

By: Smith, Metcalf

H.B. No. 2505

A BILL TO BE ENTITLED

1 AN ACT
2 relating to creating the criminal offense of boating while
3 intoxicated with a child passenger; changing the eligibility for
4 deferred adjudication community supervision.

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

6 SECTION 1. Chapter 49, Penal Code, is amended by adding
7 Section 49.061 to read as follows:

8 Sec. 49.061. BOATING WHILE INTOXICATED WITH CHILD
9 PASSENGER. (a) A person commits an offense if:

10 (1) the person is intoxicated while operating a
11 watercraft; and

12 (2) the watercraft being operated by the person is
13 occupied by a passenger who is younger than 15 years of age.

14 (b) An offense under this section is a state jail felony.

15 SECTION 2. Sections 49.09(b) and (d), Penal Code, are
16 amended to read as follows:

17 (b) An offense under Section 49.04, 49.045, 49.05, 49.06,
18 49.061, or 49.065 is a felony of the third degree if it is shown on
19 the trial of the offense that the person has previously been
20 convicted:

21 (1) one time of an offense under Section 49.08 or an
22 offense under the laws of another state if the offense contains
23 elements that are substantially similar to the elements of an
24 offense under Section 49.08; or

1 (2) two times of any other offense relating to the
2 operating of a motor vehicle while intoxicated, operating an
3 aircraft while intoxicated, operating a watercraft while
4 intoxicated, or operating or assembling an amusement ride while
5 intoxicated.

6 (d) For the purposes of this section, a conviction for an
7 offense under Section 49.04, 49.045, 49.05, 49.06, 49.061, 49.065,
8 49.07, or 49.08 that occurs on or after September 1, 1994, is a
9 final conviction, whether the sentence for the conviction is
10 imposed or probated.

11 SECTION 3. Section 49.09(c)(3), Penal Code, is amended to
12 read as follows:

13 (3) "Offense of operating a watercraft while
14 intoxicated" means:

15 (A) an offense under Section 49.06 or 49.061;

16 (B) an offense under Section 49.07 or 49.08, if
17 the vehicle operated was a watercraft;

18 (C) an offense under Section 31.097, Parks and
19 Wildlife Code, as that law existed before September 1, 1994;

20 (D) an offense under Section 19.05(a)(2), as that
21 law existed before September 1, 1994, if the vehicle operated was a
22 watercraft; or

23 (E) an offense under the laws of another state
24 that prohibit the operation of a watercraft while intoxicated.

25 SECTION 4. Section 49.10, Penal Code, is amended to read as
26 follows:

27 Sec. 49.10. NO DEFENSE. In a prosecution under Section

1 49.031 [~~49.03~~], 49.04, 49.045, 49.05, 49.06, 49.061, 49.065, 49.07,
2 or 49.08, the fact that the defendant is or has been entitled to use
3 the alcohol, controlled substance, drug, dangerous drug, or other
4 substance is not a defense.

5 SECTION 5. Section 106.041(g), Alcoholic Beverage Code, is
6 amended to read as follows:

7 (g) An offense under this section is not a lesser included
8 offense under Section 49.04, 49.045, [~~or~~] 49.06, or 49.061, Penal
9 Code.

10 SECTION 6. Article 16.23(b), Code of Criminal Procedure, is
11 amended to read as follows:

12 (b) Subsection (a) does not apply to a person who is accused
13 of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.061,
14 49.065, 49.07, or 49.08, Penal Code.

15 SECTION 7. Article 17.441(a), Code of Criminal Procedure,
16 is amended to read as follows:

17 (a) Except as provided by Subsection (b), a magistrate shall
18 require on release that a defendant charged with a subsequent
19 offense under Section 49.04, 49.05, [~~or~~] 49.06, or 49.061, Penal
20 Code, or an offense under Section 49.045, 49.07, or 49.08 of that
21 code:

22 (1) have installed on the motor vehicle owned by the
23 defendant or on the vehicle most regularly driven by the defendant,
24 a device that uses a deep-lung breath analysis mechanism to make
25 impractical the operation of a motor vehicle if ethyl alcohol is
26 detected in the breath of the operator; and

27 (2) not operate any motor vehicle unless the vehicle

1 is equipped with that device.

2 SECTION 8. Article 18.01(j), Code of Criminal Procedure, is
3 amended to read as follows:

4 (j) Any magistrate who is an attorney licensed by this state
5 may issue a search warrant under Article 18.02(a)(10) to collect a
6 blood specimen from a person who:

7 (1) is arrested for an offense under Section 49.04,
8 49.045, 49.05, 49.06, 49.061, 49.065, 49.07, or 49.08, Penal Code;
9 and

10 (2) refuses to submit to a breath or blood alcohol
11 test.

12 SECTION 9. Article 42A.102(b), Code of Criminal Procedure,
13 as amended by Chapters 1137 (H.B. 2758) and 1298 (H.B. 3582), Acts
14 of the 86th Legislature, Regular Session, 2019, is reenacted and
15 amended to read as follows:

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

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

19 (A) under Section 20A.02, ~~or~~ 20A.03, ~~or~~
20 49.045, 49.05, 49.061, 49.065, 49.07, or 49.08, Penal Code;

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

23 (i) the defendant held a commercial
24 driver's license or a commercial learner's permit; or

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

27 (C) for which punishment may be increased under

1 Section 49.09, Penal Code; or

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

7 (2) the defendant:

8 (A) is charged with an offense under Section
9 21.11, 22.011, 22.021, 43.04, or 43.05, Penal Code, regardless of
10 the age of the victim, or a felony described by Article 42A.453(b),
11 other than a felony described by Subdivision (1)(A) or (3)(B) of
12 this subsection; and

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

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

16 (A) Section 21.02, Penal Code; or

17 (B) Section 22.021, Penal Code, that is
18 punishable under Subsection (f) of that section or under Section
19 12.42(c)(3) or (4), Penal Code; or

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

26 SECTION 10. Articles 42A.408(c) and (d), Code of Criminal
27 Procedure, are amended to read as follows:

1 (c) The court shall require as a condition of community
2 supervision that a defendant described by Subsection (b) have an
3 ignition interlock device installed on the motor vehicle owned by
4 the defendant or on the vehicle most regularly driven by the
5 defendant and that the defendant not operate any motor vehicle
6 unless the vehicle is equipped with that device if:

7 (1) it is shown on the trial of the offense that an
8 analysis of a specimen of the defendant's blood, breath, or urine
9 showed an alcohol concentration level of 0.15 or more at the time
10 the analysis was performed;

11 (2) the defendant is placed on community supervision
12 after conviction of an offense under Sections 49.04-49.061
13 [~~49.04-49.06~~], Penal Code, for which the defendant is punished
14 under Section 49.09(a) or (b), Penal Code; or

15 (3) the court determines under Subsection (d) that the
16 defendant has one or more previous convictions under Sections
17 49.04-49.08, Penal Code.

18 (d) Before placing on community supervision a defendant
19 convicted of an offense under Sections 49.04-49.08, Penal Code, the
20 court shall determine from criminal history record information
21 maintained by the Department of Public Safety whether the defendant
22 has one or more previous convictions under any of those sections. A
23 previous conviction may not be used for purposes of restricting a
24 defendant to the operation of a motor vehicle equipped with an
25 ignition interlock device under Subsection (c) if:

26 (1) the previous conviction was a final conviction
27 under Section 49.04, 49.045, 49.05, 49.06, 49.061, 49.07, or 49.08,

1 Penal Code, and was for an offense committed before the beginning of
2 the 10-year period preceding the date of the instant offense for
3 which the defendant was convicted and placed on community
4 supervision; and

5 (2) the defendant has not been convicted of an offense
6 under Section 49.04, 49.045, 49.05, 49.06, 49.061, 49.07, or 49.08,
7 Penal Code, committed within the 10-year period preceding the date
8 of the instant offense for which the defendant was convicted and
9 placed on community supervision.

10 SECTION 11. Section 12.203(a), Parks and Wildlife Code, is
11 amended to read as follows:

12 (a) A person may apply to the committee for a reward to be
13 paid from the operation game thief fund if the person furnishes
14 information leading to the arrest and conviction of a person for a
15 violation of this code or any of the following laws or a regulation
16 adopted under this code or any of the following laws:

17 (1) Subchapter B, Chapter 365, Health and Safety Code;

18 (2) Subchapter E, Chapter 191, Natural Resources Code;

19 (3) Chapter 28 or Section 30.05, 31.03, 31.11, 37.10,
20 49.06, 49.061, 49.07, or 49.08, Penal Code;

21 (4) Chapter 160, Tax Code; or

22 (5) Subchapter E, Chapter 7, or Subchapter D, Chapter
23 26, Water Code.

24 SECTION 12. Section 524.011(a), Transportation Code, is
25 amended to read as follows:

26 (a) An officer arresting a person shall comply with
27 Subsection (b) if:

1 (1) the person is arrested for an offense under
2 Section 49.04, 49.045, [~~or~~] 49.06, or 49.061, Penal Code, or an
3 offense under Section 49.07 or 49.08 of that code involving the
4 operation of a motor vehicle or watercraft, submits to the taking of
5 a specimen of breath or blood and an analysis of the specimen shows
6 the person had an alcohol concentration of a level specified by
7 Section 49.01(2)(B), Penal Code; or

8 (2) the person is a minor arrested for an offense under
9 Section 106.041, Alcoholic Beverage Code, or Section 49.04, 49.045,
10 [~~or~~] 49.06, or 49.061, Penal Code, or an offense under Section 49.07
11 or 49.08, Penal Code, involving the operation of a motor vehicle or
12 watercraft and:

13 (A) the minor is not requested to submit to the
14 taking of a specimen; or

15 (B) the minor submits to the taking of a specimen
16 and an analysis of the specimen shows that the minor had an alcohol
17 concentration of greater than.00 but less than the level specified
18 by Section 49.01(2)(B), Penal Code.

19 SECTION 13. Section 524.015(b), Transportation Code, is
20 amended to read as follows:

21 (b) A suspension may not be imposed under this chapter on a
22 person who is acquitted of a criminal charge under Section 49.04,
23 49.045, 49.06, 49.061, 49.07, or 49.08, Penal Code, or Section
24 106.041, Alcoholic Beverage Code, arising from the occurrence that
25 was the basis for the suspension. If a suspension was imposed before
26 the acquittal, the department shall rescind the suspension and
27 shall remove any reference to the suspension from the person's

1 computerized driving record.

2 SECTION 14. Section 524.022(b), Transportation Code, is
3 amended to read as follows:

4 (b) A period of suspension under this chapter for a minor
5 is:

6 (1) 60 days if the minor has not been previously
7 convicted of an offense under Section 106.041, Alcoholic Beverage
8 Code, or Section 49.04, 49.045, [~~or~~] 49.06, or 49.061, Penal Code,
9 or an offense under Section 49.07 or 49.08, Penal Code, involving
10 the operation of a motor vehicle or a watercraft;

11 (2) 120 days if the minor has been previously
12 convicted once of an offense listed by Subdivision (1); or

13 (3) 180 days if the minor has been previously
14 convicted twice or more of an offense listed by Subdivision (1).

15 SECTION 15. Section 524.023, Transportation Code, is
16 amended to read as follows:

17 Sec. 524.023. APPLICATION OF SUSPENSION UNDER OTHER LAWS.

18 (a) If a person is convicted of an offense under Section 106.041,
19 Alcoholic Beverage Code, or Section 49.04, 49.045, 49.06, 49.061,
20 49.07, or 49.08, Penal Code, and if any conduct on which that
21 conviction is based is a ground for a driver's license suspension
22 under this chapter and Section 106.041, Alcoholic Beverage Code,
23 Subchapter O, Chapter 521, or Subchapter H, Chapter 522, each of the
24 suspensions shall be imposed.

25 (b) The court imposing a driver's license suspension under
26 Section 106.041, Alcoholic Beverage Code, or Chapter 521 or 522 as
27 required by Subsection (a) shall credit a period of suspension

1 imposed under this chapter toward the period of suspension required
2 under Section 106.041, Alcoholic Beverage Code, or Subchapter O,
3 Chapter 521, or Subchapter H, Chapter 522, unless the person was
4 convicted of an offense under Article 67011-1, Revised Statutes, as
5 that law existed before September 1, 1994, Section 19.05(a)(2),
6 Penal Code, as that law existed before September 1, 1994, Section
7 49.04, 49.045, 49.06, 49.061, 49.07, or 49.08, Penal Code, or
8 Section 106.041, Alcoholic Beverage Code, before the date of the
9 conviction on which the suspension is based, in which event credit
10 may not be given.

11 SECTION 16. Section 524.042(a), Transportation Code, is
12 amended to read as follows:

13 (a) A suspension of a driver's license under this chapter is
14 stayed on the filing of an appeal petition only if:

15 (1) the person's driver's license has not been
16 suspended as a result of an alcohol-related or drug-related
17 enforcement contact during the five years preceding the date of the
18 person's arrest; and

19 (2) the person has not been convicted during the 10
20 years preceding the date of the person's arrest of an offense under:

21 (A) Article 67011-1, Revised Statutes, as that
22 law existed before September 1, 1994;

23 (B) Section 19.05(a)(2), Penal Code, as that law
24 existed before September 1, 1994;

25 (C) Section 49.04, 49.045, [~~or~~] 49.06, or 49.061,
26 Penal Code;

27 (D) Section 49.07 or 49.08, Penal Code, if the

1 offense involved the operation of a motor vehicle or a watercraft;
2 or

3 (E) Section 106.041, Alcoholic Beverage Code.

4 SECTION 17. Section 724.012(b), Transportation Code, is
5 amended to read as follows:

6 (b) A peace officer shall require the taking of a specimen
7 of the person's breath or blood under any of the following
8 circumstances if the officer arrests the person for an offense
9 under Chapter 49, Penal Code, involving the operation of a motor
10 vehicle or a watercraft and the person refuses the officer's
11 request to submit to the taking of a specimen voluntarily:

12 (1) the person was the operator of a motor vehicle or a
13 watercraft involved in an accident that the officer reasonably
14 believes occurred as a result of the offense and, at the time of the
15 arrest, the officer reasonably believes that as a direct result of
16 the accident:

17 (A) any individual has died or will die;

18 (B) an individual other than the person has
19 suffered serious bodily injury; or

20 (C) an individual other than the person has
21 suffered bodily injury and been transported to a hospital or other
22 medical facility for medical treatment;

23 (2) the offense for which the officer arrests the
24 person is an offense under Section 49.045, Penal Code; or

25 (3) at the time of the arrest, the officer possesses or
26 receives reliable information from a credible source that the
27 person:

1 (A) has been previously convicted of or placed on
2 community supervision for an offense under Section 49.045, 49.07,
3 or 49.08, Penal Code, or an offense under the laws of another state
4 containing elements substantially similar to the elements of an
5 offense under those sections; or

6 (B) on two or more occasions, has been previously
7 convicted of or placed on community supervision for an offense
8 under Section 49.04, 49.05, 49.06, 49.061, or 49.065, Penal Code,
9 or an offense under the laws of another state containing elements
10 substantially similar to the elements of an offense under those
11 sections.

12 SECTION 18. To the extent of any conflict, this Act prevails
13 over another Act of the 87th Legislature, Regular Session, 2021,
14 relating to nonsubstantive additions to and corrections in enacted
15 codes.

16 SECTION 19. This Act takes effect September 1, 2021.