

By: Zaffirini

S.B. No. 26

A BILL TO BE ENTITLED

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AN ACT

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

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

SECTION 1. Section 49.09, Penal Code, is amended by adding Subsection (a-1) and amending Subsection (d) to read as follows:

(a-1) An offense under Section 49.04, 49.05, or 49.06 is a Class A misdemeanor if it is shown on the trial of the offense that an analysis of a specimen of the person's blood, breath, or urine showed an alcohol concentration level of 0.15 or more at the time the analysis was performed.

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

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

(a) A judge granting community supervision to a defendant convicted of an offense under Chapter 49, Penal Code, shall require

1 as a condition of community supervision that the defendant submit
2 to:

3 (1) not less than 72 hours [~~three days~~] of confinement
4 in a county jail if the defendant was punished under Section
5 49.09(a);

6 (2) not less than five days of confinement in county
7 jail if the defendant:

8 (A) was punished under Section 49.09(a) and was
9 subject to Section 49.09(g), as added by Chapter 969, Acts of the
10 77th Legislature, Regular Session, 2001; or

11 (B) was punished under Section 49.09(a-1);

12 (3) not less than 10 days of confinement in county jail
13 if the defendant was punished under Section 49.09(b) [~~or (c)~~];

14 (4) [~~or~~] not less than 30 days of confinement in county
15 jail if the defendant was punished [~~convicted~~] under Section
16 49.09(a-1), if it is shown on the trial of the offense that the
17 defendant has previously been convicted of an offense under Chapter
18 49; or

19 (5) not less than 120 days of continuous confinement
20 in county jail if the defendant was convicted under Section 49.07 or
21 49.08 [~~, and~~

22 [~~(2) an evaluation by a supervision officer or by a~~
23 ~~person, program, or facility approved by the Texas Commission on~~
24 ~~Alcohol and Drug Abuse for the purpose of having the facility~~
25 ~~prescribe and carry out a course of conduct necessary for the~~
26 ~~rehabilitation of the defendant's drug or alcohol dependence~~
27 ~~condition].~~

1 (b) A judge granting community supervision to a defendant
2 convicted of an offense under Sections 49.04-49.08 [~~Section 49.08~~],
3 Penal Code, shall require as a condition of community supervision
4 that the defendant submit to an evaluation by a supervision officer
5 or by a person, program, or facility approved by the Texas
6 Commission on Alcohol and Drug Abuse for the purpose of having the
7 facility prescribe and carry out a course of conduct necessary for
8 the rehabilitation of the defendant's drug or alcohol dependence
9 condition [~~a period of confinement of not less than 120 days~~].

10 (c) If the director of a facility to which a defendant is
11 referred under Subsection (b) [~~Subdivision (2) of Subsection (a) of~~
12 ~~this section~~] determines that the defendant is not making a good
13 faith effort to participate in a program of rehabilitation, the
14 director shall notify the judge that referred the defendant of that
15 fact.

16 (i) If a person convicted of an offense under Sections
17 49.04-49.08, Penal Code, is placed on community supervision, the
18 court may require as a condition of community supervision that the
19 defendant have a device installed, on the motor vehicle owned by the
20 defendant or on the vehicle most regularly driven by the defendant,
21 that uses a deep-lung breath analysis mechanism to make impractical
22 the operation of the motor vehicle if ethyl alcohol is detected in
23 the breath of the operator and that the defendant not operate any
24 motor vehicle that is not equipped with that device. If the person
25 is convicted of an offense under Sections 49.04-49.06, Penal Code,
26 and punished under Section 49.09(a), (a-1), or (b), Penal Code, or
27 of a second or subsequent offense under Section 49.07 or 49.08,

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

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

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

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

1 supervision.

2 SECTION 3. (a) This Act takes effect September 1, 2005.

3 (b) The changes in law made by this Act apply only to the
4 penalty or the terms of community supervision for an offense under
5 Chapter 49, Penal Code, that is committed on or after September 1,
6 2003. The penalty and the terms of community supervision for an
7 offense under Chapter 49, Penal Code, that was committed before
8 September 1, 2005, is covered by the law in effect when the offense
9 was committed, and the former law is continued in effect for that
10 purpose. For purposes of this subsection, an offense was committed
11 before September 1, 2005, if any element of the offense was
12 committed before that date.