

CHAPTER 427

S.B. No. 589

An Act relating to the reorganization of statutes regulating probation, parole, and executive clemency in criminal cases and providing for certain reports from probation officers; enacting the Adult Parole and Mandatory Supervision Law; amending the Code of Criminal Procedure, 1965, as amended, by amending Article 42.12, by adding Article 42.18 and by repealing Article 42.13.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article 42.12, Code of Criminal Procedure, 1965, is amended to read as follows:

"Article 42.12. ADULT PROBATION [~~;~~ PAROLE, AND MANDATORY SUPERVISION] LAW

"A. PURPOSE OF ARTICLE AND DEFINITIONS

"Section 1. It is the purpose of this Article to place wholly within the State courts of appropriate jurisdiction the responsibility for determining when the imposition of sentence in certain cases shall be suspended, the conditions of probation, and the supervision of probationers, in consonance with the powers assigned to the judicial branch of this government by the Constitution of Texas. [~~It is also the intent of this Article to provide for the release of persons on parole and for the method thereof, to designate the Board of Pardons and Paroles as the agency of State government with exclusive authority to determine paroles and to further designate the Board of Pardons and Paroles as responsible for the investigation and supervision of persons released on parole. It is the intent of this Article to aid all prisoners to readjust to society upon completion of their period of incarceration by providing a program of mandatory supervision for those prisoners not released on parole or through executive clemency and to designate the Board of Pardons and Paroles as the agency of government responsible for the program.~~] It is the [final] purpose of this Article to remove from existing statutes the limitations, other than questions of constitutionality, that have acted as barriers to effective systems of probations [~~and paroles~~] in the public interest.

"Section 2. This Article may be cited as the 'Adult Probation [~~;~~ Parole; and Mandatory Supervision] Law'.

"Unless the context otherwise requires, the following definitions shall apply to the specified words and phrases as used in this Article:

"a. 'Courts' shall mean the courts of record having original criminal jurisdiction;

"b. 'Probation' shall mean the release of a convicted defendant by a court under conditions imposed by the court for a specified period during which the imposition of sentence is suspended;

"c. [~~'Parole' shall mean the release of a prisoner from imprisonment but not from the legal custody of the State, for rehabilitation outside of prison walls under such conditions and provisions for disciplinary supervision as the Board of Pardons and Paroles may determine. Parole shall not be construed to mean a commutation of sentence or any other form of executive clemency;~~

"[~~d. 'Mandatory supervision' shall mean the release of a prisoner from imprisonment but not on parole and not from the legal custody of the State, for rehabilitation outside of prison walls under such conditions and provisions for disciplinary supervision as the Board of Pardons and Paroles may determine. Mandatory supervision may not be construed as a commutation of sentence or any other form of executive clemency;~~

"[~~e.] 'Probation officer' shall mean either a person duly appointed by one or more courts of record having original criminal jurisdiction, to supervise defendants placed on probation; or a person designated by such courts for such duties on a part-time basis;~~

"d. 'Probationer' means a defendant who is on probation

"[~~f. 'Parole officer' shall mean a person duly appointed by the Director of the Division of Parole Supervision and assigned the duties of investigating and supervising paroled prisoners and prisoners released to mandatory supervision to see that the conditions of parole or mandatory supervision are complied with;~~

"[~~g. 'Board' shall mean the Board of Pardons and Paroles;~~

"[~~h. 'Division' shall mean the Division of Parole Supervision of the Board of Pardons and Paroles; and~~

"[~~i. 'Director' shall mean the Director of the Board of Pardons and Paroles].~~

"B. PROBATIONS

"Section 3. The judges of the courts of the State of Texas having original jurisdiction of criminal actions, when it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public as well as the defendant will be subserved thereby, shall have the power, after conviction or a plea of guilty or *nolo contendere* for any crime or offense, where the maximum punishment assessed against the defendant does not exceed ten years imprisonment, to suspend the imposition of the sentence and may place the defendant on probation or impose a fine applicable to the offense committed and also place the defendant on probation as hereinafter provided. In all *felony* cases where the punishment is assessed by the Court it may fix the period of probation without regard to the term of punishment assessed, but in no event may the period

of probation be greater than 10 years or less than the minimum prescribed for the offense for which the defendant was convicted. *In a misdemeanor case in which confinement is imposed by the court, the period of probation shall be for a period of time not to exceed the maximum confinement applicable to the offense.* Any such person placed on probation, whether in a trial by jury or before the court, shall be under the supervision of such court.

"Section 3a. (a) When there is a *felony* conviction in any court of this State and the punishment assessed by the jury shall not exceed ten years, the jury may recommend probation for a period of any term of years authorized for the offense for which the defendant was convicted, but in no event for more than ten years, upon written sworn motion made therefor by the defendant, filed before the trial begins. When the jury recommends probation, it may also assess a fine applicable to the offense for which the defendant was convicted. When the trial is to a jury, and the defendant has no counsel, the court shall inform the defendant of his right to make such motion, and the court shall appoint counsel to prepare and present same, if desired by the defendant. In no case shall probation be recommended by the jury except when the sworn motion and proof shall show, and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this or any other State. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but he may enter a plea of not guilty. In all eligible cases, probation shall be granted by the court, if the jury recommends it in their verdict, for the period recommended by the jury.

"(b) *Where there is a misdemeanor conviction in any court of this state and the punishment assessed by the jury shall be by imprisonment in jail or by a fine or by both such fine and imprisonment, the jury may recommend probation for a period of time not to exceed the maximum imprisonment applicable to such offense of which the defendant is convicted, upon sworn motion made therefor by the defendant, filed before the penalty stage of the trial begins. When the jury recommends probation, it may recommend that the imprisonment or fine or both such fine and imprisonment found in its verdict may be probated. If the jury recommends probation for a person convicted of an offense under Article 6701I-1, Revised Statutes, and punished under Subsection (c) of that article, it may recommend that any operator's, commercial operator's, or chauffeur's license issued to the defendant under Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes), not be suspended. When the trial is to a jury and the defendant has no counsel, the court shall inform the defendant of his right to make such motion, and the court shall appoint counsel to prepare and present same, if desired by the defendant. In no case shall probation be recommended by the jury except when the defendant, before the trial began, had filed a sworn statement that the defendant has never before been convicted of a felony, and after conviction and before the penalty stage of the trial began, the defendant shall have filed a sworn motion for probation and the proof shall show and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this or any other state. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but the defendant may enter a plea of not guilty. In all eligible cases, probation shall be granted by the court, if the jury recommends it in their verdict.*

"*If probation is granted by the jury in a misdemeanor case, the court may impose only those conditions which are set out in Section 6, 6a, or 6b hereof. The court may impose any one or all of those conditions. If probation is granted by the jury for a person convicted of an offense under Article 6701I-1, Revised Statutes, and punished under Subsection (c) of that article, the court shall impose as a condition the condition set out in Section 6d of this article.*

"Section 3b. Where probation is recommended by the verdict of a jury as provided for in Section [See:] 3a above, a defendant's probation shall not be revoked during his good behavior, so long as he is within the jurisdiction of the court and his residence is known, except in accordance with the provisions of Section [See:] 8 of this Article. If such a defendant has no counsel, it shall be the duty of the court to inform him of his right to show cause why his probation should not be revoked; and if such a defendant requests such right, the court shall appoint counsel in accordance with Articles 26.04 and 26.05 of this Code to prepare and present the same; and in all other respects the procedure set forth in said Section [See:] 8 of this Article shall be followed.

"Section 3c. Nothing herein shall limit the power of the court to grant a probation of sentence regardless of the recommendation of the jury or prior conviction of the defendant.

"Section 3d. (a) Except as provided by Subsection (d) of this section, when in its opinion the best interest of society and the defendant will be served, the court may, after receiving a plea of guilty or plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt, and place the defendant on probation ~~for a period as the court may prescribe, not to exceed 10 years~~. *In a felony case, the period of probation may not exceed 10 years. In a misdemeanor case, the period of probation may not exceed the maximum period of confinement prescribed for the offense.* The court may impose a fine applicable to the offense and require any reasonable terms

and conditions of probation, including any of the conditions enumerated in Sections 6 and 6a of this Article. However, upon written motion of the defendant requesting final adjudication filed within 30 days after entering such plea and the deferment of adjudication, the court shall proceed to final adjudication as in all other cases.

“(b) On violation of a condition of probation imposed under Subsection (a) of this section, the defendant may be arrested and detained as provided in Section 8 of this Article. The defendant is entitled to a hearing limited to the determination by the court of whether it proceeds with an adjudication of guilt on the original charge. No appeal may be taken from this determination. After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of probation, and defendant’s appeal continue as if the adjudication of guilt had not been deferred.

“(c) On expiration of a probationary period imposed under Subsection (a) of this section, if the court has not proceeded to adjudication of guilt, the court shall dismiss the proceedings against the defendant and discharge him. The court may dismiss the proceedings and discharge the defendant prior to the expiration of the term of probation if in its opinion the best interest of society and the defendant will be served. A dismissal and discharge under this section may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense, except that upon conviction of a subsequent offense, the fact that the defendant had previously received probation shall be admissible before the court or jury to be considered on the issue of penalty.

“(d) This section does not apply to a defendant charged with an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 67011-1, Revised Statutes, as amended.

“Section 3e. (a) For the purposes of this section, the jurisdiction of a court in which a sentence requiring confinement in the Texas Department of Corrections is imposed for conviction (of a felony) shall continue for 180 days from the date the execution of the sentence actually begins. After the expiration of 60 days but prior to the expiration of 180 days from the date the execution of the sentence actually begins, the judge of the court that imposed such sentence may on his own motion or on written motion of the defendant, suspend further execution of the sentence imposed and place the defendant on probation under the terms and conditions of this article, if in the opinion of the judge the defendant would not benefit from further incarceration in a penitentiary. Probation may be granted under this section only if:

“(1) the defendant is otherwise eligible for probation under this article; and

“(2) the defendant had never before been incarcerated in a penitentiary serving a sentence for a felony; and

“(3) the offense for which the defendant was convicted was other than those defined by Section 19.02, 20.04, 22.021, 22.03, 22.04(a)(1), (2), or (3), 29.03, 36.02, 38.07, 71.02 or a felony of the second degree under Section 38.10, Penal Code.

“(b) When the defendant files a written motion requesting suspension by the court of further execution of the sentence and placement on probation, and when requested to do so by the court, the clerk of the court shall request a copy of the defendant’s record while incarcerated from the Texas Department of Corrections. Upon receipt of such request, the Texas Department of Corrections shall forward to the court, as soon as possible, a full and complete copy of the defendant’s record while incarcerated. When the defendant files a written motion requesting suspension of further execution of the sentence and placement on probation, he shall immediately deliver or cause to be delivered a true and correct copy of the motion to the office of the prosecuting attorney.

“(c) The court may deny the motion without a hearing but may not grant the motion without holding a hearing and providing the attorney for the state and the defendant the opportunity to present evidence on the motion.

“Section 3f. (a) For the purposes of this section, the jurisdiction of the courts in this state in which a sentence requiring confinement in a jail is imposed for conviction of a misdemeanor shall continue for a period of 90 days from the date the execution of the sentence actually begins. After the expiration of 10 days but prior to 90 days from the date the execution of the sentence actually begins, the judge of the court that imposed such sentence may on his own motion or on the motion of the defendant suspend further execution of the sentence imposed and place the defendant on probation under the terms and conditions of this article, if prior to the execution of that sentence the defendant had never been incarcerated in a penitentiary or jail serving a sentence for a felony or misdemeanor and in the opinion of the judge the defendant would not benefit from further incarceration in a jail.

“(b) When the defendant files a written motion with the court requesting suspension of further execution of the sentence and placement on probation or when requested to do so by the judge, the clerk of the court shall request a copy of the defendant’s record while incarcerated from the agency

operating the jail where the defendant is incarcerated. Upon receipt of such request, the agency operating the jail where the defendant is incarcerated shall forward to the court as soon as possible a full and complete copy of the defendant's record while incarcerated.

"Section 3g. [3f.] (a) The provisions of Sections 3 and 3c of this Article do not apply:

"(1) to a defendant adjudged guilty of an offense defined by the following sections of the Penal Code:

"(A) Section 19.03 (Capital murder);

"(B) Section 20.04 (Aggravated kidnapping);

"(C) Section 22.021 (Aggravated sexual assault);

"(D) Section 29.03 (Aggravated robbery); or

"(2) to a defendant when it is shown that the defendant used or exhibited a deadly weapon as defined in Section 1.07(a)(11), Penal Code, during the commission of a felony offense or during immediate flight therefrom. Upon affirmative finding that the defendant used or exhibited a deadly weapon during the commission of an offense or during immediate flight therefrom, the trial court shall enter the finding in the judgment of the court. Upon an affirmative finding that the deadly weapon the defendant used or exhibited was a firearm, the court shall enter that finding in its judgment.

"(b) If there is an affirmative finding that the defendant convicted of a felony of the second degree or higher used or exhibited a firearm during the commission or flight from commission of the offense and the defendant is granted probation, the court may order the defendant confined in the Texas Department of Corrections for not less than 60 and not more than 120 days. At any time after the defendant has served 60 days in the custody of the Department of Corrections, the sentencing judge, on his own motion or on motion of the defendant, may order the defendant released to probation. The Department of Corrections shall release the defendant to probation after he has served 120 days.

"(c) The provisions of Section 3d of this Article do not apply to a defendant charged with or adjudged guilty of an offense under Section 4.052 or 4.053 Texas Controlled Substances Act. (Article 4476-15, Vernon's Texas Civil Statutes), or an offense listed in Section 4.012(b) of that Act.

~~"[Section 4. (a) When directed by the court, a probation officer shall fully investigate and report to the court in writing the circumstances of the offense, criminal record, social history and present condition of the defendant. Whenever practicable, such investigation shall include a physical and mental examination of the defendant. Defendant, if not represented by counsel, counsel for defendant and counsel for the state shall be afforded an opportunity to see a copy of the report upon request. If a defendant is committed to any institution the probation officer shall send a report of such investigation to the institution at the time of commitment.~~

~~"[(b) Except as otherwise provided by this subsection, if a defendant is charged with an offense under Article 67011/1, Revised Statutes, and the offense is punishable under Subsection (e) of that article, the court shall direct a probation officer or other person approved by the probation department for that purpose to conduct an evaluation to determine the appropriateness of alcohol or drug rehabilitation for the defendant and to report that evaluation to the court. The evaluation may be made at any time, except that if the defendant elects to have a jury assess punishment, the court may not order an evaluation until after sentencing. The court is not required to request an evaluation and report if it determines that the resources required to properly conduct the evaluation are not available in the county.]~~

"Section 4. (a) Except as provided by Subsections [Subsection] (b) and (h) of this section, prior to the imposition of sentence by the court in a criminal case the court shall direct a probation officer to report to the court in writing on the circumstances of the offense with which the defendant is charged, the criminal and social history of the defendant, and any other information relating to the defendant or the offense requested by the court.

"(b) The court is not required to direct a probation officer to prepare a report if:

"(1) the defendant requests that a report not be made and the court agrees to the request; or

"(2) the court finds that there is sufficient information in the record to permit the meaningful exercise of sentencing discretion and the court explains this finding on the record.

"(c) The court may not inspect a report and the contents of the report may not be disclosed to any person unless:

"(1) the defendant pleads guilty or nolo contendere or is convicted of the offense; or

"(2) the defendant, in writing, authorizes the judge to inspect the report.

"(d) Before sentencing a defendant, the court shall permit the defendant or his counsel to read the presentence report.

“(e) The court shall allow the defendant or his attorney to comment on the report and, with the approval of the court, introduce testimony or other information alleging a factual inaccuracy in the report.

“(f) The court shall allow the attorney representing the state access to any information made available to the defendant under this section.

“(g) The probation officer making a report under this section shall send a copy of the report to an institution to which the defendant is committed.

“(h) *Except as otherwise provided by this subsection, if a defendant is charged with an offense under Article 67011-1, Revised Statutes, and the offense is punishable under Subsection (c) of that article, the court shall direct a probation officer or other person approved by the probation department for that purpose to conduct an evaluation to determine the appropriateness of alcohol or drug rehabilitation for the defendant and to report that evaluation to the court. The evaluation may be made at any time, except that if the defendant elects to have a jury assess punishment, the court may not order an evaluation until after sentencing. The court is not required to request an evaluation and report if it determines that the resources required to properly conduct the evaluation are not available in the county.*

“Section 5. (a) Only the court in which the defendant was tried may grant probation, fix or alter conditions, revoke the probation, or discharge the defendant, unless the court has transferred jurisdiction of the case to another court with the latter’s consent. *In a felony case, only [Only] the judge who originally sentenced the defendant may suspend execution thereof and place the defendant under probation pursuant to Section 3e of this article except that if the judge who originally sentenced the defendant is deceased or disabled or if the office is vacant and a motion is filed in accordance with Section 3e of this article, the clerk of the court shall promptly forward a copy of the motion to the presiding judge of the administrative judicial district for that court, who may deny the motion without a hearing or appoint a judge to hold a hearing on the motion.*

“(b) After a defendant has been placed on probation, jurisdiction of the case may be transferred to a court of the same rank in this State having geographical jurisdiction where the defendant is residing or where a violation of the conditions of probation occurs. Upon transfer, the clerk of the court of original jurisdiction shall forward a transcript of such portions of the record as the transferring judge shall direct to the court accepting jurisdiction, which latter court shall thereafter proceed as if the trial and conviction had occurred in that court.

“(c) Any court having geographical jurisdiction where the defendant is residing or where a violation of the conditions of probation occurs may issue a warrant for his arrest, but the determination of action to be taken after arrest shall be only by the court having jurisdiction of the case at the time the action is taken.

“Section 6. (a) The court having jurisdiction of the case shall determine the terms and conditions of probation and may, at any time, during the period of probation alter or modify the conditions; provided, however, that the clerk of the court shall furnish a copy of such terms and conditions to the probationer, and shall note the date of delivery of such copy on the docket. Terms and conditions of probation may include, but shall not be limited to, the conditions that the probationer shall:

“a. Commit no offense against the laws of this State or of any other State or of the United States;

“b. Avoid injurious or vicious habits;

“c. Avoid persons or places of disreputable or harmful character;

“d. Report to the probation officer as directed by the judge or probation officer and obey all rules and regulations of the probation department;

“e. Permit the probation officer to visit him at his home or elsewhere;

“f. Work faithfully at suitable employment as far as possible;

“g. Remain within a specified place;

“h. Pay his fine, if one be assessed, and all court costs whether a fine be assessed or not, in one or several sums, and make restitution or reparation in any sum that the court shall determine;

“i. Support his dependents;

“j. Participate, for a time specified by the court and subject to the same conditions imposed on community-service probationers by Sections 10A(c), (d), (g), and (h) of this article, in any community-based program, including a community-service work program designated by the court;

“k. Reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending him in the case, if counsel was appointed, or if he was represented by a county-paid public defender, in an amount that would have been paid to an appointed attorney had the county not had a public defender;

"l. Remain under custodial supervision in a community-based facility, obey all rules and regulations of such facility, and pay a percentage of his income to the facility for room and board;

"m. Pay a percentage of his income to his dependents for their support while under custodial suspension in a community-based facility; and

"n. Pay a percentage of his income to the victim of the offense, if any, to compensate the victim for any property damage or medical expenses sustained by the victim as a direct result of the commission of the offense.

"(b) If the court grants probation to a defendant and requires the defendant to serve a probationary term in a restitution center, the court shall require as a condition of probation that the defendant secure employment and obey all rules and regulations of the center.

"(c) ~~(b)~~ If the court grants probation to a person convicted of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 67011-1, Revised Statutes, the court may require as a condition of probation that the person participate, for a time specified by the court and subject to the same conditions imposed on community-service probationers by ~~[Subsections (e), (d), (g), and (h),]~~ Section 10A of this article, in a community-service work program designated by the court.

"Section 6a. (a) A court granting probation may fix a fee not exceeding \$15 per month to be paid to the court by the probationer during the probationary period. The court may make payment of the fee a condition of granting or continuing the probation.

"(b) The court shall deposit the fees received under Subsection (a) of this section in the special fund of the county treasury provided by Section 4.05(b), Article 42.121 of this Code, to be used for the same purposes for which state-aid may be used under that section.

"(c) A court receiving a probationer for supervision as authorized by Article 42.11 of this code may impose on the probationer any term of probation authorized by Section 6 of this article and may require the probationer to pay the fee authorized by Subsection (a) of this section. Fees received under this section shall be deposited in the same manner as required by Subsection (b) of this section.

"Section 6b. (a) When the court having jurisdiction of the case grants probation to the defendant, in addition to the conditions imposed under Section 6 of this article, the court may require as a condition of probation that the defendant submit to a period of detention in a penal institution to serve a term of imprisonment not to exceed 30 days or one-third of the sentence whichever is lesser.

"(b) A court granting probation to a defendant convicted of an offense under Article 67011-1, Revised Statutes, and punished under Subsection (d), (e), or (f) of that article shall require as a condition of probation that the defendant submit to:

"(1) 72 hours of detention in a jail if the defendant was convicted under Subsection (d) of Article 67011-1, Revised Statutes, as amended; 10 days of detention in a jail if the defendant was convicted under Subsection (e) of Article 67011-1, Revised Statutes, as amended; or 30 days of detention in a jail if the defendant was convicted under Subsection (f) of Article 67011-1, Revised Statutes, as amended; and

"(2) an evaluation by a probation officer, by a person approved by the probation department, or by a program or facility approved by the Texas Commission on Alcoholism for the purpose of having the facility prescribe a course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition.

"(c) A court granting probation to a defendant convicted of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, shall require as a condition of probation that the defendant submit to a period of detention in a penal institution to serve a term of confinement of not less than 120 days.

"(d) If the director of a facility to which a person is referred under Subdivision (2) of Subsection (b) of this article determines that the person is not making a good faith effort to participate in a program of rehabilitation, the director shall notify the court that referred the person of that fact.

"(e) If a court requires as a condition of probation that the defendant participate in a prescribed course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition, the court shall require that the defendant pay for all or part of the cost of such rehabilitation based on the defendant's ability to pay. The court may, in its discretion, credit such cost paid by the defendant against the fine assessed.

"(f) The imprisonment imposed shall be treated as a condition of probation, and in the event of a sentence of imprisonment upon the revocation of probation, the term of imprisonment served hereunder shall be credited toward service of such subsequent imprisonment.

"Section 6c. (a) If a payment is received under Subdivision h or n of Section 6 of this article from a probationer for transmittal to a victim of an offense and the victim cannot be located, the

probation department that receives the payment for disbursement to the victim shall deposit the payment in an interest-bearing account in the department having original jurisdiction.

“(b) If the payment is not claimed by the victim before the expiration of four years after the date on which the first unsuccessful attempt to locate the victim after full restitution has been made, the probation department shall transfer the payment from the interest-bearing account to the comptroller of public accounts, after deducting five percent of the payment as a collection fee and deducting any interest accrued on the payment. The comptroller shall deposit the payment in the state treasury to the credit of the compensation to victims of crime auxiliary fund.

“(c) The collection fee and the accrued interest shall be deposited in the special fund of the county treasury provided by Section 4.05(b), Article 42.121, of this code to be used for the same purposes for which state aid may be used under that section. The probation department has a maximum of 121 days after the four-year expiration date to transfer the funds to the comptroller’s office. Failure to comply with the 121-day deadline will result in a five percent collection fee penalty calculated from the total deposit and all interest attributable to the unclaimed funds.

“(d) If the victim of the offense claims the payment during the four-year period in which the payment is held in the interest-bearing account, the probation department shall pay the victim the amount of the original payment, less any interest earned while holding the payment. After the payment has been transferred to the comptroller, the probation department has no liability in regard to the payment, and any claim for the payment must be made to the comptroller. If the victim makes a claim to the comptroller, the comptroller shall pay the victim the amount of the original payment, less the collection fee, from the compensation to victims of crime auxiliary fund.

“Section 6d. If a person convicted of an offense under Article 67011-1, Revised Statutes, is punished under Subsection (c) of that article and is placed on probation, the court shall require, as a condition of the probation, that the defendant attend and successfully complete before the 181st day after the day probation is granted an educational program jointly approved by the Texas Commission on Alcoholism, the Department of Public Safety, the Traffic Safety Section of the State Department of Highways and Public Transportation, and the Texas Adult Probation Commission designed to rehabilitate persons who have driven while intoxicated. The Texas Commission on Alcoholism shall publish the jointly approved rules and shall monitor and coordinate the educational programs. Persons who have successfully completed an approved educational program or who are currently under an order to attend an educational program shall not be eligible for attendance upon a subsequent offense. The judge may waive the educational program requirement, however, if the defendant by a motion in writing shows good cause. In determining good cause, the judge may consider but is not limited to: the offender’s school and work schedule, the offender’s health, the distance which the offender must travel to attend an educational program, and the fact that the offender resides out of state, has no valid driver’s license, or does not have access to transportation. The judge shall set out the finding of good cause in the judgment. If a person is required, as a condition of probation, to attend an educational program, the court clerk shall immediately report such fact to the Department of Public Safety, on a form prescribed by the department, for inclusion in the person’s driving record. The report must include the beginning date of the person’s probation. Upon the successful completion of the educational program, the person shall give notice to the probation department. The probation department shall then forward the notice to the court clerk. The court clerk shall then report the date of successful completion of the educational program to the Department of Public Safety for inclusion in the person’s driving record. If the department does not receive notice that a person required to complete an educational program has successfully completed the program within the period required by this section, as shown on department records, the department shall suspend the person’s driver’s license, permit, or privilege or prohibit the person from obtaining a license or permit, as provided by Subdivision (2), Subsection (g), Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon’s Texas Civil Statutes).

“Section 6e. [6e-] (a) If a judge sentences a defendant to a term of imprisonment in the Texas Department of Corrections and the defendant is eligible for probation, the judge may suspend imposition of the sentence of imprisonment and require as a condition of probation, in addition to the conditions imposed under Section 6 of this article, that the defendant serve an alternate probationary sentence of not less than six months or more than 12 months in a restitution center if:

“(1) the district is served by a restitution center;

“(2) the defendant is not sentenced for a felony offense under Title 5, Penal Code, or under the Texas Controlled Substances Act (Article 4476-15, Vernon’s Texas Civil Statutes);

“(3) before sentencing, the defendant, in writing, requests of the court special issues as to whether the defendant:

“(A) caused the bodily injury, serious bodily injury, or death of another as a result of the commission of the offense; or

“(B) used a deadly weapon during the commission of or flight from the offense;

“(4) the trier of facts answers both issues submitted under Subdivision (3) of this subsection in the negative; and

“(5) the trier of facts determines that the defendant does not have an extensive history of drug or alcohol abuse and is employable.

“(b) If a jury recommends that an eligible defendant serve an alternate term in a restitution center, the judge shall follow the jury's recommendation.

“(c) A probationer granted probation under this section may not earn good conduct credit for time spent in a restitution center or apply time spent in the center toward completion of a sentence in the Texas Department of Corrections if the probation is revoked.

“(d) No later than six months after the date on which a defendant is granted probation under this section, the restitution center director shall file with the chief adult probation officer or the probation department director a copy of an evaluation made by the director of the probationer's behavior and attitude at the center. The officer or director shall examine the evaluation, make written comments on the evaluation that he considers relevant, and file the evaluation and comments with the judge who granted probation to the probationer. If the evaluation indicates that the probationer has made significant progress toward compliance with court-ordered conditions of probation and payment of restitution, the court may release the probationer from the restitution center. The probationer shall serve the remainder of his probation under any terms and conditions the court imposes under this article. The court shall require the probation department to place the probationer under intensive supervision during the first two months after his release.

“(e) No later than nine months after the date on which a defendant is granted probation under this section, the restitution center director shall file with the chief adult probation officer or the probation department director a copy of an evaluation made by the director of the probationer's behavior and attitude at the center. The officer or director shall examine the evaluation, make written comments on the evaluation that he considers relevant, and file the evaluation and comments with the judge who granted probation to the defendant. If the report indicates that the probationer has made significant progress toward court-ordered conditions of probation and payment of restitution, the court shall modify its sentence and release the probationer in the same manner as provided by Subsection (d) of this section. If the report indicates that the probationer would benefit from continued participation in the restitution center program, the court may order the probationer to remain at the restitution center for a period determined by the court. If the report indicates that the probationer has not made significant progress toward rehabilitation, the court may revoke probation and order the prisoner to the term of imprisonment specified in the probationer's sentence.

“(f) A restitution center director shall attempt to secure employment for each probationer required to serve a probationary term in a restitution center under this article. The director shall also attempt to place each probationer as a worker in a community-service project of a type described in Section 10A(g) of this article, either during off-work hours if the probationer is employed or during any time if the probationer is unable to find employment.

“(g) The employer of a probationer participating in a program under this section shall deliver the probationer's salary to the restitution center director. The director shall deposit the salary into a fund to be given to the probationer on his release after deducting:

“(1) the cost to the center for the probationer's food, housing, and supervision;

“(2) necessary travel expense to and from work and community-service projects and other incidental expenses of the probationer;

“(3) support of the probationer's dependents; and

“(4) restitution to the victims of an offense committed by the probationer.

“(h) If a restitution center director is unable to find employment for a probationer, the director shall transfer the probationer to the supervision of the director of another restitution center who agrees to accept the probationer as a participant in the center's program.

“(i) If a restitution center director determines that the probationer is knowingly or intentionally failing to seek employment, the director shall request the court having jurisdiction of the case to revoke the probationer's probation and transfer the probationer to the custody of the Texas Department of Corrections.

“(j) A restitution center director may grant an emergency furlough to a probationer for the purpose of obtaining medical treatment or diagnosis or to attend funerals or visit critically ill relatives. A furlough for purposes other than medical purposes may not exceed 24 hours in length.

“(k) A probationer participating in a program under this article shall be confined in the restitution center at all times except for:

- “(1) time spent at work and traveling to and from work;
- “(2) time spent attending and traveling to and from an education or rehabilitation program approved by the restitution center director;
- “(3) time spent attending and traveling to and from a community-service project; and
- “(4) time spent on emergency furlough.

“(l) Before sentencing a defendant to an alternate probationary sentence under this section, the court shall consider whether the defendant is a proper subject for probation authorized under Section 3e of this article.

~~“[Section 6e. A court receiving a probationer for supervision as authorized by Article 42.11 of this code may impose on the probationer any term of probation authorized by Section 6 of this article, and may require the probationer to pay the fee authorized by Section 6a of this article. Fees received under this section shall be deposited in the same manner as required by Section 6a(b) of this article.]~~

“Section 7. At any time, after the defendant has satisfactorily completed one-third of the original probationary period or two years of probation, whichever is the lesser, the period of probation may be reduced or terminated by the court. Upon the satisfactory fulfillment of the conditions of probation, and the expiration of the period of probation, the court, by order duly entered, shall amend or modify the original sentence imposed, if necessary, to conform to the probation period and shall discharge the defendant. In case the defendant has been convicted or has entered a plea of guilty or a plea of nolo contendere to an offense other than an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 67011-1, Revised Statutes, and the court has discharged the defendant hereunder, such court may set aside the verdict or permit the defendant to withdraw his plea, and shall dismiss the accusation, complaint, information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted or to which he has pleaded guilty, except that proof of his said conviction or plea of guilty shall be made known to the court should the defendant again be convicted of any criminal offense.

“Section 8. (a) At any time during the period of probation the court may issue a warrant for violation of any of the conditions of the probation and cause the defendant to be arrested. Any probation officer, police officer or other officer with power of arrest may arrest such defendant without a warrant upon the order of the judge of such court to be noted on the docket of the court. A probationer so arrested may be detained in the county jail or other appropriate place of detention until he can be taken before the court. Such officer shall forthwith report such arrest and detention to such court. If the defendant has not been released on bail, on motion by the defendant the court shall cause the defendant to be brought before it for a hearing within 20 days of filing of said motion, and after a hearing without a jury, may either continue, modify, or revoke the probation. *In a felony case, the [The] state may amend the motion to revoke probation any time up to seven days before the date of the revocation hearing, after which time the motion may not be amended except for good cause shown, and in no event may the state amend the motion after the commencement of taking evidence at the hearing.* The court may continue the hearing for good cause shown by either the defendant or the state. If probation is revoked, the court may proceed to dispose of the case as if there had been no probation, or if it determines that the best interests of society and the probationer would be served by a shorter term of imprisonment, reduce the term of imprisonment originally assessed to any term of imprisonment not less than the minimum prescribed for the offense of which the probationer was convicted. If probation is revoked *in a felony case*, the court may sentence a probationer to serve a term in a restitution center if the probationer would have been eligible for sentencing to the center on conviction of the offense for which the probationer received probation and the probationer had not been placed under intensive supervision probation prior to revocation because of failure to meet court-imposed conditions.

“(b) Any probationer who removes himself from the State of Texas without permission of the court having jurisdiction of the case, shall be deemed and considered a fugitive from justice and shall be subject to extradition as now provided by law. No part of the time that the defendant is on probation shall be considered as any part of the time that he shall be sentenced to serve. The right of the probationer to appeal to the Court of Appeals for a review of the trial and conviction, as provided by law, shall be accorded the probationer at the time he is placed on probation. When he is notified that his probation is revoked for violation of the conditions of probation and he is called on to serve a sentence in a jail or in an institution operated by the Department of Corrections, he may appeal the revocation.

“(c) In a probation revocation hearing at which it is alleged only that the probationer violated the conditions of probation by failing to pay compensation paid to appointed counsel, probation fees, court costs, restitution, or reparations, the inability of the probationer to pay as ordered by the court is an affirmative defense to revocation; which the probationer must prove by a preponderance of evidence.

“Section 9. If, for good and sufficient reasons, probationers desire to change their residence within the State, such transfer may be effected by application to their supervising probation officer, which transfer shall be subject to the court’s consent and subject to such regulations as the court may require in the absence of a probation officer in the locality to which the probationer is transferred.

“Section 10. (a) For the purpose of providing adequate probation services, the district judge or district judges trying criminal cases in each judicial district in the state shall establish a probation office and employ, in accordance with standards set by the commission, district personnel as may be necessary to conduct presentence investigations, supervise and rehabilitate probationers, and enforce the terms and conditions of misdemeanor and felony probation. The district judge or judges may authorize district personnel to operate programs for the supervision and rehabilitation of persons in pretrial diversion programs. Persons in pretrial diversion programs may be supervised for a period not to exceed 12 months and may be assessed a supervisory fee or a program fee, or both, provided the maximum fees do not exceed a total of \$200.00. If two or more judicial districts serve a county, or a district has more than one county, one district probation department shall serve all courts and counties in the districts. However, the adult probation commission may adopt rules to allow more than one probation department in a judicial district with more than one county if providing more than one probation department will promote administrative convenience or economy or improve probation services. The district judge or judges may direct the probation department to establish and maintain a restitution center under this subsection. The district judge or judges may enter into an agreement with the judge or judges of other districts for the purpose of establishing a regional restitution center. If a restitution center is established, the district judge or judges shall appoint a community advisory council to advise the probation department in its establishment and maintenance of the center.

“(b) Where more than one probation officer is required, the judge or judges shall appoint a chief adult probation officer or director, who, with their approval, shall appoint a sufficient number of assistants and other employees to carry on the professional, clerical, and other work of the court. The chief adult probation officer or director shall also appoint the director of a restitution center established in the district. The appointment is subject to the approval of the district judge or judges.

“(c) To be eligible for appointment as an adult probation officer, a person who is not an adult probation officer on the effective date of this Act:

“(1) must have acquired a bachelor’s degree conferred by a college or university accredited by an accrediting organization recognized by the Coordinating Board, Texas College and University System; and

“(A) one year of graduate study in criminology, corrections, counseling, law, social work, psychology, sociology, or a related field that has been approved by the Texas Adult Probation Commission; or

“(B) one year of experience in full-time case work, counseling, or community or group work in a social, community, corrections, or juvenile agency that deals with offenders or disadvantaged persons that has been approved by the Texas Adult Probation Commission; and

“(2) must not be otherwise disqualified by Section 24 [21] of Article 42.18 of this code [this article].

“(d) The adult probation commission may adopt rules under which a judicial district may employ an adult probation officer who is not qualified under Subdivision (B), Subsection (c) of this section if the district judge, district judges, chief adult probation officer, or director tried but failed to employ a probation officer qualified under Subsection (c) of this section.

“(e) The same person serving as a probation officer for juveniles may not be required to serve as a probation officer for adults and vice versa.

“(f) Probation officers shall be furnished transportation or, alternatively, shall be entitled to an automobile allowance for use of personal automobile on official business.

“(g) Except as provided in Subsection (k) [(f)] of this section, personnel of the respective district probation departments shall not be deemed state employees and the responsible judge or judges of a district probation department shall negotiate a contract with the most populous county within the judicial district for all district probation department staff to participate in that county’s group insurance programs, retirement plan, including the district and county retirement system if the county participates in that system for any county employees, and personnel policies with regard to vacation credit, sick leave credit, holiday schedule, credit union, jury leave, military leave, etc.

“(h) Where a judicial district has criminal jurisdiction in two or more counties, those counties may enter into agreement that the total expenses of such facilities, equipment, and utilities be distributed approximately in the same proportion as the population in each county bears to the total population of all those counties, according to the last preceding or any future federal census.

“(i) The salaries of personnel, and other expenses essential to the adequate supervision of probationers, shall be paid from the funds of the judicial district. In all the instances of employment of probation officers, the responsible judges are authorized to accept state-aid, grants or gifts from other political subdivisions of the state or associations and foundations, for the sole purpose of financing adequate and effective probationary programs and community-based correctional facilities other than jails or prisons in the various parts of the district. For the purposes of this Act, the municipalities of this state are specifically authorized to grant and allocate such sums of money as their respective governing bodies may approve to their appropriate county governments for the support and maintenance of effective programs. All grants, gifts, and allocations of the character and purpose described in this section shall be handled and accounted for separately from other public funds of the county.

“(j) In a county with a population in excess of 2,000,000 according to the most recent federal census, both the district judges trying criminal cases and the judges of statutory county courts trying criminal cases are entitled to participate in the supervision and administration of the probation office serving those courts.

“(k) ~~(g)~~ Persons employed as district personnel under Subsection (a) of this section are state employees for the purposes of Chapter 309, Acts of the 64th Legislature, 1975 (Article 6252-26, Vernon's Texas Civil Statutes), and Article 8309g, Revised Statutes.

“(l) ~~(h)~~ The county or counties comprising a judicial district or geographical area served by a district probation department shall provide physical facilities, equipment, and utilities for an effective and professional adult probation and adult community-based correctional service.

“(m) ~~(i)~~ The district judge or judges may authorize the expenditure of district funds in order to provide expanded facilities, equipment, and utilities if:

“(1) the probation department needs to increase its number of employees in order to provide more effective service;

“(2) the county or counties certify to the judge or judges that they have neither adequate space in county-owned buildings nor adequate funds to lease additional physical facilities, purchase additional equipment, and pay for additional utilities required by the department; and

“(3) the county or counties provide facilities, equipment, and utilities at or above the level required by the Texas Adult Probation Commission.

“(n) ~~(j)~~ The Texas Adult Probation Commission shall set as the level of contribution a county or counties must meet or exceed to receive district funds under Subsection (m) ~~(i)~~ of this section a level that is not lower than the average level provided by the county or counties during the county fiscal years of 1979, 1980, 1981, 1982, and 1983. In setting the level, the commission may consider inflation and changes in the population and tax base in the county or counties.

“(o) ~~(k)~~ If the probation department needs to expand its facilities in order to provide more effective services and if the judge or judges determine that effective management of the department requires all or part of the department to be moved to rented or leased space outside of the county-owned building because additional space in a county-owned building is unavailable, the county or counties shall provide the department with funds necessary to pay for the rental or lease of the same number of square feet as provided to the department in county-owned buildings immediately before such a move. The district judge or judges may approve a proportional reduction in a county's contribution to the cost of rental or lease of space provided to a probation department if the judge or judges determine that the number of probationers supervised by the department has decreased and the department is able to provide effective services with a reduced number of officers requiring less office space.

“(p) ~~(l)~~ The district judge or judges may authorize expenditures of funds provided by the Texas Adult Probation Commission to the department for the purposes of providing facilities, equipment, and utilities for community-based correctional programs if:

“(1) the judge or judges direct the probation department to establish community-based correctional programs requiring facilities other than a probation office;

“(2) the adult probation commission provides state funds for the purpose of establishing or improving residential centers, restitution centers, and other community-based correctional programs other than jails or prisons; and

“(3) the county or counties certify to the judge or judges that space in county-owned buildings is not available and county funds are not available to provide facilities, equipment, and utilities for the establishment of community-based correctional programs.

~~Section 10A. [Deferred Adjudication and Performance of Community Service.]~~
 (a) Except for a defendant charged with an offense under Article 67011-1, Revised Statutes, as amended, a defendant who pleads guilty or nolo contendere to a first offense [felony] that does not involve bodily injury or the threat of bodily injury to any person and for which the maximum punishment assessed against the defendant does not exceed 10 years' imprisonment is eligible for community-service restitution probation.

"(b) The judges of the courts of the State of Texas having original jurisdiction of criminal actions, when it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public as well as the defendant will be subserved thereby, shall have the power, upon application of an eligible defendant and after receiving the defendant's plea, hearing the evidence, and finding that it substantiates the defendant's guilt, to defer further proceedings without entering an adjudication of guilt and place the defendant on community-service restitution probation.

"(c) If the court places a defendant on community-service restitution probation, the court shall require, as a condition of the probation, that the defendant work a specified number of hours at a specified community-service project for an organization named in the court's order.

"(d) The amount of community-service work ordered by the court:

"(1) may not exceed 1,000 hours and may not be less than 320 hours for an offense classified as a first degree felony;

"(2) may not exceed 800 hours and may not be less than 240 hours for an offense classified as a second degree felony; ~~and~~

"(3) may not exceed 600 hours and may not be less than 160 hours for an offense classified as a third degree felony;

"(4) *may not exceed 200 hours and may not be less than 80 hours for an offense classified as a Class A misdemeanor or for any other misdemeanor for which the maximum permissible imprisonment, if any, exceeds six months or the maximum permissible fine, if any, exceeds \$1,000; and*

"(5) *may not exceed 100 hours and may not be less than 24 hours for an offense classified as a Class B misdemeanor or for any other misdemeanor for which the maximum permissible imprisonment, if any, does not exceed six months and the maximum permissible fine, if any, does not exceed \$1,000.*

"(e) The terms of community-service restitution probation shall include the condition that the defendant shall:

"(1) work faithfully at the community-service task assigned by the court; and

"(2) make restitution and/or reparation to the victim of the offense and any other person who suffered loss of property or physical injury as a result of the offense as ordered by the court; and shall include, but shall not be limited to, the conditions set forth in Sections 6 and 6a of this article.

"(f) The clerk of a court granting community-service restitution probation shall promptly furnish the probationer with a written statement of the period and terms of the probation.

"(g) Community-service work authorized pursuant to this section must be for any nonprofit organization that has agreed to accept community-service probationers and supervise and report on their work and whose services are provided to the general public and are designed to enhance the social welfare, physical or mental stability, environmental quality, or general well-being of the community.

"(h) The court shall select community-service tasks that may be performed during hours the probationer is not working or attending school and that are within the probationer's capabilities. A probationer may not receive compensation for community-service work.

"(i) On violation of a condition of community-service probation, the defendant may be arrested and detained as provided in Section 8 of this article. The defendant is entitled to a hearing limited to the determination by the court of whether it proceeds with an adjudication of guilt on the original charge. No appeal may be taken from this determination. After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of probation, and defendant's appeal continue as if the adjudication of guilt had not been deferred.

"(j) Except as provided in Subsection (k) of this section on satisfactory completion by a probationer of the required amount of community-service restitution work and full payment of restitution as ordered by the court, if the court has not proceeded to adjudication of guilt, the court shall dismiss the proceedings against the defendant and discharge him. A dismissal and discharge under this section may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense, except that on conviction of a subsequent offense the fact that the defendant previously received community-service probation is admissible on the issue of penalty.

“(k) The provisions of Subsection (j) of this section do not apply to a defendant charged with an offense listed in Section 4.012(b), Texas Controlled Substances Act, as amended (Article 4476-15, Vernon’s Texas Civil Statutes). On satisfactory completion of probation by a defendant charged with such an offense, the court shall adjudge the defendant guilty of the offense and shall discharge him without further punishment.

“Section 11. For the purpose of determining when fees are to be paid to any officer or officers, the placing of the defendant on probation shall be considered a final disposition of the case, without the necessity of waiting for the termination of the period of probation or suspension of sentence.

“[Section 11a. The provisions of Sections 6a, 10, and 11 of this Article also apply to Article 42-13.

“(C. Paroles

“[Section 12: (a) The Board of Pardons and Paroles is established as a statutory agency. The Board consists of six members appointed by the Governor with the advice and consent of the senate.

“(b) Members of the Board must be resident citizens of this state and must have been residents for a period of not less than two years immediately preceding their appointment. Members hold office for staggered terms of six years. The terms expire on January 31 of odd/numbered years.

“(c) If a vacancy occurs, the Governor shall appoint a person to serve the remainder of the unexpired term in the same manner as other appointments.

“(d) The Board shall administer the provisions of this Act respecting determinations of which prisoners shall be paroled and the conditions of parole and mandatory supervision; may recommend the revocation of conditional pardons by the Governor; and may revoke paroles and releases to mandatory supervision. Keeping the goals of this Act in mind, the Board shall have the authority to determine the degree and intensity of supervision a prisoner released on parole or released to mandatory supervision should receive.

“[Section 12a. The Board of Pardons and Paroles is subject to the Texas Sunset Act, but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1987 and of every 12th year after 1987 are reviewed.

“[Section 13. The members of the Board shall give full time to the duties of their office and shall be paid such salaries as the Legislature may determine in Appropriation Acts. The Governor shall biennially designate one member to serve as chairman and one member to serve as vice/chairman.

“[The Board shall meet at the call of the chairman and from time to time as may otherwise be determined by majority vote of the Board. A majority of the Board shall constitute a quorum for the transaction of all business.

“[The Board shall adopt an official seal of which the courts shall take judicial notice. Decisions of the Board shall be by majority vote.

“[The Board shall keep a record of its acts and shall notify each institution of its decision relating to the persons who are confined therein. At the close of each fiscal year the Board shall submit to the Governor and to the Legislature a report with statistical and other data of its work.

“[All minutes of the Board and decisions relating to mandatory supervision, parole, pardon, and clemency shall be matters of public record and subject to public inspection at all reasonable times.

“[The Board shall employ an executive director who shall be responsible to the Board for the conduct of the affairs of the agency.

“[Section 14. The necessary office quarters shall be provided for the Board in the manner that the same are furnished to other departments; boards; commissions; bureaus and offices of the State.

“[Section 14A. (a) To aid and assist the Board of Pardons and Paroles in parole and mandatory supervision decisions; provision is hereby made for the employment of parole commissioners.

“(b) There shall be employed no less than six commissioners subject to the approval of a majority of the members of the Board.

“(c) The commissioners shall assist the Board in parole decisions and mandatory supervision revocation decisions. The votes on individual recommendations by the commissioners on parole decisions and mandatory supervision revocation decisions shall be independent and have the same force and effect as votes by the Board. The commissioners may assist the Board in other matters as determined by the Board.

"[A parole panel, as hereinafter provided, may recommend the granting, denying, or revocation of parole, the revocation of mandatory supervision status, and may conduct parole revocation hearings and mandatory supervision revocation hearings. The commissioners shall perform their duties as directed by the board.

"[(d) The board may provide and promulgate a written plan for the administrative review of actions taken by a parole panel.

"[(e) In matters of parole and release to mandatory supervision, the board members and commissioners may act in panels comprised of three persons in each panel. The composition of the respective panels shall be designated by the board. A majority of each panel shall constitute a quorum for the transaction of its business, and its decisions shall be by a majority vote. The functions given to the board throughout Article 42-12, Code of Criminal Procedure, 1965, as amended, may be enlarged and extend to the parole panels, as provided by board rules. The powers of the board and the board members can be delegated by the board to the parole panels and to the commissioners as needed for the convenience of and assistance to the board.

"[Section 15. (a) The Board is authorized to release on parole any person confined in any penal or correctional institution who is eligible for parole under Subsection (b) of this Section. The Board may consider a person for release on parole if the person has been sentenced to a term of imprisonment in the Texas Department of Corrections, is confined in a jail in this state, a federal correctional institution, or a jail or a correctional institution in another state, and is eligible for parole under Subsection (b) of this Section. The department shall provide the Board with sentence time credit information on persons described in this Section. The period of parole shall be equivalent to the maximum term for which the prisoner was sentenced less calendar time actually served on the sentence. All paroles shall issue upon order of the Board.

"[(b) A prisoner under sentence of death is not eligible for parole. If a prisoner is serving a sentence for the offenses listed in Section 3(a)(1) of this Article or if the judgment contains an affirmative finding under Section 3(a)(2) of this Article, he is not eligible for release on parole until his actual calendar time served, without consideration of good conduct time, equals one-third of the maximum sentence or 20 calendar years, whichever is less, but in no event shall he be eligible for release on parole in less than two calendar years. All other prisoners shall be eligible for release on parole when their calendar time served plus good conduct time equals one-third of the maximum sentence imposed or 20 years, whichever is less.

"[(c) A prisoner who is not on parole, except a person under sentence of death, shall be released to mandatory supervision by order of the Board when the calendar time he has served plus any accrued good conduct time equal the maximum term to which he was sentenced. A prisoner released to mandatory supervision shall, upon release, be deemed as if released on parole. To the extent practicable, arrangements for the prisoner's proper employment, maintenance, and care shall be made prior to his release to mandatory supervision. The period of mandatory supervision shall be for a period equivalent to the maximum term for which the prisoner was sentenced less calendar time actually served on the sentence. The time served on mandatory supervision is calculated as calendar time. Every prisoner while on mandatory supervision shall remain in the legal custody of the institution from which he was released but shall be amenable to the orders of the Board.

"[(d) A prisoner who has not been released to mandatory supervision and has 180 calendar days or less remaining on his sentence may be released by order of the Board to mandatory supervision.

"[(e) Within one year after a prisoner's admittance to the penal or correctional institution and at such intervals thereafter, as it may determine, the Board shall secure and consider all pertinent information regarding each prisoner, except any under sentence of death, including the circumstances of his offense; his previous social history and criminal record; his conduct, employment and attitude in prison; and his physical and mental health.

"[(f) Before ordering the parole of any prisoner, the Board may have the prisoner appear before it and interview him. A parole shall be ordered only for the best interest of society, not as an award of clemency; it shall not be considered to be a reduction of sentence or pardon. A prisoner shall be placed on parole only when arrangements have been made for his employment or for his maintenance and care, and when the Board believes that he is able and willing to fulfill the obligations of a lawabiding citizen. Every prisoner while on parole shall remain in the legal custody of the institution from which he was released but shall be amenable to the orders of the Board.

"[(g) The Board may adopt such other reasonable rules not inconsistent with law as it may deem proper or necessary with respect to the eligibility of prisoners for parole and mandatory supervision, the conduct of parole and mandatory supervision hearings, or conditions to be imposed upon parolees and persons released to mandatory supervision. Each person to be released on parole shall be furnished a written statement and contract setting forth in clear and intelligible language the conditions and rules of parole. The conditions shall include the making of restitution or reparation to the victim of the prisoner's crime, in an amount not greater than such restitution or reparation as established by the court and entered in the sentence of the court which sentenced the prisoner to his term of imprisonment. Acceptance, signing, and execution of the contract by the inmate to be paroled shall be a precondition to release on parole. Persons released on mandatory supervision shall be furnished a written statement setting forth in clear and intelligible language the conditions and rules of mandatory supervision.

"[(h) The Board shall certify and contract with halfway houses and shall use them to the maximum extent:

"[(1) to provide close supervision;

"[(2) to help persons released on parole make restitution or reparation and fulfill the obligations of law-abiding citizens; and

"[(3) to reduce recidivism.

"[(i) The halfway houses shall include a pilot project for selected inmates over 55 years of age in order to assist these elderly persons in obtaining parole by providing transitional living arrangements and possible suitable employment.

"[(j) Funding for this pilot project for parole for the elderly should come from the Criminal Justice Division of the Governor's Office. The funding agency should evaluate the performance of the pilot project at the end of two years of operation and provide recommendations to the Governor and the Legislature regarding the need and value of continuing the project.

"[(k) It shall be the duty of the Board at least ten days before ordering the parole of any prisoner or upon the granting of executive clemency by the Governor to notify the sheriff, the prosecuting attorney and the district judge in the county where such person was convicted that such parole or clemency is being considered by the Board or by the Governor.

"[(l) If no parole officer has been assigned to the locality where a person is to be released on parole, mandatory supervision, or executive clemency the Board shall notify the chairman of the Voluntary Parole Board of such county prior to the release of such person. The Board shall request such Voluntary Parole Board, in the absence of a parole officer, for information which would herein be required of such duly appointed parole officer. This shall not, however, preclude the Board from requesting information from any public agency in such locality. Further, the Board is authorized to contract with the Texas Adult Probation Commission for the supervision of persons released on parole or mandatory supervision for supervision by an adult probation officer, subject to the approval of the judge or judges that employ the officer. The Board shall report annually all such payments made to the Texas Adult Probation Commission, the Governor, and the Legislature.

"[(m) As an element of the board's halfway house program, the board, in cooperation with the Texas Department of Corrections, shall utilize halfway houses for the purpose of diverting from housing in regular units of the department of corrections suitable low/risk prisoners and other prisoners who would benefit from a smoother transition from incarceration to conditional freedom. To accomplish this purpose, the board, after reviewing all available pertinent information and receiving the approval of the governor, may designate a presumptive parole date for any inmate who (i) is not serving a sentence for an offense listed in Subdivision (1) of Subsection (a) of Section 3f of this article and whose judgment does not contain an affirmative finding under Subdivision (2) of Subsection (a) of Section 3f of this article, (ii) has never been convicted of an offense listed in Subdivision (1) of Subsection (a) of Section 3f of this article and has never had a conviction; the judgment for which contains an affirmative finding under Subdivision (2) of Subsection (a) of Section 3f of this article, and (iii) has not previously been denied release by the board. The presumptive parole date may not be a date which is earlier than the prisoner's initial parole eligibility date, as calculated or projected pursuant to Subsection (b) of Section 15 of this article. If a prisoner for whom a presumptive parole date has been established is transferred into a pre/parole residence in a halfway house pursuant to the terms of Article 6166x/4, Revised Statutes, the board is responsible for his supervision. The board may rescind or postpone a previously

established presumptive parole date on the basis of reports from agents of the board responsible for supervision or agents of the department of corrections acting in the case. If a prisoner transferred to preparole status has satisfactorily served his sentence in the halfway house to which he is assigned, from the date of transfer to the presumptive parole date, without rescission or postponement of the date, the board shall order his release to parole and issue an appropriate certificate of release. The prisoner is subject to the provisions of this article governing release on parole.

"[Section 16. It shall be the duty of any judge, district attorney, county attorney, police officer or other public official of the state, having information with reference to any prisoner eligible for parole, to send in writing such information as may be in his possession or under his control to the Board, upon request of any member or employee thereof.

"[Section 17. It shall be the duty of all prison officials to grant to the members of the Board, or its properly accredited representatives, access at all reasonable times to any prisoner, to provide for the Board or such representatives facilities for communicating with and observing such prisoner, and to furnish to the Board such reports as the Board shall require concerning the conduct and character of any prisoner in their custody and any other facts deemed by the Board pertinent in determining whether such prisoner shall be paroled.

"[Section 18. The Board shall formulate rules as to the submission and presentation of information and arguments to the Board for and in behalf of any person within the jurisdiction of the Board.

"[All persons presenting information or arguments to the Board shall submit therewith an affidavit stating whether any fee has been paid or is to be paid for their services in the case, the amount of such fee, if any, and by whom such fee is paid or to be paid.

"[Section 19. The Board shall have power to issue subpoenas requiring the attendance of such witnesses and the production of such records, books, papers, and documents as it may deem necessary for investigation of the case of any person before it. Subpoenas may be signed and oath administered by any member of the Board. Subpoenas so issued may be served by a sheriff, constable, police, parole, or probation officer, or other law enforcement officer, in the same manner as similar process in courts of record having original jurisdiction of criminal actions. Any person who testifies falsely or fails to appear when subpoenaed, or fails or refuses to produce such material pursuant to the subpoena, shall be subject to the same orders and penalties to which a person before a court is subject. Any courts of record having original jurisdiction of criminal actions upon application of the Board, may in their discretion compel the attendance of witnesses, the production of such material and the giving of testimony before the Board, by an attachment for contempt or otherwise in the same manner as production of evidence may be compelled before such courts of record having original jurisdiction of criminal actions.

"[Section 20. The Board shall have the power and duty to make rules for the conduct of persons placed on parole and of persons released to mandatory supervision.

"[Section 21. (a) A warrant for the return of a paroled prisoner, a prisoner released to mandatory supervision, a prisoner released on emergency reprieve or on furlough, or a person released on a conditional pardon to the institution from which he was paroled, released, or pardoned may be issued by the Board in cases of parole or mandatory supervision, or by the Board on order by the Governor in other cases, when there is reason to believe that he has committed an offense against the laws of this State or of the United States, violated a condition of his parole, mandatory supervision, or conditional pardon, or when the circumstances indicate that he poses a danger to society that warrants his immediate return to incarceration. Such warrant shall authorize all officers named therein to take actual custody of the prisoner and return him to the institution from which he was released. Pending hearing, as hereinafter provided, upon any charge of parole violation or violation of the conditions of mandatory supervision, the prisoner shall remain incarcerated.

"(b) A prisoner for whose return a warrant has been issued by the Board shall, after the issuance of such warrant, be deemed a fugitive from justice and if it shall appear that he has violated the conditions or provisions of his mandatory supervision or parole, then the time from the issuing of such warrant to the date of his arrest shall not be counted as any part of the time to be served under his sentence. The law now in effect concerning the right of the State of Texas to extradite persons and return fugitives from justice, and Article 42.11 of this Code concerning the waiver of all legal requirements to obtain extradition of fugitives from justice, from other states to this State, shall not be impaired by this Act and shall remain in full force and effect.

"[Section 22. Whenever a prisoner or a person granted a conditional pardon is accused of a violation of his parole, mandatory supervision, or conditional pardon on information and complaint by a law enforcement officer or parole officer, he shall be entitled to be heard on such charges before the Board or its designee under such rules and regulations as the Board may adopt; providing, however, said hearing shall be a public hearing and shall be held within ninety days of the date of arrest under a warrant issued by the Board of Pardons and Paroles or the Governor and at a time and place set by the Board. When the Board has heard the facts, it may recommend to the Governor that the conditional pardon be continued, or revoked, or modified, or it may continue, revoke, or modify the parole or mandatory supervision, in any manner warranted by the evidence. When a person's parole, mandatory supervision, or conditional pardon is revoked, that person may be required to serve the portion remaining of the sentence on which he was released, such portion remaining to be calculated without credit for the time from the date of his release to the date of revocation. When a warrant is issued by the Board of Pardons and Paroles or the Governor charging a violation of release conditions, the sentence time credit shall be suspended until a determination is made by the Board of Pardons and Paroles or the Governor in such case and such suspended time credit may be reinstated by the Board of Pardons and Paroles should such parole, mandatory supervision, or conditional pardon be continued.

"[Section 23. In order to complete the parole period, a parolee shall be required to serve out the whole term for which he was sentenced, subject to the deduction of the time he had served prior to his parole and to any diminution of sentence earned for good behavior while imprisoned in the Department of Corrections. The time on parole shall be calculated as calendar time. This provision, however, shall not be construed so as to interfere with the constitutional power conferred upon the Governor to grant pardons and to commute sentences.

"[When any paroled prisoner has fulfilled the obligations of his parole and has served out his term as conditioned in the preceding paragraph, the Board shall make a final order of discharge and issue to the parolee a certificate of such discharge.

"[Section 24. When any prisoner who has been paroled or released to mandatory supervision has complied with the rules and conditions governing his release until the end of the term to which he was sentenced, and without a revocation of his parole or mandatory supervision, the Board shall make a final order of discharge and issue the prisoner a certificate of discharge.

"[Section 25. On request of the Governor the Board shall investigate and report to the Governor with respect to any person being considered by the Governor for pardon, commutation of sentence, reprieve, or remission of fine or forfeiture, and make recommendations thereon.

"D. Supervision of Parolees

"[Section 26. The Board of Pardons and Paroles shall have general responsibility for the investigation and supervision of all prisoners released on parole and to mandatory supervision. For the discharge of this responsibility, there is hereby created with the Board of Pardons and Paroles, a Division of Parole Supervision. Subject to the general direction of the Board of Pardons and Paroles, the Division of Parole Supervision, including its field staff shall be responsible for obtaining and assembling any facts the Board of Pardons and Paroles may desire in considering parole eligibility, in establishing a mandatory supervision plan, and for investigating and supervising paroled prisoners and prisoners released to mandatory supervision to see that the conditions of parole and mandatory supervision are complied with, and for making such periodic reports on the progress of parolees and prisoners released to mandatory supervision as the Board may desire.

"[Section 27. All information obtained in connection with inmates of the Texas Department of Corrections subject to parole, release to mandatory supervision, or executive clemency or individuals who may be on mandatory supervision or parole and under the supervision of the division, or persons directly identified in any proposed plan of release for a prisoner, shall be confidential and privileged information and shall not be subject to public inspection; provided, however, that all such information shall be available to the Governor and the Board of Pardons and Paroles upon request. It is further provided, that statistical and general information respecting the parole and mandatory supervision program and system, including the names of paroled prisoners, prisoners released to mandatory supervision, and data recorded in connection with parole and mandatory supervision services, shall be subject to public inspection at any reasonable time.

"[Section 28. It is expressly provided that no person may be employed as a parole officer or supervisor, or be responsible for the investigations or supervision of persons on parole or mandatory supervision, unless he meets the following qualifications together with any other qualifications that may be specified by the Director, with the approval of the Board of Pardons and Paroles; four years of successfully completed education in an accredited college or university; and two years of full time paid employment in responsible correctional work with adults or juveniles, social welfare work, teaching, or personnel work. Additional experience in the above categories may be substituted year for year for the required college education, with a maximum substitution for two years.

"[Section 29. Any parole officer or supervisor may, with the approval of the director, be designated as a probation officer by the judge of a court of the State having original jurisdiction of criminal actions. Any proportional part of the salary paid to a parole officer or supervisor so designated, however, in compensation for his service as a probation officer, shall be only with the prior written approval of the director; and all such proportional salary payments shall be periodically reported to the Governor and the Legislature by the director.

"[Section 30. In order to provide supervision of parolees, persons released to mandatory supervision, and persons granted executive clemency who reside in sparsely settled areas of the State and in localities not served by regularly employed parole officers, the Governor of this State is authorized to appoint chairmen of Voluntary Parole Boards for such areas or localities. The appointed chairman may, with the advice and approval of the Director, appoint additional members of such Voluntary Parole Boards. The term of service by such appointed chairmen of Voluntary Parole Boards shall not exceed the term of office of the appointing Governor, and the terms of service of locally appointed additional members of such Voluntary Parole Boards shall not exceed the terms of office of the director. However, it is expressly provided that the terms of service by such chairmen and additional members of Voluntary Parole Boards may be continued by appropriate reappointments. The chairman of the Voluntary Parole Board shall be responsible for assigning supervision of parolees and of persons released to mandatory supervision to the members of such board.

"[Section 31. No person who is serving as a sheriff, deputy sheriff, constable, deputy constable, city policeman, Texas Ranger, state highway patrolman, or similar law enforcement officer, or as a prosecuting attorney, shall act as a parole officer or be responsible for the supervision of persons on parole or released to mandatory supervision.

"[Section 32. Any parole officer or supervisor, upon order of the Board and by direction of the director, shall be responsible for supervising persons placed on conditional pardon or furlough or prisoners transferred to pre/parole status under Article 6166x/4, Revised Statutes.

"[E. General Provisions

"[Section 33. The provisions of this Act shall not be construed to prevent or limit the exercise by the Governor of powers of executive clemency vested in him by the Constitution of this State.

"[Section 34. The provisions of this Act shall not apply to parole from institutions for juveniles.

"[Section 35. This Article shall not be deemed to alter or invalidate any probationary period fixed under statutes in force prior to the effective date of this Code or to limit the jurisdiction or power of a court to modify or terminate such probationary period. In other respects, persons placed on probation or parole prior to the effective date of this Code shall be amenable to the provisions of this Code insofar as it may be made applicable to them. All other actions pertaining to probations and paroles granted prior to the effective date of this Code shall be regulated according to the law in force at the time the probation or parole was granted.

"[Section 36. The provisions of this article do not apply to temporary furloughs granted to an inmate by the Texas Department of Corrections under Article 6184n, Revised Civil Statutes of Texas, 1925.]"

SECTION 2. Chapter 42, Code of Criminal Procedure, 1965, is amended by adding Article 42.18 to read as follows:

"Article 42.18. ADULT PAROLE AND MANDATORY SUPERVISION LAW

"Section 1. It is the intent of this article to provide for the release of persons on parole and for the method thereof, to designate the Board of Pardons and Paroles as the agency of state government with exclusive authority to determine paroles, and to further designate the board as responsible for the investigation and supervision of persons released on parole. It is the intent of

this article to aid all prisoners to readjust to society upon completion of their period of incarceration by providing a program of mandatory supervision for those prisoners not released on parole or through executive clemency and to designate the board as the agency of government responsible for the program. It is the final purpose of this article to remove from existing statutes the limitations, other than questions of constitutionality, that have acted as barriers to effective systems of probations and paroles in the public interest.

"Section 2. This article may be cited as the 'Adult Parole and Mandatory Supervision Law.'

"Unless the context otherwise requires, the following definitions shall apply to the specified words and phrases as used in this article:

"a. 'Parole' means the release of a prisoner from imprisonment but not from the legal custody of the state for rehabilitation outside prison walls under such conditions and provisions for disciplinary supervision as the board may determine. Parole shall not be construed to mean a commutation of sentence or any other form of executive clemency.

"b. 'Mandatory supervision' means the release of a prisoner from imprisonment but not on parole, and not from the legal custody of the state, for rehabilitation outside prison walls under such conditions and provisions for disciplinary supervision as the board may determine. Mandatory supervision may not be construed as a commutation of sentence or any other form of executive clemency.

"c. 'Parole officer' means a person duly appointed by the director of the Division of Parole Supervision and assigned the duties of investigating and supervising paroled prisoners and prisoners released to mandatory supervision to see that the conditions of parole or mandatory supervision are complied with.

"d. 'Board' means the Board of Pardons and Paroles.

"e. 'Division' means the Division of Parole Supervision of the Board of Pardons and Paroles.

"f. 'Director' means the director of the Board of Pardons and Paroles.

"Section 3. (a) The Board of Pardons and Paroles is established as a statutory agency. The board consists of six members appointed by the governor with the advice and consent of the senate.

"(b) Members of the board must be resident citizens of this state and must have been residents for a period of not less than two years immediately preceding their appointment. Members hold office for staggered terms of six years. The terms expire on January 31 of odd-numbered years.

"(c) If a vacancy occurs, the governor shall appoint a person to serve the remainder of the unexpired term in the same manner as other appointments.

"(d) The board shall administer the provisions of this Act respecting determinations of which prisoners shall be paroled and the conditions of parole and mandatory supervision, may recommend the revocation of conditional pardons by the governor, and may revoke paroles and releases to mandatory supervision. Keeping the goals of this Act in mind, the board shall have the authority to determine the degree and intensity of supervision a prisoner released on parole or released to mandatory supervision should receive.

"Section 4. The Board of Pardons and Paroles is subject to the Texas Sunset Act, but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1, 1987, and every 12th year after 1987, are reviewed.

"Section 5. The members of the board shall give full time to the duties of their office and shall be paid such salaries as the legislature may determine in appropriation Acts. The governor shall biennially designate one member to serve as chairman and one member to serve as vice-chairman.

"The board shall meet at the call of the chairman and from time to time as may otherwise be determined by majority vote of the board. A majority of the board shall constitute a quorum for the transaction of all business.

"The board shall adopt an official seal of which the courts shall take judicial notice. Decisions of the board shall be by majority vote.

"The board shall keep a record of its acts and shall notify each institution of its decisions relating to the persons who are confined therein. At the close of each fiscal year the board shall submit to the governor and to the legislature a report with statistical and other data of its work.

"All minutes of the board and decisions relating to mandatory supervision, parole, pardon, and clemency shall be matters of public record and subject to public inspection at all reasonable times.

"The board shall employ an executive director who shall be responsible to the board for the conduct of the affairs of the agency.

"Section 6. The necessary office quarters shall be provided for the board in the manner that the same are furnished to other departments, boards, commissions, bureaus, and offices of the state.

"Section 7. (a) To aid and assist the Board of Pardons and Paroles in parole and mandatory supervision decisions, provision is hereby made for the employment of parole commissioners.

“(b) There shall be employed not less than six commissioners subject to the approval of a majority of the members of the board.

“(c) The commissioners shall assist the board in parole decisions and mandatory supervision revocation decisions. The votes on individual recommendations by the commissioners on parole decisions and mandatory supervision revocation decisions shall be independent and have the same force and effect as votes by the board. The commissioners may assist the board in other matters as determined by the board.

“A parole panel, as hereinafter provided, may recommend the granting, denial, or revocation of parole and the revocation of mandatory supervision status and may conduct parole revocation hearings and mandatory supervision revocation hearings. The commissioners shall perform their duties as directed by the board.

“(d) The board may provide and promulgate a written plan for the administrative review of actions taken by a parole panel.

“(e) In matters of parole and release to mandatory supervision, the board members and commissioners may act in panels comprised of three persons in each panel. The composition of the respective panels shall be designated by the board. A majority of each panel shall constitute a quorum for the transaction of its business, and its decisions shall be by majority vote. The functions given to the board throughout this article may be enlarged and extend to the parole panels, as provided by board rules. The powers of the board and the board members can be delegated by the board to the parole panels and to the commissioners as needed for the convenience of and assistance to the board.

“Section 8. (a) The board is authorized to release on parole any person confined in any penal or correctional institution who is eligible for parole under Subsection (b) of this section. The board may consider a person for release on parole if the person has been sentenced to a term of imprisonment in the Texas Department of Corrections, is confined in a jail in this state, a federal correctional institution, or a jail or a correctional institution in another state, and is eligible for parole under Subsection (b) of this section. The department shall provide the board with sentence time credit information on persons described in this section. The period of parole shall be equivalent to the maximum term for which the prisoner was sentenced less calendar time actually served on the sentence. All paroles shall issue upon order of the board.

“(b) A prisoner under sentence of death is not eligible for parole. If a prisoner is serving a sentence for the offenses listed in Subdivision (1), Subsection (a), Section 3g, Article 42.12 of this code, or if the judgment contains an affirmative finding under Subdivision (2) of Subsection (a) of Section 3g of that article, he is not eligible for release on parole until his actual calendar time served, without consideration of good conduct time, equals one-third of the maximum sentence or 20 calendar years, whichever is less, but in no event shall he be eligible for release on parole in less than two calendar years. All other prisoners shall be eligible for release on parole when their calendar time served plus good conduct time equals one-third of the maximum sentence imposed or 20 years, whichever is less.

“(c) A prisoner who is not on parole, except a person under sentence of death, shall be released to mandatory supervision by order of the board when the calendar time he has served plus any accrued good conduct time equal the maximum term to which he was sentenced. A prisoner released to mandatory supervision shall, upon release, be deemed as if released on parole. To the extent practicable, arrangements for the prisoner's proper employment, maintenance, and care shall be made prior to his release to mandatory supervision. The period of mandatory supervision shall be for a period equivalent to the maximum term for which the prisoner was sentenced less calendar time actually served on the sentence. The time served on mandatory supervision is calculated as calendar time. Every prisoner while on mandatory supervision shall remain in the legal custody of the institution from which he was released but shall be amenable to the orders of the board.

“(d) A prisoner who has not been released to mandatory supervision and has 180 calendar days or less remaining on his sentence may be released by order of the board to mandatory supervision.

“(e) Within one year after a prisoner's admittance to the penal or correctional institution and at such intervals thereafter as it may determine, the board shall secure and consider all pertinent information regarding each prisoner, except any under sentence of death, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment, and attitude in prison, and his physical and mental health.

“(f) Before ordering the parole of any prisoner, the board may have the prisoner appear before it and interview him. A parole shall be ordered only for the best interest of society, not as an award of clemency; it shall not be considered to be a reduction of sentence or pardon. A prisoner shall be placed on parole only when arrangements have been made for his employment or for his maintenance and care and when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal

custody of the institution from which he was released but shall be amenable to the orders of the board.

“(g) The board may adopt such other reasonable rules not inconsistent with law as it may deem proper or necessary with respect to the eligibility of prisoners for parole and mandatory supervision, the conduct of parole and mandatory supervision hearings, or conditions to be imposed upon parolees and persons released to mandatory supervision. Each person to be released on parole shall be furnished a written statement and contract setting forth in clear and intelligible language the conditions and rules of parole. The conditions shall include the making of restitution or reparation to the victim of the prisoner’s crime, in an amount not greater than such restitution or reparation as established by the court and entered in the sentence of the court which sentenced the prisoner to his term of imprisonment. Acceptance, signing, and execution of the contract by the inmate to be paroled shall be a precondition to release on parole. Persons released on mandatory supervision shall be furnished a written statement setting forth in clear and intelligible language the conditions and rules of mandatory supervision.

“(h) The board shall certify and contract with halfway houses and shall use them to the maximum extent:

“(1) to provide close supervision;

“(2) to help persons released on parole make restitution or reparation and fulfill the obligations of law-abiding citizens; and

“(3) to reduce recidivism.

“(i) The halfway houses shall include a pilot project for selected inmates over 55 years of age in order to assist those elderly persons in obtaining parole by providing transitional living arrangements and possible suitable employment.

“(j) Funding for this pilot project for parole for the elderly should come from the criminal justice division of the governor’s office. The funding agency should evaluate the performance of the pilot project at the end of two years of operation and provide recommendations to the governor and the legislature regarding the need and value of continuing the project.

“(k) It shall be the duty of the board at least 10 days before ordering the parole of any prisoner or upon the granting of executive clemency by the governor to notify the sheriff, the prosecuting attorney, and the district judge in the county where such person was convicted that such parole or clemency is being considered by the board or by the governor.

“(l) If no parole officer has been assigned to the locality where a person is to be released on parole, mandatory supervision, or executive clemency, the board shall notify the chairman of the voluntary parole board of such county prior to the release of such person. The board shall request such voluntary parole board, in the absence of a parole officer, for information which would herein be required of such duly appointed parole officer. This shall not, however, preclude the board from requesting information from any public agency in such locality. Further, the board is authorized to contract with the Texas Adult Probation Commission for the supervision of persons released on parole or mandatory supervision for supervision by an adult probation officer, subject to the approval of the judge or judges that employ the officer. The board shall report annually all such payments made to the Texas Adult Probation Commission, the governor, and the legislature.

“(m) As an element of the board’s halfway house program, the board, in cooperation with the Texas Department of Corrections, shall utilize halfway houses for the purpose of diverting from housing in regular units of the department of corrections suitable low-risk prisoners and other prisoners who would benefit from a smoother transition from incarceration to conditional freedom. To accomplish this purpose, the board, after reviewing all available pertinent information and receiving the approval of the governor, may designate a presumptive parole date for any inmate who (i) is not serving a sentence for an offense listed in Subdivision (1) of Subsection (a) of Section 3g of Article 42.12 of this code and whose judgment does not contain an affirmative finding under Subdivision (2) of Subsection (a) of Section 3g of that article; (ii) has never been convicted of an offense listed in Subdivision (1) of Subsection (a) of Section 3g of that article and has never had a conviction, the judgment for which contains an affirmative finding under Subdivision (2) of Subsection (a) of Section 3g of that article; and (iii) has not previously been denied release by the board. The presumptive parole date may not be a date which is earlier than the prisoner’s initial parole eligibility date, as calculated or projected pursuant to Subsection (b) of this section. If a prisoner for whom a presumptive parole date has been established is transferred into a preparole residence in a halfway house pursuant to the terms of Article 6166x-4, Revised Statutes, the board is responsible for his supervision. The board may rescind or postpone a previously established presumptive parole date on the basis of reports from agents of the board responsible for supervision or agents of the department of corrections acting in the case. If a prisoner transferred to preparole status has satisfactorily served his sentence in the halfway house to which he is assigned from the date of transfer to the presumptive parole date, without rescission or postponement of the date, the board shall order his release to parole and issue an appropriate certificate of release. The prisoner is subject to the provisions of this article governing release on parole.

"Section 9. It shall be the duty of any judge, district attorney, county attorney, police officer, or other public official of the state having information with reference to any prisoner eligible for parole to send in writing such information as may be in his possession or under his control to the board, upon request of any member or employee thereof.

"Section 10. It shall be the duty of all prison officials to grant to the members of the board or its properly accredited representatives access at all reasonable times to any prisoner, to provide for the board or such representatives facilities for communicating with and observing such prisoner, and to furnish to the board such reports as the board shall require concerning the conduct and character of any prisoner in their custody and any other facts deemed by the board pertinent in determining whether such prisoner shall be paroled.

"Section 11. The board shall formulate rules as to the submission and presentation of information and arguments to the board for and in behalf of any person within the jurisdiction of the board.

"All persons presenting information or arguments to the board shall submit therewith an affidavit stating whether any fee has been paid or is to be paid for their services in the case, the amount of such fee, if any, and by whom such fee is paid or to be paid.

"Section 12. The board shall have power to issue subpoenas requiring the attendance of such witnesses and the production of such records, books, papers, and documents as it may deem necessary for investigation of the case of any person before it. Subpoenas may be signed and oaths administered by any member of the board. Subpoenas so issued may be served by a sheriff, a constable, a police, parole, or probation officer, or another law enforcement officer in the same manner as similar process in courts of record having original jurisdiction of criminal actions. Any person who testifies falsely or fails to appear when subpoenaed or fails or refuses to produce such material pursuant to the subpoena shall be subject to the same orders and penalties to which a person before a court is subject. Any courts of record having original jurisdiction of criminal actions, upon application of the board, may in their discretion compel the attendance of witnesses, the production of such material, and the giving of testimony before the board, by an attachment for contempt or otherwise in the same manner as production of evidence may be compelled before such courts of record having original jurisdiction of criminal actions.

"Section 13. The board shall have the power and duty to make rules for the conduct of persons placed on parole and of persons released to mandatory supervision.

"Section 14. (a) A warrant for the return of a paroled prisoner, a prisoner released to mandatory supervision, a prisoner released on emergency reprieve or on furlough, or a person released on a conditional pardon to the institution from which he was paroled, released, or pardoned may be issued by the board in cases of parole or mandatory supervision, or by the board on order by the governor in other cases, when there is reason to believe that he has committed an offense against the laws of this state or of the United States, violated a condition of his parole, mandatory supervision, or conditional pardon, or when the circumstances indicate that he poses a danger to society that warrants his immediate return to incarceration. Such warrant shall authorize all officers named therein to take actual custody of the prisoner and return him to the institution from which he was released. Pending hearing, as hereinafter provided, upon any charge of parole violation or violation of the conditions of mandatory supervision, the prisoner shall remain incarcerated.

"(b) A prisoner for whose return a warrant has been issued by the board shall, after the issuance of such warrant, be deemed a fugitive from justice and if it shall appear that he has violated the conditions or provisions of his mandatory supervision or parole, the time from the issuing of such warrant to the date of his arrest shall not be counted as any part of the time to be served under his sentence. The law now in effect concerning the right of the State of Texas to extradite persons and return fugitives from justice and Article 42.11 of this code concerning the waiver of all legal requirements to obtain extradition of fugitives from justice from other states to this state shall not be impaired by this Act and shall remain in full force and effect.

"Section 15. Whenever a prisoner or a person granted a conditional pardon is accused of a violation of his parole, mandatory supervision, or conditional pardon, on information and complaint by a law enforcement officer or parole officer, he shall be entitled to be heard on such charges before the board or its designee under such rules as the board may adopt; provided, however, said hearing shall be a public hearing and shall be held within 90 days of the date of arrest under a warrant issued by the board or the governor and at a time and place set by the board. When the board has heard the facts, it may recommend to the governor that the conditional pardon be continued, revoked, or modified, or it may continue, revoke, or modify the parole or mandatory supervision, in any manner warranted by the evidence. When a person's parole, mandatory supervision, or conditional pardon is revoked, that person may be required to serve the portion remaining of the sentence on which he was released, such portion remaining to be calculated without credit for the time from the date of his release to the date of revocation. When a warrant is issued by the board or the governor charging a violation of release conditions, the

sentence time credit shall be suspended until a determination is made by the board or the governor in such case and such suspended time credit may be reinstated by the board should such parole, mandatory supervision, or conditional pardon be continued.

“Section 16. In order to complete the parole period, a parolee shall be required to serve out the whole term for which he was sentenced, subject to the deduction of the time he had served prior to his parole and to any diminution of sentence earned for good behavior while imprisoned in the department of corrections. The time on parole shall be calculated as calendar time. This provision, however, shall not be construed so as to interfere with the constitutional power conferred upon the governor to grant pardons and to commute sentences.

“When any paroled prisoner has fulfilled the obligations of his parole and has served out his term as conditioned in the preceding paragraph, the board shall make a final order of discharge and issue to the parolee a certificate of such discharge.

“Section 17. When any prisoner who has been paroled or released to mandatory supervision has complied with the rules and conditions governing his release until the end of the term to which he was sentenced, and without a revocation of his parole or mandatory supervision, the board shall make a final order of discharge and issue the prisoner a certificate of discharge.

“Section 18. On request of the governor, the board shall investigate and report to the governor with respect to any person being considered by the governor for pardon, commutation of sentence, reprieve, remission of fine, or forfeiture and make recommendations thereon.

“Section 19. The Board of Pardons and Paroles shall have general responsibility for the investigation and supervision of all prisoners released on parole and to mandatory supervision. For the discharge of this responsibility there is hereby created with the board a division of parole supervision. Subject to the general direction of the board, the division of parole supervision, including its field staff, shall be responsible for obtaining and assembling any facts the board may desire in considering parole eligibility, in establishing a mandatory supervision plan, and for investigating and supervising paroled prisoners and prisoners released to mandatory supervision to see that the conditions of parole and mandatory supervision are complied with and for making such periodic reports on the progress of parolees and prisoners released to mandatory supervision as the board may desire.

“Section 20. All information obtained in connection with inmates of the Texas Department of Corrections subject to parole, release to mandatory supervision, or executive clemency, or individuals who may be on mandatory supervision or parole and under the supervision of the division, or persons directly identified in any proposed plan of release for a prisoner, shall be confidential and privileged information and shall not be subject to public inspection; provided, however, that all such information shall be available to the governor and the board upon request. It is further provided that statistical and general information respecting the parole and mandatory supervision program and system, including the names of paroled prisoners, prisoners released to mandatory supervision, and data recorded in connection with parole and mandatory supervision services, shall be subject to public inspection at any reasonable time.

“Section 21. It is expressly provided that no person may be employed as a parole officer or supervisor or be responsible for the investigation or supervision of persons on parole or mandatory supervision, unless he meets the following qualifications together with any other qualifications that may be specified by the director with the approval of the Board of Pardons and Paroles: four years of successfully completed education in an accredited college or university and two years of full-time paid employment in responsible correctional work with adults or juveniles, social welfare work, teaching, or personnel work. Additional experience in the above categories may be substituted year for year for the required college education, with a maximum substitution for two years.

“Section 22. Any parole officer or supervisor may, with the approval of the director, be designated as a probation officer by the judge of a court of the state having original jurisdiction of criminal actions. Any proportional part of the salary paid to a parole officer or supervisor so designated, however, in compensation for his service as a probation officer, shall be only with the prior written approval of the director, and all such proportional salary payments shall be periodically reported to the governor and the legislature by the director.

“Section 23. In order to provide supervision of parolees, persons released to mandatory supervision, and persons granted executive clemency who reside in sparsely settled areas of the state and in localities not served by regularly employed parole officers, the governor of this state is authorized to appoint chairmen of voluntary parole boards for such areas or localities. The appointed chairmen may, with the advice and approval of the director, appoint additional members of such voluntary parole boards. The term of service by such appointed chairmen of voluntary parole boards shall not exceed the term of office of the appointing governor, and the terms of service of locally appointed additional members of such voluntary parole boards shall not exceed the terms of office of the director. However, it is expressly provided that the terms of service by such chairmen and additional members of voluntary parole boards may be continued by appropriate reappointments. The chairmen of the voluntary parole boards shall be responsible for

assigning supervision of parolees and of persons released to mandatory supervision to the members of the boards.

"Section 24. No person who is serving as a sheriff, deputy sheriff, constable, deputy constable, city policeman, Texas Ranger, state highway patrolman, or similar law enforcement officer or as a prosecuting attorney shall act as a parole officer or be responsible for the supervision of persons on parole or released to mandatory supervision.

"Section 25. Any parole officer or supervisor, upon order of the board and by direction of the director, shall be responsible for supervising persons placed on conditional pardon or furlough and prisoners transferred to preparole status under Article 6166x-4, Revised Statutes.

"Section 26. Any parole officer or supervisor employed by the division of parole supervision may, upon request of the governor or the board and by direction of the director, be responsible for supervising persons placed on conditional pardon or furlough.

"Section 27. The provisions of this article shall not be construed to prevent or limit the exercise by the governor of powers of executive clemency vested in him by the constitution of this state.

"Section 28. The provisions of this article shall not apply to parole from institutions for juveniles.

"Section 29. The provisions of this article do not apply to temporary furloughs granted to an inmate by the Texas Department of Corrections under Article 6184n, Revised Statutes."

SECTION 3. Article 42.13, Code of Criminal Procedure, 1965, is repealed.

SECTION 4. (a) Except as provided by Subsection (b) of this section, this Act is intended as a recodification only, no substantive change in law is intended, and Chapter 455, Acts of the 60th Legislature, Regular Session, 1967 (Article 5429b-2, Vernon's Texas Civil Statutes), applies to this Act.

(b) The amendment of Section 4, Article 42.12, Code of Criminal Procedure, 1965, by Section 1 of this Act is intended to harmonize and give effect to the amendments made to that section by both Section 9 of Chapter 303 and Section 1 of Chapter 343, Acts of the 68th Legislature, Regular Session, 1983, and is intended to overcome a decision of the Texas Court of Criminal Appeals which gave effect to Chapter 303 and held provisions of Chapter 343 to be without effect.

SECTION 5. This Act takes effect September 1, 1985.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 2, 1985, by a viva-voce vote; passed the House on May 21, 1985, by a non-record vote.

Approved: June 11, 1985

Effective: September 1, 1985