

APPLICABILITY OF ARTICLE 42A.701, CODE OF CRIMINAL PROCEDURE: REDUCTION OR TERMINATION OF COMMUNITY SUPERVISION PERIOD

In *State v. Juvrud*, 187 S.W.3d 492, 496 (Tex. Crim. App. 2006), the Court of Criminal Appeals held that Section 20, Article 42.12 (currently Article 42A.701) of the Code of Criminal Procedure applies only to regular or straight probation. *See also Yazdchi v. State*, 428 S.W.3d 831, 839 (Tex. Crim. App. 2014) (holding that the judicial clemency provision applies to offenses for which a defendant has been convicted through a straight probation).

Therefore, it is OCA's opinion that the Notice of Judicial Clemency should be used when a defendant is placed on probation, and the Order of Discharge should be used when a defendant is discharged from probation under Article 42A.701.

INSTRUCTIONS FOR NOTICE OF JUDICIAL CLEMENCY FOR DEFENDANTS PLACED ON COMMUNITY SUPERVISION (PROBATION)

Notice of Judicial Clemency should be provided in cases where the defendant is placed on probation, not deferred adjudication.

In accordance with Article 42A.701(g), Code of Criminal Procedure, courts **should not provide** the notice of judicial clemency to defendants who are convicted of: (1) an offense under Sections 49.04-49.08, Penal Code (Certain offenses involving the use of alcohol); (2) an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure; or (3) a felony described by Article 42A.054, Code of Criminal Procedure.

INSTRUCTIONS FOR ORDER OF DISCHARGE FROM COMMUNITY SUPERVISION (PROBATION)

Courts must use the Order of Discharge from Community Supervision when discharging defendants from probation under Article 42A.701, Code of Criminal Procedure (REDUCTION OR TERMINATION OF COMMUNITY SUPERVISION PERIOD). Do not use this form to discharge defendants from deferred adjudication. Discharges and dismissals from deferred adjudication occur under Article 42A.111, Code of Criminal Procedure, not Article 42A.701.

Under Article 42A.701, Code of Criminal Procedure, there are only two ways to discharge a defendant. Both are reflected on the form. A court should choose the most appropriate option.