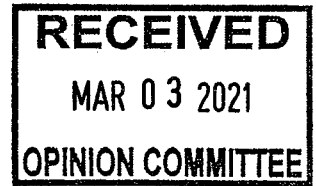


**RYAN SINCLAIR**  
**DISTRICT ATTORNEY**  
355TH JUDICIAL DISTRICT  
HOOD COUNTY, TEXAS



February 22, 2021

The Honorable Ken Paxton  
Texas Attorney General  
P.O. Box 12548  
Austin, Texas 78711-2548

RQ-0398-KP  
FILE# ML-48939-21  
I.D.# 48939

**RE: Request for an opinion regarding the maximum allowable period of deferred adjudication community supervision for a defendant who pleads guilty or nolo contendere to a third degree felony under Title 7, Penal Code, or a third degree felony under Chapter 481, Health and Safety Code**

Dear Attorney General Paxton:

The Hood County District Attorney's Office respectfully asks for your opinion regarding the following issue:

Whether a court, upon a plea of guilty or nolo contendere by a defendant charged with a third degree felony under Title 7, Penal Code, or a third degree felony under Chapter 481, Health and Safety Code, who is otherwise eligible for deferred adjudication community supervision, and upon a finding by the court that the evidence substantiates the defendant's guilt, may initially place the defendant on deferred adjudication community supervision for a period not to exceed 10 years, or whether the maximum period of deferred adjudication community supervision is limited initially to five years.

Chapter 42A of the Code of Criminal Procedure, Subchapter A – General Provisions, Article 42A.001(1), provides as follows:

Art. 42A.001. DEFINITIONS. In this chapter:

(1) "Community supervision" means 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. Crim Proc. Code, art. 42A.001(1). Accordingly, the term "community supervision" applies to criminal proceedings wherein an adjudication of guilt is deferred as well as proceedings wherein a sentence is probated and the imposition of sentence is suspended.

Chapter 42A, Subchapter B – Placement on Community Supervision, Article 42A.053(a), provides as follows:

Art. 42A.053. JUDGE-ORDERED COMMUNITY SUPERVISION. (a) A judge, in the best interest of justice, the public, and the defendant, after conviction or a plea of guilty or nolo contendere, may:

- (1) suspend the imposition of the sentence and place the defendant on community supervision; or
- (2) impose a fine applicable to the offense and place the defendant on community supervision.

Tex. Crim Proc. Code, art. 42A.053(a). Article 42A.053(d), provides as follows:

(d) In a felony case:

- (1) the minimum period of community supervision is the same as the minimum term of imprisonment applicable to the offense; and
- (2) the maximum period of community supervision is:
  - (A) 10 years, for a felony other than a third degree felony described by Paragraph (B); and
  - (B) five years, for any of the following third degree felonies:
    - (i) a third degree felony under Title 7, Penal Code; and
    - (ii) a third degree felony under Chapter 481, Health and Safety Code.

Tex. Crim Proc. Code, art. 42A.053(d). A third degree felony is punishable by imprisonment in the Texas Department of Criminal Justice for any term of not more than 10 years or less than 2 years and a fine not to exceed \$10,000. Tex. Penal Code Ann., §12.34. Article 42A.053(a) grants a judge authority to place a defendant on community supervision either after conviction or a plea of guilty. According to the provisions of Article 42A.053(d), the period of community supervision for third degree felonies under Title 7, Penal Code, and Chapter 481, Health and Safety Code, is set at a minimum of two years and a maximum of five years.

However, Chapter 42A, Subchapter C – Deferred Adjudication Community Supervision, Article 42A.103(a), provides in relevant part as follows:

Art. 42A.103. PERIOD OF DEFERRED ADJUDICATION COMMUNITY SUPERVISION. (a) In a felony case, the period of deferred adjudication community supervision may not exceed 10 years.

Tex. Crim Proc. Code, art. 42A.103(a). No distinction is made among the various felony offenses or the degree of felony regarding establishing the maximum allowable period of deferred adjudication community supervision. Under Article 42A.103(a), a defendant in a felony case may

be placed on deferred adjudication community supervision for any period not to exceed 10 years.

We write to request your opinion as to whether Articles 42A.053 and 42A.103 conflict as applied specifically to establishing the maximum allowable term of deferred adjudication community supervision that a court may initially order for third degree felonies under Title 7, Penal Code, and Chapter 481, Health and Safety Code.

Applying general statutory construction principles, it would appear, and we believe, the language of the statutes at issue is plain and unambiguous. Specifically, we contend Article 42A.053 pertains generally to placement on community supervision after sentencing, limiting the initial term of community supervision to five years for third degree felonies under Title 7, Penal Code, and Chapter 481, Health and Safety Code, while Article 42A.103(a) applies specifically to placement on deferred adjudication community supervision, establishing therein a maximum initial term of 10 years for *all* felonies (including third degree felonies under Title 7, Penal Code, and Chapter 481, Health and Safety Code).<sup>1</sup> See *Ex parte Head*, 2019 WL 6139167, 2 (Tex. App. – Beaumont 2019, *pet. ref'd, not designated for publication*) (placement on deferred adjudication community supervision for a period of 10 years on a state jail felony permissible and controlled by 42A.103; five-year limitation in 42A.553 did not apply); *State v. Juvrud*, 187 S.W.3d 492, 496 (Tex. Crim. App. 2006) (where defendant had been granted deferred adjudication community supervision for a period of 10 years, provisions of CCP art. 42.12, §5(c), which requires no minimum period of supervision prior to early dismissal, controls over art. 42.12, §20, which by its language applies only to types of community supervision following a conviction and sentence); *Davidson v. State*, 1997 WL 392731, 2 (Tex. – App. 1997, *no pet., not designated for publication*) (where defendant had been granted deferred adjudication community supervision for a period of six years in a state jail felony theft case, the limit on the period of probation under CCP art. 42.12, §15 is predicated on conviction of a state jail felony and does not limit the probationary period when adjudication of guilt is deferred, as here; the period of community supervision is provided for in art. 42.12, §5(a), which allows up to a 10-year period of community supervision). Further, even if the two statutes are in conflict, we believe that the construction proposed hereinabove gives effect to both. Tex. Gov't Code, §311.026.

Should it be determined that Articles 42A.053 and 42A.103 are in irreconcilable conflict, we contend that Article 42A.103, as the “special” provision related specifically to deferred adjudication community supervision, prevails over the general community supervision provision of Article 42A.053. *Id.* See *Kesinger v. State*, 34 S.W.3d 644, 645 (Tex. App. – San Antonio 2000, *no pet.*) (CCP art. 42.12, §5(b), a specific statute, prevails over art. 42.12, §15(a), a general statute, allowing the court, after placing defendant on deferred adjudication community supervision, to adjudicate the defendant, assess sentence and order sentence executed rather than suspending defendant’s sentence); *Dudley v. State*, 2008 WL 2043034, 4 (Tex. App. – Dallas 2008, *no pet., not designated for publication*) (CCP, art. 42.12, §5 [now codified in art. 42A.103] controls over art. 42.12, §15, concerning post-adjudication sentencing in a state jail felony case wherein defendant was granted deferred adjudication community supervision, noting that §5 is a special statute relating to deferred adjudication proceedings and controls the trial court’s discretion in

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<sup>1</sup> We recognize that both Articles 42A.053 and 42A.103 provide for the manner in which the term of community supervision may be extended.

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assessing punishment in the case).

We respectfully request your opinion on the issue identified herein. If you need any additional information, please contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Sinclair". The signature is written in a cursive style with a prominent initial "R".

Ryan Sinclair  
Hood County District Attorney