



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 30, 2021

The Honorable Ryan Sinclair
Hood County District Attorney
1200 West Pearl Street
Granbury, Texas 76048

Opinion No. KP-0383

Re: Maximum allowable period of deferred adjudication community supervision for a third degree felony under either Title 7 of the Penal Code or Chapter 481 of the Health and Safety Code (RQ-0398-KP)

Dear Mr. Sinclair:

You ask about the maximum allowable period of deferred adjudication community supervision for a third degree felony under either Title 7 of the Penal Code or Chapter 481 of the Health and Safety Code.¹

Background

Chapter 42A of the Code of Criminal Procedure regulates community supervision, also known as probation, that a court may order in different circumstances.² *See* TEX. CODE CRIM. PROC. arts. 42A.001–.757; *see also Hongpathoum v. State*, 578 S.W.3d 213, 214 n.1 (Tex. App.—Fort Worth 2019, no pet.) (“‘Community supervision’ and ‘probation’ are synonymous and generally used interchangeably.”). Your question concerns two statutes in the chapter, article 42A.053 (“Judge-Ordered Community Supervision”) and article 42A.103 (“Period of Deferred Adjudication Community Supervision”). Request Letter at 3. Article 42A.053 authorizes a judge to place a defendant on community supervision in specific circumstances. TEX. CODE CRIM. PROC. art. 42A.053(a). The statute provides for minimum and maximum periods of community supervision for various offenses, and states that “the maximum period of community supervision is . . . five years, for any of the following third degree felonies: (i) a third degree felony under Title

¹*See* Letter from Honorable Ryan Sinclair, Hood Cnty. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Feb. 22, 2021), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2021/pdf/RQ0398KP.pdf> (“Request Letter”).

²Previously the community-supervision statutes were located in former article 42.12 of the Code of Criminal Procedure. In 2015, the Legislature repealed article 42.12 and enacted Chapter 42A in a nonsubstantive revision of the community-supervision laws. *See* Act of May 26, 2015, 84th Leg., R.S., ch. 770, §§ 1.01, 3.01, 4.01–.02, 2015 Tex. Gen. Laws 2321, 2321–95 (codified at TEX. CODE CRIM. PROC. arts. 42A.001–.757).

7, Penal Code;³ and (ii) a third degree felony under Chapter 481, Health and Safety Code.”⁴ *Id.* art. 42A.053(d)(2)(B). Article 42A.103, on the other hand, provides that “[i]n a felony case, the period of deferred adjudication community supervision may not exceed 10 years.” *Id.* art. 42A.103(a). You ask specifically whether the five-year maximum period under article 42A.053 conflicts with the ten-year period under article 42A.103 with respect to establishing the maximum allowable period of deferred community supervision for one of the third degree felonies specified in article 42A.053. Request Letter at 3.

Overview of Community Supervision

Chapter 42A defines community supervision as

the placement of a defendant by a court under a continuum of programs and sanctions, with conditions imposed by the court for a specified period during which:

(A) criminal proceedings are deferred without an adjudication of guilt; or

(B) a sentence of imprisonment or confinement, imprisonment and fine, or confinement and fine, is probated and the imposition of sentence is suspended in whole or in part.

TEX. CODE CRIM. PROC. art. 42A.001(1). Thus, the definition establishes two primary kinds of community supervision—regular community supervision in subsection (1)(B) and deferred adjudication in subsection (1)(A). *In re R.B.*, 361 S.W.3d 184, 189 n.5 (Tex. App.—El Paso 2012, pet. denied) (discussing predecessor statute). This general definition encompasses several specific forms of community supervision for various circumstances and offenses addressed in chapter 42A—“such as regular (or ‘straight’), deferred-adjudication, shock, boot-camp, and state-jail-felony.” *State v. Juvrud*, 187 S.W.3d 492, 493 (Tex. Crim. App. 2006) (footnote and citation omitted). “Each form has its own limitations and requirements. Each is independent of the other in the sense that a defendant may be eligible for one or two forms of community supervision, but not another.” *Rodriguez v. State*, 939 S.W.2d 211, 221 (Tex. App.—Austin 1997, no pet.) (addressing predecessor statute).

Regular Community Supervision

Article 42A.053, located in subchapter B (“Placement on Community Supervision”), provides for regular community supervision. *See* TEX. CODE CRIM. PROC. art. 42A.053; *Wright v. State*, 506 S.W.3d 478, 481 (Tex. Crim. App. 2016) (citing predecessor statute). The article authorizes a judge to order community supervision “after conviction or a plea of guilty or nolo contendere.” TEX. CODE CRIM. PROC. art. 42A.053(a). In doing so, the judge may “suspend the

³*See* TEX. PENAL CODE §§ 28.01–35A.02 (Title 7, “Offenses Against Property”).

⁴*See* TEX. HEALTH & SAFETY CODE §§ 481.001–.354 (chapter 481, “Texas Controlled Substances Act”).

imposition of *the sentence* and place the defendant on community supervision.”⁵ *Id.* art. 42A.053(a)(1) (emphasis added). Thus, for regular community supervision under article 42A.053, the defendant “is convicted of the offense charged and the punishment is assessed by judge or jury. The imposition of the sentence is suspended and the defendant is placed on regular community supervision.” *Rodriguez*, 939 S.W.2d at 221. Article 42A.053 provides different maximum periods according to the offense, including the five-year maximum period for specified third degree felonies. TEX. CODE CRIM. PROC. art. 42A.053(d)(2)(A), (B), (e), (f).

Deferred Adjudication Community Supervision

While article 42A.053 is located in subchapter B (“Placement on Community Supervision”), article 42A.101 is located in subchapter C, which governs deferred adjudication community supervision. *See id.* arts. 42A.101–111 (“Deferred Adjudication Community Supervision”). Under subchapter C, “the judge may, after receiving a plea of guilty or nolo contendere, hearing the evidence, and finding that it substantiates the defendant’s guilt, *defer further proceedings without entering an adjudication of guilt* and place the defendant on deferred adjudication community supervision.” *Id.* art. 42A.101(a) (emphasis added). A court may order deferred adjudication community supervision only after it receives the defendant’s plea of guilty or nolo contendere, and “[a]s a practical matter, a defendant must waive his right to a jury trial in order to obtain the benefit of deferred adjudication community supervision.” *Metts v. State*, 510 S.W.3d 1, 7 n.9 (Tex. Crim. App. 2016). Once the criminal case has been adjudicated, the defendant is no longer eligible for deferred adjudication community supervision. *See Rodriguez*, 939 S.W.2d at 221–22. Article 42A.103 specifies the maximum period of deferred adjudication community supervision for felonies is ten years without making exceptions for particular felonies. TEX. CODE CRIM. PROC. art. 42A.103(a).

Neither article 42A.053 nor article 42A.103 refers to the other either expressly or implicitly. Thus, regular community supervision, in which a sentence is assessed but not implemented, and deferred adjudication community supervision, in which all proceedings are deferred without an adjudication, are subject to different limitations and requirements according to different statutory schemes. *See Rodriguez*, 939 S.W.2d at 221–22. “The rules and requirements of deferred-adjudication community supervision are distinct and separate from those applying to other types of community supervision.” *Juvrud*, 187 S.W.3d at 494.

Because “the special provisions for deferred adjudication . . . prevail over provisions for regular probation,” *id.* at 493 (discussing predecessor statute), the five-year maximum period of community supervision under article 42A.053 does not apply to deferred adjudication community supervision under article 42A.103, and, therefore, the statutes do not conflict. In article 42A.103, the maximum period of deferred adjudication community supervision is ten years for all felonies without regard to the specific offense. TEX. CODE CRIM. PROC. art. 42A.103(a). Accordingly, the maximum allowable period of deferred adjudication community supervision for a felony, including a third degree felony under either Title 7 of the Penal Code or Chapter 481 of the Health and Safety Code, is ten years. *Id.*

⁵A judge may also impose a fine and place the defendant on community supervision. TEX. CODE CRIM. PROC. art. 42A.053(a)(2).

S U M M A R Y

Under article 42A.053 of the Code of Criminal Procedure, the maximum period of regular community supervision for a third degree felony under either Title 7, Penal Code or Chapter 481, Health and Safety Code is five years.

Under article 42A.103, the maximum period of deferred adjudication community supervision for all felonies is ten years.

Articles 42A.053 and 42A.103 do not conflict. The maximum allowable period of deferred adjudication community supervision for a felony, including a third degree felony under either Title 7 of the Penal Code or Chapter 481 of the Health and Safety Code, is ten years.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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