

By: Frullo

H.B. No. 2327

A BILL TO BE ENTITLED

1 AN ACT
2 relating to increasing the criminal penalty for operating a
3 watercraft while intoxicated with a child passenger; changing the
4 eligibility for deferred adjudication community supervision.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 49.06, Penal Code, is amended by
7 amending Subsection (b) and adding Subsection (c) to read as
8 follows:

9 (b) Except as provided by Subsection (c) or Section 49.09,
10 an offense under this section is a Class B misdemeanor, with a
11 minimum term of confinement of 72 hours.

12 (c) If it is shown on the trial of an offense under this
13 section that at the time of the offense the watercraft being
14 operated by the person was occupied by a passenger who was younger
15 than 15 years of age, the offense is a state jail felony.

16 SECTION 2. Article 42A.102(b), Code of Criminal Procedure,
17 as amended by Chapters 1137 (H.B. 2758) and 1298 (H.B. 3582), Acts
18 of the 86th Legislature, Regular Session, 2019, is reenacted and
19 amended to read as follows:

20 (b) In all other cases, the judge may grant deferred
21 adjudication community supervision unless:

22 (1) the defendant is charged with an offense:

23 (A) under Section 20A.02, ~~[or]~~ 20A.03, ~~[or]~~
24 49.045, 49.05, 49.065, 49.07, or 49.08, Penal Code;

1 (B) under Section 49.04 or 49.06, Penal Code,
2 and, at the time of the offense:

3 (i) the defendant held a commercial
4 driver's license or a commercial learner's permit; [~~or~~]

5 (ii) the defendant's alcohol concentration,
6 as defined by Section 49.01, Penal Code, was 0.15 or more; or

7 (iii) the watercraft being operated by the
8 defendant was occupied by a passenger who was younger than 15 years
9 of age;

10 (C) for which punishment may be increased under
11 Section 49.09, Penal Code; or

12 (D) for which punishment may be increased under
13 Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it
14 is shown that the defendant has been previously convicted of an
15 offense for which punishment was increased under any one of those
16 subsections;

17 (2) the defendant:

18 (A) is charged with an offense under Section
19 21.11, 22.011, 22.021, 43.04, or 43.05, Penal Code, regardless of
20 the age of the victim, or a felony described by Article 42A.453(b),
21 other than a felony described by Subdivision (1)(A) or (3)(B) of
22 this subsection; and

23 (B) has previously been placed on community
24 supervision for an offense under Paragraph (A);

25 (3) the defendant is charged with an offense under:

26 (A) Section 21.02, Penal Code; or

27 (B) Section 22.021, Penal Code, that is

1 punishable under Subsection (f) of that section or under Section
2 12.42(c)(3) or (4), Penal Code; or

3 (4) the defendant is charged with an offense under
4 Section 19.02, Penal Code, except that the judge may grant deferred
5 adjudication community supervision on determining that the
6 defendant did not cause the death of the deceased, did not intend to
7 kill the deceased or another, and did not anticipate that a human
8 life would be taken.

9 SECTION 3. The change in law made by this Act applies only
10 to an offense committed on or after the effective date of this Act.
11 An offense committed before the effective date of this Act is
12 governed by the law in effect on the date the offense was committed,
13 and the former law is continued in effect for that purpose. For
14 purposes of this section, an offense was committed before the
15 effective date of this Act if any element of the offense occurred
16 before that date.

17 SECTION 4. To the extent of any conflict, this Act prevails
18 over another Act of the 87th Legislature, Regular Session, 2021,
19 relating to nonsubstantive additions to and corrections in enacted
20 codes.

21 SECTION 5. This Act takes effect September 1, 2021.