

By: Smith of Tarrant, Pena, et al.

H.B. No. 51

Substitute the following for H.B. No. 51:

By: Hodge

C.S.H.B. No. 51

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the punishment prescribed for and conditions of  
3 community supervision imposed on certain persons who commit  
4 intoxication offenses.

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

6 SECTION 1. Section 49.09(d), Penal Code, is amended to read  
7 as follows:

8 (d) For the purposes of this section, a conviction for an  
9 offense under Article 67011-1, Revised Statutes, as that law  
10 existed before September 1, 1994, Article 67011-2, Revised  
11 Statutes, as that law existed before January 1, 1984, Section  
12 19.05(a)(2), as that law existed before September 1, 1994, or  
13 Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08 [~~that~~  
14 ~~occurs on or after September 1, 1994,~~] is a final conviction,  
15 whether the sentence for the conviction is imposed or probated.

16 SECTION 2. Sections 13(b), (c), and (i), Article 42.12,  
17 Code of Criminal Procedure, are amended to read as follows:

18 (b) A judge granting community supervision to a defendant  
19 convicted of an offense under Sections 49.04-49.08 [~~Section 49.08~~],  
20 Penal Code, shall require as a condition of community supervision  
21 that the defendant submit to an evaluation by a supervision officer  
22 or by a person, program, or facility approved by the Department of  
23 State Health Services for the purpose of having the facility  
24 prescribe and carry out a course of conduct necessary for the

1 rehabilitation of the defendant's drug or alcohol dependence  
2 condition [~~a period of confinement of not less than 120 days~~].

3 (c) If the director of a facility to which a defendant is  
4 referred under Subsection (b) [~~Subdivision (2) of Subsection (a) of~~  
5 ~~this section~~] determines that the defendant is not making a good  
6 faith effort to participate in a program of rehabilitation, the  
7 director shall notify the judge that referred the defendant of that  
8 fact.

9 (i) If a person convicted of an offense under Sections  
10 49.04-49.08, Penal Code, is placed on community supervision, the  
11 court may require as a condition of community supervision that the  
12 defendant have a device installed, on the motor vehicle owned by the  
13 defendant or on the vehicle most regularly driven by the defendant,  
14 that uses a deep-lung breath analysis mechanism to make impractical  
15 the operation of the motor vehicle if ethyl alcohol is detected in  
16 the breath of the operator and that the defendant not operate any  
17 motor vehicle that is not equipped with that device. If it is shown  
18 on the trial of the offense that an analysis of a specimen of the  
19 person's blood, breath, or urine showed an alcohol concentration  
20 level of 0.15 or more at the time the analysis was performed, or if  
21 the person is convicted of an offense under Sections 49.04-49.06,  
22 Penal Code, and punished under Section 49.09(a) or (b), Penal Code,  
23 or of a second or subsequent offense under Section 49.07 or 49.08,  
24 Penal Code, and the person after conviction of either offense is  
25 placed on community supervision, the court shall require as a  
26 condition of community supervision that the defendant have the  
27 device installed on the appropriate vehicle and that the defendant

1 not operate any motor vehicle unless the vehicle is equipped with  
2 that device. Before placing on community supervision a person  
3 convicted of an offense under Sections 49.04-49.08, Penal Code, the  
4 court shall determine from criminal history record information  
5 maintained by the Department of Public Safety whether the person  
6 has one or more previous convictions under Sections 49.04-49.08,  
7 Penal Code, or has one previous conviction under Sections  
8 49.04-49.07, Penal Code, or one previous conviction under Section  
9 49.08, Penal Code. If it is shown on the trial of the offense that  
10 an analysis of a specimen of the person's blood, breath, or urine  
11 showed an alcohol concentration level of 0.15 or more at the time  
12 the analysis was performed, or if the court determines that the  
13 person has one or more such previous convictions, the court shall  
14 require as a condition of community supervision that the defendant  
15 have that device installed on the motor vehicle owned by the  
16 defendant or on the vehicle most regularly driven by the defendant  
17 and that the defendant not operate any motor vehicle unless the  
18 vehicle is equipped with the device described in this subsection.  
19 The court shall require the defendant to obtain the device at the  
20 defendant's own cost before the 30th day after the date of  
21 conviction unless the court finds that to do so would not be in the  
22 best interest of justice and enters its findings on record. The  
23 court shall require the defendant to provide evidence to the court  
24 within the 30-day period that the device has been installed on the  
25 appropriate vehicle and order the device to remain installed on  
26 that vehicle for a period not less than 50 percent of the  
27 supervision period. If the court determines the offender is unable

1 to pay for the device, the court may impose a reasonable payment  
2 schedule not to exceed twice the period of the court's order. The  
3 Department of Public Safety shall approve devices for use under  
4 this subsection. Section 521.247, Transportation Code, applies to  
5 the approval of a device under this subsection and the consequences  
6 of that approval. Notwithstanding the provisions of this section,  
7 if a person is required to operate a motor vehicle in the course and  
8 scope of the person's employment and if the vehicle is owned by the  
9 employer, the person may operate that vehicle without installation  
10 of an approved ignition interlock device if the employer has been  
11 notified of that driving privilege restriction and if proof of that  
12 notification is with the vehicle. This employment exemption does  
13 not apply, however, if the business entity that owns the vehicle is  
14 owned or controlled by the person whose driving privilege has been  
15 restricted. A previous conviction may not be used for purposes of  
16 restricting a person to the operation of a motor vehicle equipped  
17 with an interlock ignition device under this subsection if:

18 (1) the previous conviction was a final conviction  
19 under Section 49.04, 49.045, 49.05, 49.06, 49.07, or 49.08, Penal  
20 Code, and was for an offense committed more than 10 years before the  
21 instant offense for which the person was convicted and placed on  
22 community supervision; and

23 (2) the person has not been convicted of an offense  
24 under Section 49.04, 49.045, 49.05, 49.06, 49.07, or 49.08 of that  
25 code, committed within 10 years before the date on which the instant  
26 offense for which the person was convicted and placed on community  
27 supervision.

1           SECTION 3. Sections 49.09(e) and (f), Penal Code, are  
2 repealed.

3           SECTION 4. The changes in law made by this Act apply only to  
4 the penalty or the terms of community supervision for an offense  
5 under Chapter 49, Penal Code, that is committed on or after the  
6 effective date of this Act. The penalty and the terms of community  
7 supervision for an offense under Chapter 49, Penal Code, that was  
8 committed before the effective date of this Act are covered by the  
9 law in effect when the offense was committed, and the former law is  
10 continued in effect for that purpose. For purposes of this section,  
11 an offense was committed before the effective date of this Act if  
12 any element of the offense was committed before that date.

13           SECTION 5. This Act takes effect September 1, 2005.