restitution.

**Government Code, Section 509.001 And 509.002.**

**TCCP, Article 42.12, Section 18(i).**

**SUBSTANCE ABUSE TREATMENT FACILITY(SATF)**

Felony or Misdemeanor; \*Assessed as having a substance abuse problem; may have failed at out-patient treatment. Pre-trial Diversion (SMART, Travis only); Probation Condition; Amended Conditions; Court Order Prosecute if pre-trial intervention; Extend time in facility; Impose more restrictive terms of probation; Place in another CCF; Revoke probation Not to exceed twenty-four months Treats offenders for substance abuse and alcohol dependency. Offers education, cognitive restructuring skills, vocational and life skills.

**Government Code, Section 509.001 And 509.002.**

**TCCP, Article 42.12, Section 18(i).**

**\*Most CCFs accept only felony cases. Check with the CCF to determine if misdemeanors are accepted**

**C. Summary Guide To Residential Incarcerative Facilities (Non-Ccfs)**

Judicial discretion in each of these options may result in the offender returning to community supervision (probation) following incarceration.

**FACILITY TYPE ELIGIBILITY PLACEMENT METHOD MODIFICATION/ REVOCATION PERIOD OF CONFINEMENT PROGRAMS STATUTORY AUTHORITY**

**STATE BOOT CAMPS** Felony offender, otherwise eligible for probation; 17- 26 years of age; Suitable for those who can endure strenuous activity. Pre-trial Diversion; Court Order; Motion to Revoke Failure to successfully complete may result in offender being placed in ID, placement in a CCF or imposition of more restrictive terms. 75-90 days; review by Court at 75 days; any Community Corrections alternative, including placement in a more restrictive CCF upon completion of camp. Rigid discipline, strict supervision and physical regimen; Educational and life skills programs; Restitution services.

**TCCP Art. 42.12, Section 8(a).**

Located administratively in the ID (prison) division

**SUBSTANCE ABUSE FELONY PUNISHMENT FACILITY (SAFPF)**

**(Administered by State Jail Division)** \*Described in more detail in Chapter 5. Any felony other than sex offenders assessed as having a substance abuse problem. Offender usually has several to numerous arrests or history of incarceration; offender’s circumstances compounded by very dysfunctional family and job history. Condition of probation or parole or modification of probation or parole conditions. Failure to successfully complete may result in revocation of parole or probation or imposition of additional terms. Phase 1: Six month Therapeutic Community program as modification of probation/parole. Phases 2 and 3 are Treatment and Re-entry. Intensive 3 phase substance abuse treatment; Transitional planning for aftercare and vocational placement, including 3 month residential placement after completion, then **Arch Randall Roberts**

**VII. DRUG COURTS, AND SUBSTANCE ABUSE SENTENCING ALTERNATIVES INTRODUCTION**

This chapter presents information about substance abuse-related community corrections programs currently available in various regions, with a primary focus on Drug (treatment) Courts, specialized caseloads, and non-residential, outpatient programs. The majority of the nearly quarter-million individuals under direct community supervision receive non-incarcerative, non-residential sanctions and services.

These are funded by the State of Texas by channeling formula funds and discretionary grants to the CSCDs and are supplemented by payments by program participants. In some cases, county funding or federal grants also supplement the program. Each sentencing option is presented in a separate section and each contains the following information:

1. eligibility criteria and information for selecting a particular substance abuse program;
2. Community Justice Assistance Division (CJAD) standards for using or developing a particular program or sanction;
3. the purposes and goal of the program or sanction; and,
4. hyperlinks to access more detailed information.

The spectrum of community corrections alternative sanctions in Texas and elsewhere has expanded in recent years to include many innovative programs. Some of the alternatives blur traditional distinctions between probation and institutionalization. Texas substance abuse programs can be visualized as a continuum as illustrated in the chart on the next page

of this chapter. This chapter will provide more detailed information on the “community based” options.

**The non-residential substance abuse probation programs described in this chapter are:**

1. Drug Courts
2. Specialized Caseloads for Substance Abuse
3. Treatment Alternative to Incarceration Program (TAIP)
4. Other Substance Abuse Treatment Options
5. Substance Abuse Felony Punishment Facilities (SAFPF)

### **Texas Community Supervision Substance Abuse Continuum of Sanctions**

**\*SAFPF programs have a community transitional and aftercare component. However the primary component takes place within a secure State Jail facility.**

### **INCARCERATION ARREST COMMUNITY BASED**

#### **Drug**

#### **Courts**

#### **\*Treatment**

#### **Alternative to Incarceration**

#### **(TAIP)**

#### **Specialized Caseloads and Substance Abuse Treatment**

#### **Programs (DP)**

#### **Residential**

#### **Treatment Facilities**

#### **\*Court Residential Treatment Centers**

#### **\*Substance Abuse Treatment Facilities**

#### **Day Reporting/Treatment Center Programs**

#### **\*Substance Abuse Felony**

#### **Punishment Facilities**

#### **(SAFPF)**

#### **\*Funding through the Substance Abuse Initiative administered by the Programs and Services Division**

#### **\*TTC**

### **A. Drug Courts**

A Drug Court is a type of intensive treatment and supervision consisting of judicially led substance abuse treatment programs for offenders whose offense history or assessment indicates that they may benefit from this option. Research shows that drug courts provide extensive supervision, more comprehensive than other forms of community supervision. This encompasses monitoring by the drug court judge, weekly supervision by a community supervision officer, frequent urinalysis and treatment sessions several times weekly. Research indicates that lower recidivism is associated with drug court participation and completion (see Criminal Justice Policy Council

report at <http://www.cjpc.state.tx.us>, “Initial Process and Outcome Evaluation of Drug Courts in Texas” Jan. 2003).

The drug courts also establish interagency cooperation and coordination to facilitate involvement in ongoing community treatment and court supervision. Many drug courts are configured as pre-trial programs and some are pre-indictment. An offender waives the right to a speedy trial and agrees to abide by the judge’s order in exchange for a clean criminal record. As a form of treatment intervention, drug courts divert a nonviolent drug offender from prosecution. Some drug courts have expanded their programs to include non-drug offenders who have substance abuse problems. Drug courts can serve post-adjudication defendants as well.

Research has indicated that drug courts reduce criminal behavior and drug use. Efficacy research data is available through the Department of Justice, Criminal Justice Policy Council, and other sources on file at the TDCJ-CJAD. There are several factors that contribute to the success of drug courts:

- \*Intensive, face-to-face interaction with a judicial authority;
- \*Immediate treatment, a continuum of swift reaction and sanctions to relapse; and,
- \*An environment focused intensively on marshalling community resources toward success.

### **Drug Courts in Texas**

In 2001, H.B. 1287 authorized County Commissioners Courts to establish drug courts and required Texas counties with populations exceeding 550,000 to apply for federal and other funds to establish drug courts. The following are mandated counties: Bexar, Dallas, El Paso, Harris, Hidalgo, Tarrant, and Travis. Drug courts may also be established in counties that were not mandated. Texas counties have implemented adult drug courts primarily as a pre-trial diversion.

Currently, the size of the population served by drug courts in Texas is limited due to the judge’s weekly or biweekly interaction with a relatively small number of participants. Texas may expand the drug court concept to include satellite administrative courts. A possible expansion would include two or more administrative courts in local CSCDs with similar authority and positive factors. A community supervision officer and CSCD staff would have the same treatment format and relationship with the participants, similar to a super-intensive specialized caseload.

Participants would report to the District Court Judge or Magistrate once a month.

## DRUG COURTS

**COMMENTARY:** Drug courts were first established in Texas in Jefferson and Travis counties in 1993. Additional courts have since been established in Dallas, El Paso, Montgomery, and Tarrant Counties. Under legislation adopted in 2001, Bexar, Harris and Hidalgo Counties are required to apply for drug court funds. The Legislature appropriated \$750,000 annually for this effort, but this appropriation will have to be supplemented with other sources of funding in order for drug courts to operate in nine jurisdictions. The budgets for the presently operating drug courts range from \$150,748 in Tarrant to \$832,330 in Travis. Drug courts involve the judge and other court officials in a non-adversarial approach to sanction and supervise and provide alcohol and drug treatment services to offenders.

The drug courts in Dallas, Jefferson, Montgomery, Tarrant and Travis Counties are relatively small, with Travis having the largest program capacity with 300 clients in FY 2001 and Tarrant having the smallest capacity with 55 clients. The Dallas program requires 4 court appearances per month in the first phase of the program while the Tarrant program requires 2 court appearances per month in the first phase. Montgomery County requires the completion of stress management, cognitive-behavioral training and education, and employment services. Jefferson County requires participation in employment services and life skills training.

Drug Courts are considered to be part of the movement towards **rehabilitation** and **restorative justice**. Jurisdictions interested in exploring funding opportunities for Drug Courts can contact the United States Department of Justice, Office of Justice Programs, Drug Court Program Office at [www.ojp.usdoj.gov/dcpo](http://www.ojp.usdoj.gov/dcpo) or 800-421-6770. Additional information regarding the effectiveness and logistics of drug and alcohol treatment programs can be found at the website of the Texas Commission on Alcohol and Drug Abuse (TCADA),

<http://www.tcada.state.tx.us/>

## ELIGIBILITY PLACEMENT MODIFICATION/ REVOCATION PROGRAMS STATUTORY AUTHORITY

Offenders eligible for drug courts are typically non-violent, first-time drug offenders or offenders who have committed a driving-while-intoxicated (DWI) offense. In most programs, offenders volunteer for drug courts. Drug court programs range in length from 12 to 18 months, provide court supervised treatment and involve the use of progressive sanctions to enforce program compliance. No statewide, standardized eligibility criteria exist. Pre-trial Diversion; Deferred Adjudication; or Court-Ordered Condition of Probation. Most programs have an initial period of

tolerance for violations followed by a series of escalating sanctions associated with program noncompliance. Depending on the court, program graduation can result in dropped criminal charges, early release from supervision requirements, reduced supervision requirements, or deletion of charges from the participant's criminal record. Drug courts were designed to provide court-supervised treatment as an alternative to traditional criminal sanctions. The model for drug courts assumes that a combination of judicial monitoring and supervised treatment can be more effective in reducing drug usage and crime than treatment or judicial sanctions. Drug Courts provide intensive supervision such as monitoring by the drug court judge, weekly supervision by a community supervision officer, frequent urinalysis, and treatment sessions several times a week. The offender waives the right to a speedy trial and agrees to abide by the judge's order in exchange for a dismissal. The 77th Legislature, in **House Bill 1287**, authorized County Commissioners Courts to establish drug courts for persons arrested for, charged with, or convicted of certain drug or alcohol offenses. H.B. 1287 mandated that all Texas counties with populations exceeding 550,000 apply for federal and other funds to establish drug courts. This was preceded by a recommendation by the Texas Comptroller. Drug courts were established in several counties that were not mandated.

## B. Specialized Caseloads For Substance Abuse And Aftercare Caseloads

A primary strategy employed by the TDCJ-CJAD and the local CSCDs is the utilization of specialized caseloads for offenders assessed as having substance abuse problems. Specially trained community supervision officers develop unique expertise and supervise caseloads of 40-65 offenders.

Probationers in these caseloads remain in the community but are supervised closely and linked to treatment. Specific strategies may include greater face-to-face and collateral agency or family contacts. Assessment should indicate that the person is at high-risk of re-offending due to substance abusing behavior. The community supervision officer receives specialized training in best practices for this population.

When individuals transition into the community from a residential or in-patient program, they have unique challenges and require support, including program elements similar to those in the facility; otherwise, they are at high-risk of relapse and community supervision failure.

Substance abuse aftercare and other residential aftercare caseloads focus on providing the support, service, and supervision that will lead to a successful re-entry.

### C. Treatment Alternative To Incarceration Program (Taip)

Arrests for drug offenses, especially possession of marijuana, increased rapidly during the 1990's. In Texas in 1999, there was a slight decrease in the crime rate but drug offenses increased 5%. It is estimated that drug or alcohol abuse is involved in at least 80% of all criminal incidents.

State court systems have been seeking alternatives to deal with these cases. The Treatment Alternative to Incarceration Program (TAIP) is a community corrections sentencing alternative using assessment, screening and substance abuse treatment for offenders with substance abuse problems.

TAIP was enacted by the legislature under the Texas Code of Criminal Procedure, Chapter 42.131, Section 14. The mission of TAIP is to provide the judiciary with an alternative to sentencing offenders to jail or prison, thereby increasing available prison space for non-qualifying and violent offenders. TAIP was implemented to provide offenders with screening, assessment/evaluation, referral, and placement into a licensed chemical dependency program, as appropriate. An offender is eligible for treatment with TAIP funds if it is determined that the individual is unable to afford treatment and no other programs are available to treat the offender. TAIP has served as a linkage between the community-based chemical dependency treatment providers and the criminal justice system in order to serve the chemically dependent population more effectively.

Originally administered by the Texas Commission on Alcohol and Drug Abuse (TCADA) in FY 1995, TAIP began as an \$11.2M annual program serving the six most populous Texas counties (Bexar, Dallas, El Paso, Harris, Tarrant, and Travis). Administration of TAIP was given to the

TDCJ-CJAD September 1995. The law requires that the funds awarded to the TDCJ-CJAD are available statewide, and the program has grown to include rural counties with limited treatment resources. TAIP is now a \$14.5M program serving 125 counties in FY'01. As the rural counties continue to make use of the TAIP grant dollars, the program can be expected to grow beyond its current capacity. Since TAIP provides services to 58 CSCDs, the program is able to offer treatment access to 77% of the offenders on direct community supervision statewide. TAIP also provides matching funds for Residential Substance Abuse Treatment (RSAT) grant programs utilizing federal funds through the Office of the Governor.

Please see the map of TAIP programs which follows. For further information review TDCJ-CJAD's publication on "Substance Abuse Treatment" at: <http://www.tdcj.state.tx.us/publications/cjad/subtm97.pdf>

Confusion may arise because Boot Camps operated by the Institutional Division of the TDCJ are also referred to as Special Alternative Incarceration Programs; clearly, the TAIP program has different goals, target population and parameters. TDCJ-CJAD, April 26, 2002

### D. Other Substance Abuse Programs

Both national and state statistics show that substance abuse and related offenses, such as burglary and theft, comprise over half the direct supervision population. In Texas, these offenses represent 65.18% of crimes committed by offenders under direct supervision by CSCDs. To cope with rising numbers of offenders, whose main problem is substance abuse, CSCDs are using all resources available to them.

Prior to TAIP funds, the CSCDs had already begun to perform specialized assessments to determine the level of risk and need presented by substance abusing offenders, form specialized caseloads, contract for inpatient and outpatient programs, and operate departmental residential facilities. These programs continue in addition to TAIP because the need is so great. Generally, programs provide offenders with services such as screening, assessment, greater frequency of contact with community supervision officers, substance abuse education, cognitive training, urinalysis, group and individual counseling, and residential services, if necessary. TAIP funds help pay for some services; funds from other sources supplement the TDCJ-CJAD and TAIP funds. For example TAIP does not pay for specialized caseloads, but these are essential components of managing offenders in the community. There are several substance-abuse related services and sanctions not covered by TAIP, but they are available through continuing grants or other funding from TDCJ. For further information review TDCJ-CJAD's publication on "Substance Abuse Treatment" at <http://www.tdcj.state.tx.us/publications/cjad/subtm97.pdf>.

A new alternative has been developed that combines intensive supervision and intensive day reporting: the Day Reporting-Day Treatment Program. Currently, there is one such program in Tarrant County that commenced in FY 2002. It operates as a "day jail" and has very intensive, daily substance abuse treatment. See the information on day reporting centers in chapter 4.

In chapter 4, summaries are available on CCFs, several of which have specialized substance abuse treatment components. Please refer back to this chapter for additional substance abuse options.

### Substance Abuse Treatment Resources

The Texas Commission on Alcohol and Drug Abuse (TCADA) provides a list of TCADA Licensed

Treatment Facilities and Treatment Programs by county on their website at <http://www.tcada.state.tx.us/treatment/index.shtml>. In addition, the website provides a map to quickly identify screening and referral providers in your area. Finally, there is a "Guide to Effective Treatment" that can be downloaded free of charge.

\*Substance Abuse Felony Punishment Facilities (SAFPFs) provide intensive treatment in a secure incarceration-type facility. SAFPFs are neither operated nor funded by the TDCJ-CJAD, but are an important resource for offenders on community supervision. The TDCJ-CJAD does provide funds for SAFPF aftercare caseloads which provide more intensive supervision for SAFPF graduates.

### **E. Substance Abuse Felony Punishment Facilities (Safpf)**

#### **SAFPF Treatment Components SAFPF Eligibility Criteria SAFPF Admission Criteria**

##### **Unit Treatment Components**

- \*Intensive six month therapeutic community program
- \*Phase I (Orientation), a comprehensive assessment and orientation to the therapeutic community
- \*Phase II (Main Treatment), which includes cognitive restructuring, education, skills training, offender lifestyle confrontation, family dynamics and twelve-step programs
- \*Phase III (Re-Entry), the education of offenders in the development of social skills and the recognition of triggers or relapse

##### **Aftercare Treatment Components**

- \*Upon successful completion of the SAFPF program, defendants are placed in a community residential facility (Transitional Treatment Center) for 60-90 days
- \*Outpatient individual and group treatment is provided for up to nine months after release from the Transitional Treatment Center

##### **Medical/Psychological Criteria**

- \*Capable of participation
- \*No medical or psychological condition requiring inpatient care or permanent infirmary care
- \*No medical condition for which continuity of care is essential
- \*No infectious condition requiring isolation

##### **Special Needs Criteria**

- \*Must have a current Axis I (DSM-IV-R) psychiatric diagnosis (bi-polar, major depression or schizophrenia) or
- \*Must have a medical condition requiring ancillary services or
- \*Must have a severe mobility impairment

\*Additional questions regarding special needs issues should be directed to TDCJ Health Services at (936) 437-3589

**CRIMINAL JUSTICE POLICY COUNCIL:** The Second Biennial Report on the Performance of the TDCJ Rehabilitation Tier Programs - February 2003

\*The use of the SAFPF program as a diversion from prison makes the program cost effective as offenders are sentenced to 6 months in SAFPFs in lieu of longer prison terms

\*The CJPC estimates that for every 100 offenders placed in the SAFPF program the state avoids \$770,000 in incarceration costs

**CJAD AFTERCARE FUNDING:** Due to the additional supervision required for continuum of care management of SAFPF graduates, supplemental funding helps departments to continue providing aftercare management services above and beyond those that regular defendants receive. A field committee assisted TDCJ-CJAD staff in establishing, and later revising, the minimum requirements for supervising SAFPF graduates during the 12 months in the continuum of care.

##### **Legislative**

- \*1st, 2nd, 3rd degree or state jail felonies (no Indecency of a Child, Sexual Assault, or Aggravated Sexual Assault)
- \*3G offenses including aggravated kidnapping, aggravated robbery, use/ finding of deadly weapon
- \*Deferred Adjudication
- \*Revoked probation not eligible
- \*Sentence is for indefinite period of 90 to 365 days, average stay is 6 months

##### **Administrative**

- \*No detainer or pending charges
- \*Free of acute substance abuse withdrawal - no detoxification services available at the unit
- \*Physically and mentally capable or eligible for Special Needs SAFPF

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**This chart provides a summary of information that may be used to ascertain the most effective treatment option.**

### **E. Ary Of Options For Substance Abuse Treatment Referrals**

Most CCFs do not accept serious, sexual or violent offenders, but there are exceptions. Most give priority placement to felons but accept misdemeanants on a space-available basis.

## OUTPATIENT DRUG COURTS DAY REPORTING/TREATMENT RESIDENTIAL\* SAFPF

### Offense

Any high or medium felony or misdemeanor assessed as needing substance abuse services. Any high or medium felony or misdemeanor assessed as needing intensive supervision and outpatient substance abuse services.

\*May be CCFs or may be contracted residential . Depends on facility criteria; few CCFs accept misdemeanors but contracted residentials do so. . Many CSCD facilities cannot accept Title 5 (violent) offenders. High & Med. Risk/Needs Any felony, except sex offenses Assessed as needing restrictive and intensive services High & Med. Risk/Needs

### Program Length

Indefinite – offenders generally placed as a condition of community supervision with attendance mandated until treatment is completed – often approximately six Months Drug Courts – varies from one year to 18 months Day Reporting/Day Treatment – six to nine months. . Contract Residential: programs vary; generally 30-90 days, based on offender’s progress; offenders sent as a condition of community supervision . CCFs=SATF/CRTC: programs/modalities vary; most have three – six month minimum, lasting up to a year (based on offender’s progress); offenders sent as a condition of community supervision . Approximately nine months, plus one year of aftercare completion depends on offender’s progress; . Offender sentenced to indeterminate term of 90 days to one year

### Legal Issues

- . Few arrests/legal issues
- . Brief or no jail or prison incarcerations
- . Few to moderate number of arrests; may be first substance abuse arrest
- . Brief or no prison incarcerations
- . Typically non-violent history
- . Few to moderate number of arrests
- . Brief or no prison incarcerations
- . Typically non-violent history
- . Moderate to numerous arrests
- . May have history of prison incarcerations

### Life Stressors . Examples

Mild to Moderate

- . Intact family with healthy support
- . Steady/full-time employment, more than six months in the past year; some skills

Moderate to Severe

- . Less family support with possible problems due to substance abuse (separation/divorce/alienation) ... fewer prosocial ties to the community

- . Some steady periods of employment; has some skills

Moderate to Severe

- . Less family support with possible problems due to substance abuse (separation/divorce/ alienation) ... few prosocial ties to the community
- . Some steady periods of employment; has some skills

Severe

- . Major family problems, with little or no healthy support
- . Frequent unemployment; has few job skills

### Substance Abused

- . Frequency
- . Length of Sobriety

Use of less addictive substances (no addictive IV use) characterized by:

- . Episodic, periodic or “recreational” use
- . Extended lengths of sobriety or voluntary abstinence

Use of any substance characterized by...

- . Increased/regular/routine use leading to more Life Stressors/Legal Issues; loss of control
- . Short periods of sobriety or voluntary abstinence

Use of any substance characterized by...

- . Increased/regular/routine use leading to more Life Stressors/Legal Issues; loss of control . Short periods of sobriety or voluntary abstinence

Use of any substance characterized by...

- . Increased/regular/routine use leading to more Life Stressors/ Legal Issue; loss of control
- . Fewer, if any, periods of sobriety or voluntary abstinence

**Treatment History** . Generally, first time in treatment

- . Failed at drug/alcohol education
- . Failed at 12 step program
- . Assessments have not shown an addiction profile (resid. treatment)

### OR

- . Used as support after residential programs (including state jail and SAFPF)
- . Failed at drug/alcohol education
- . Has attended and/or failed at (or relapsed from) a 12 step, outpatient, aftercare, or (possibly) use of any substance characterized by...
- . Increased/regular/routine use leading to more Life Stressors/Legal Issues; loss of control

- . Short periods of sobriety or voluntary abstinence or inpatient program
- . Failed at drug/alcohol education
- . Has attended and/or failed at (or relapsed from) a 12 step, outpatient, aftercare, or (possibly) another inpatient program
- . Increased/regular/routine use leading to more Life Stressors/Legal Issues; loss of control
- . Short periods of sobriety or voluntary abstinence or inpatient program Has typically attempted numerous other treatment programs (perhaps including SAFPF or other shorter TC modality) but has failed to maintain short or long term sobriety, or has absconded from less-restrictive treatment facilities

**Social Supports** . Strong outside social supports (e.g., 12 step group, church, etc.)

- . Non drug-using partner/family members/peer group
- . Moderate to few outside social supports
- . May have drug-using partner/family members/peer group
- . Moderate to few outside social supports
- . May have drug-using partner/family members/ peer group
- . Few outside social supports
- . Probably has drug-using partner/family members/peer group

**Motivation for Treatment** High (willing to participate) High to Moderate (may be ambivalent or unsure about commitment to sobriety or going to treatment)

Moderate (may be ambivalent or unsure about commitment to sobriety or going to treatment)  
 Moderate to Low or Resistant;  
 Higher risk to quit or abscond from non-restricted programs

## VIII. WHAT WORKS IN REDUCING RECIDIVISM?

**By Edward J. Latessa, Ph.D, Professor & Division Head of Criminal Justice, University of Cincinnati**

“What works” is not a program or an intervention, but a body of knowledge based on over thirty years of research that has been conducted by numerous scholars in North America and Europe. Also referred to as evidence-based practice, the “what works” movement demonstrates empirically that theoretically sound, well-designed programs that meet certain conditions can appreciably reduce recidivism rates for offenders.

Through the review and analysis of hundreds of studies, researchers have identified a set of principles that should guide correctional programs.

The first is the risk principle, or the “who” to target—those offenders who pose the higher risk of continued criminal conduct. This principle states that our most intensive correctional treatment and intervention programs should be reserved for higher risk offenders. Risk in this context refers to those offenders with a higher probability of recidivating. Why waste our programs on offenders who do not need them? This is a waste of resources, and more importantly, research has clearly demonstrated that when we place lower risk offenders in our more structured programs, we often increase their failure rates (and thus reduce the overall effectiveness of the program). There are several reasons this occurs. First, placing low risk offenders in with higher risk offenders only serves to increase the chances of failure for the low risk. For example, lets say that your teenage son or daughter did not use drugs, but got into some trouble with the law. Would you want them in a program or group with heavy drug users? Of course you wouldn’t since it is more likely that the higher risk youth would influence your child more than the other way around.

Second, placing low risk offenders in these programs also tends to disrupt their prosocial networks; in other words, the very attributes that make them low risk become interrupted, such as school, employment, family, and so forth. Remember, if they do not have these attributes it is unlikely they are low risk to begin with. The risk principle can best be seen from a recent study of offenders in Ohio who were placed in a halfway house or community based correctional facility (CBCF). The study found that the recidivism rate for higher risk offenders who were placed in a halfway house or CBCF was reduced, while the recidivism rates for the low risk offenders that were placed in the programs actually increased.

The second principle is referred to as the need principle, or the “what” to target—criminogenic factors that are highly correlated with criminal conduct. The need principle states that programs should target crime producing needs, such as anti-social attitudes, values, and beliefs, antisocial peer associations, substance abuse, lack of problem solving and self-control skills, and other factors that are highly correlated with criminal conduct. Furthermore, programs need to ensure that the vast majority of their interventions are focused on these factors. Non-criminogenic factors such as self-esteem, physical conditioning, understanding one’s culture or history, and creative abilities will not have much effect on recidivism rates. An example of a program that tends to target non-criminogenic factors can be seen in offender based military style boot camps.

These programs tend to focus on non-criminogenic factors, such as drill and ceremony, physical conditioning, discipline, self-esteem, and bonding offenders together. Because they tend to focus

on non-crime producing needs, most studies show that boot camps have little impact on future criminal behavior.

The third principle is the treatment principle, or the “how”—the ways in which correctional programs should target risk and need factors. This principle states that the most effective programs are behavioral in nature. Behavioral programs have several attributes. First, they are centered on the *present* circumstances and risk factors that are responsible for the offender’s behavior. Second, they are *action* oriented rather than talk oriented. In other words, offenders do something about their difficulties rather than just talk about them. Third, they teach offenders new, prosocial skills to replace the anti-social ones (e.g. stealing, cheating, lying, etc.) through modeling, practice, and reinforcement. Examples of behavioral programs would include structured social learning programs where new skills are taught, and behaviors and attitudes are consistently reinforced, cognitive behavioral programs that target attitudes, values, peers, substance abuse, anger, etc., and family based interventions that train family on appropriate behavioral techniques. Interventions based on these approaches are very structured and emphasize the importance of modeling and behavioral rehearsal techniques that engender self-efficacy, challenge of cognitive distortions, and assist offenders in developing good problem solving and self-control skills. These strategies have been demonstrated to be effective in reducing recidivism. Non-behavioral interventions that are often used in programs would include drug and alcohol education, fear tactics and other emotional appeals, talk therapy, non-directive client centered approaches, having them read books, lectures, milieu therapy, and self-help. There is little empirical evidence that these approaches will lead to long-term reductions in recidivism.

Finally, a host of other considerations will increase correctional program effectiveness. These include targeting responsivity factors such as a lack of motivation or other barriers that can influence someone’s participation in a program. Making sure that you have well trained and interpersonally sensitive staff, providing close monitoring of offenders whereabouts and associates, assisting with other needs that the offender might have, ensuring the program is delivered as designed through quality assurance processes, and providing structured aftercare. These program attributes all enhance correctional program effectiveness.

If we put it all together we have the “who, what, and how” of correctional intervention, also known as “what works”.

## TABLE OF APPENDICES

**Reference Websites**

## APPENDIX A

Article 42.12, Texas Code of Criminal Procedure can be found at this website:

<http://www.capitol.state.tx.us/statutes/cptoc.html>

**The Texas Government Code Sections 509.001-509-012**

can be found at:

<http://www.capitol.state.tx.us/statutes/gvtoc.html>

## APPENDIX B

**Definitions and Acronyms from Texas Department of Criminal Justice**

<http://www.tdcj.state.tx.us/definitions/definitions-home.htm>

## APPENDIX C

**Website: Texas Department of Criminal Justice, Community Justice Assistance Division (TCDJ-CJAD)****Standards for CSCDs;****Includes Substance Abuse Standards**

<http://www.tdcj.state.tx.us/cjad/cjad-standards.htm>

## APPENDIX D

**Website: Standard Legal Forms Office of Court Administration**

<http://www.courts.state.tx.us/jcit/FelonyForms/TableofContents.htm>

**The online forms are interactive and printable**

## APPENDIX E

**Website: Report of the Technical Violations Committee**

<http://www.tdcj.state.tx.us/publications/cjad/tech-violations-rprt.pdf>

## APPENDIX F

**“Trends, Profile, and Policy Issues Related to Felony Probation Revocation in Texas”, Excerpt, Criminal Justice Policy Council,****May 2002**

<http://cjpc.state.tx.us/reports/parprob/felpro2.pdf>

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## APPENDIX G

**Website: TDCJ-CJAD report on Diversion Programs**

<http://www.tdcj.state.tx.us/publications/cjad/diversion-programs-rprt.pdf>

## APPENDIX H

**Listing of available fact sheets and information on interim charges pertinent to CJAD.**

<http://tdcj.state.tx.us/publications/cjad/cjad-publications-home.htm>

## APPENDIX I

**Website: House Committee on Corrections**

<http://www.house.state.tx.us/committees/200.htm>

## APPENDIX J

**Website: Senate Committee on Criminal Justice**

<http://www.senate.state.tx.us/75r/senate/commit/c590/c590.htm>

## APPENDIX K

**Website: Interim Charges information from the Texas Criminal Defense Lawyer’s Association**

[http://www.tcdla.com/legislation/crimjustice\\_interimchanges.shtml](http://www.tcdla.com/legislation/crimjustice_interimchanges.shtml)

**\*Please note that the address indicates interim changes, while the terminology is interim charges.**

**2005 LEGISLATIVE CHANGES**

Note: **HB 2193** was passed and sent to the Governor. The Governor **VETOED** the Bill. It contained the following provisions, many of which may be in legislations filed for next session.

**Sec. 1: Amends Art. 42.03, Sec. 2(a): A judge shall give a defendant credit on his sentence for time spent in jail or a court-ordered residential program facility from arrest until sentence.**

**Sec. 2: Amends Art. 42.12, Sec. 3: Maximum probation supervision term is 10 years for 1st, 2nd and 3g offenses. 5 years for most 3rd degree offenses and 2 years for misdemeanors.**

Sec. 3: Amends Art. 42.12, Sec. 4(b)(d): If a jury grants probation, the maximums noted in Sec. 1 apply, subject to the judge's authority to extend under Sec. 22.

A defendant is not eligible if the term exceeds 10 years or if the defendant is entitled to automatic probation under certain State Jail provisions.

**NOTE:** A similar provision is in HB 1759.

A defendant is also not eligible for probation from a jury if they are convicted of murder under Sec. 19.02 Penal Code.

Sec. 4: Amends Art. 42.12, Sec. 5(a): The length of supervision on deferred adjudication are identical to suspended sentence supervision.

Sec. 5: Amends Art. 42.12, Sec. 15(a)(1): Probation is automatic in certain state jail offenses even if the defendant was previously convicted of a state jail offense but punished under Sec. 12.44(a) of the Penal Code.

Sec. 6: Amends Art. 42.12, Sec. 15(h)(2)(3): A judge may credit on a sentence time spent in jail or a court-ordered residential facility, including time spent in jail waiting to enter the program, but only "if the defendant successfully completes the court-ordered residential program after sentencing."

A judge shall credit after revocation, "any time served by the defendant in a state jail felony facility or court-ordered residential program or facility after sentencing."

Sec. 7; Amends 42.12, Sec. 16(a): A judge may order community service as a condition of supervision but no minimum or maximum number of hours are specified. There are also exemptions for handicapped etc.

Sec. 8; Amends 42.12, Sec. 20(a)(b): A judge must review each case for early termination when ½ of the term has been completed unless the defendant is delinquent in fees or has not completed counseling or programs.

The judge must notify the state and defendant before conducting the review.

If the review is not made based on the non-compliance, it must be done 1 year afterwards.

Early release for non-payment may not be denied if the defendant is indigent.

If the judge does not grant early release, the defendant must be notified in writing "of the requirements for satisfactorily fulfilling those conditions."

The provisions do not apply to intoxication driving/flying/boating offenses; sex offender registration offenses or 3g offenses.

Sec. 9: Amends 42.12, Sec. 22(c): A judge may extend the supervision period "on a showing of good cause." The extension may not exceed a total of 10 years in felony cases or 3 years in a misdemeanor.

Sec. 10: Amends 42.12, Sec. 23(b): On revocation, the judge may credit time served in the county jail, community correctional facility or court-ordered residential facility "but only if the defendant successfully completes the court-ordered residential program after sentencing."

Sec. 11: Amends Art. 102.0178 C.C.P.:

Requires an additional \$50 in court cost for intoxication offenses to be used to fund drug courts.

Sec. 12: Amends Sec. 469.001 Health and Safety Code: Defines Drug Courts and the mandatory requirements. If a defendant charged with a state jail offense enters a drug court program with the state's consent, case will be dismissed upon successful completion. If unsuccessful, prosecution resumes.

An order of non-disclosure can be obtained in most instances.

Sec. 13: Amends Sec. 469.002, Health and Safety Code: Authorizes Commissioners Court to establish a drug courts for persons committing specific drug offenses and for juveniles with similar conduct.

Sec. 15: Amends Sec. 469.004, Health and Safety Code: Allows a fee of \$1000 to be assessed for participation in a drug court.

Sec. 16: Amends Sec. 469.006, Health and Safety Code: Requires Commissioners Court to establish drug court in all counties of 200,000 or more.

**Establishment is required only if state and federal funds are available.**

Sec. 20: Amends Sec. 76.0045 Government Code: Provides judicial immunity for most actions involving community corrections.

Sec. 27: Prison Diversion Pilot Programs:

**Requires state funding for new programs to reduce prison sentences. Priority goes to counties with higher than normal revocation rates and who propose progressive sanctions for probation violations.**

Sec. 28: Amends Sec. 132.002 Local Government Code: Permits judges to authorize collection of fines and fees by using credit cards.

Sec. 29: The following current provisions of 42.12 are repealed:

**4(c) allowing a judge to increase supervision as provided by Sec. 22(c) or 22A.**

**16(b) requiring maximum and minimum periods of community service.**

**18(c) preventing a defendant from earning good time credit for time spent in a community corrections facility or applying time spent there as a credit upon revocation.**

**22A allow extension of supervision period for sex offenders.**

Sec. 30: Effective Dates: most provisions become effective 9/1/05. ½ review applies to everyone on probation on that date. Most other sections apply only if offense is committed on or after that date. Offenders can enter a drug court program no matter when offense occurred.

**HB 1759 eliminates** the following language from Art. 42.12, Section 15 (c)(1) regarding state jail felonies: **"except that the judge may impose on the defendant any condition that the defendant submit to a period of confinement in a county jail under Section 5 or 12 of this article only if the term does not exceed 90 days."**

**HB 590** Amends 42.12, Sec. 9(d)(g): **Judge must allow defendant to read the PSI unless waived by the defendant at least 48 hours prior to sentencing.**

**HB 1006** Amends:

Sec. 1. Sec. 76.011(a) Government Code to provide: Pretrial diversion period can not exceed 2 years.

Sec. 2. Amends Sec. 102.012 C.C.P: \$60/month fee authorized for participation as well as reimburse for all expenses of the program.

Sec. 3. Amends Sec. 103.021 Government Code: Authorizes \$60/month fee.