

By: Smith of Tarrant

H.B. No. 1234

Substitute the following for H.B. No. 1234:

By: Pena

C.S.H.B. No. 1234

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to a defendant's eligibility to be placed on deferred  
3 adjudication for certain intoxication offenses and to the  
4 consequences of that deferred adjudication.

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

6 SECTION 1. Section 5, Article 42.12, Code of Criminal  
7 Procedure, is amended by amending Subsections (a) and (d) and  
8 adding Subsection (a-1) to read as follows:

9 (a) Except as provided by Subsection (d) [~~of this section~~],  
10 when in the judge's opinion the best interest of society and the  
11 defendant will be served, the judge may, after receiving a plea of  
12 guilty or plea of nolo contendere, hearing the evidence, and  
13 finding that it substantiates the defendant's guilt, defer further  
14 proceedings without entering an adjudication of guilt, and place  
15 the defendant on community supervision. A judge may place on  
16 community supervision under this section a defendant charged with  
17 an offense under Section 21.11, 22.011, or 22.021, Penal Code,  
18 regardless of the age of the victim, or a defendant charged with a  
19 felony described by Section 13B(b) [~~of this article~~], only if the  
20 judge makes a finding in open court that placing the defendant on  
21 community supervision is in the best interest of the victim. The  
22 failure of the judge to find that deferred adjudication is in the  
23 best interest of the victim is not grounds for the defendant to set  
24 aside the plea, deferred adjudication, or any subsequent conviction

1 or sentence. After placing the defendant on community supervision  
2 under this section, the judge shall inform the defendant orally or  
3 in writing of the possible consequences under Subsection (b) [~~of~~  
4 ~~this section~~] of a violation of community supervision. If the  
5 information is provided orally, the judge must record and maintain  
6 the judge's statement to the defendant. The failure of a judge to  
7 inform a defendant of possible consequences under Subsection (b)  
8 [~~of this section~~] is not a ground for reversal unless the defendant  
9 shows that the defendant [~~he~~] was harmed by the failure of the judge  
10 to provide the information. In a felony case, the period of  
11 community supervision may not exceed 10 years. For a defendant  
12 charged with a felony under Section 21.11, 22.011, or 22.021, Penal  
13 Code, regardless of the age of the victim, and for a defendant  
14 charged with a felony described by Section 13B(b) [~~of this~~  
15 ~~article~~], the period of community supervision may not be less than  
16 five years. In a misdemeanor case, the period of community  
17 supervision may not exceed two years. A judge may increase the  
18 maximum period of community supervision in the manner provided by  
19 Section 22(c) or 22A [~~of this article~~].

20 (a-1) The judge may impose a fine applicable to the offense  
21 and require any reasonable conditions of community supervision,  
22 including mental health treatment under Section 11(d) [~~of this~~  
23 ~~article~~], that a judge could impose on a defendant placed on  
24 community supervision for a conviction that was probated and  
25 suspended, including confinement. If a judge places on community  
26 supervision under this section a defendant charged with an offense  
27 under Chapter 49, Penal Code, other than an offense described by

1 Subsection (d), the judge shall require the defendant to comply  
2 with any condition of community supervision that Section 13  
3 requires for a defendant placed on community supervision under that  
4 section. The provisions of Section 15 [~~of this article~~] specifying  
5 whether a defendant convicted of a state jail felony is to be  
6 confined in a county jail or state jail felony facility and  
7 establishing the minimum and maximum terms of confinement as a  
8 condition of community supervision apply in the same manner to a  
9 defendant placed on community supervision after pleading guilty or  
10 nolo contendere to a state jail felony. However, upon written  
11 motion of the defendant requesting final adjudication filed within  
12 30 days after entering that [~~such~~] plea and the deferment of  
13 adjudication, the judge shall proceed to final adjudication as in  
14 all other cases.

15 (d) In all other cases the judge may grant deferred  
16 adjudication unless:

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

18 (A) under Section 49.045 [~~49.04, 49.05, 49.06~~],  
19 49.07, or 49.08, Penal Code, or for which punishment may be  
20 increased under Section 49.09 of that code; or

21 (B) for which punishment may be increased under  
22 Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it  
23 is shown that the defendant has been previously convicted of an  
24 offense for which punishment was increased under any one of those  
25 subsections; or

26 (2) the defendant:

27 (A) is charged with an offense under Section

1 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the  
2 victim, or a felony described by Section 13B(b) [~~of this article~~];  
3 and

4 (B) has previously been placed on community  
5 supervision for any offense under Paragraph (A) [~~of this~~  
6 ~~subdivision~~].

7 SECTION 2. Section 411.081(e), Government Code, is amended  
8 to read as follows:

9 (e) A person is entitled to petition the court under  
10 Subsection (d) only if during the applicable period described by  
11 Subsection (d)(1), (2), or (3), as appropriate, the person is not  
12 convicted of or placed on deferred adjudication community  
13 supervision under Section 5, Article 42.12, Code of Criminal  
14 Procedure, for any offense other than an offense under the  
15 Transportation Code punishable by fine only. A person is not  
16 entitled to petition the court under Subsection (d) if the person  
17 has been previously convicted or placed on deferred adjudication  
18 for:

19 (1) an offense requiring registration as a sex  
20 offender under Chapter 62, Code of Criminal Procedure;

21 (2) an offense under Section 20.04, Penal Code,  
22 regardless of whether the offense is a reportable conviction or  
23 adjudication for purposes of Chapter 62, Code of Criminal  
24 Procedure;

25 (3) an offense under Section 19.02, 19.03, 22.04,  
26 22.041, 25.07, or 42.072, Penal Code; [~~or~~]

27 (4) any other offense involving family violence, as

1 defined by Section 71.004, Family Code; or

2 (5) an offense under Chapter 49, Penal Code, other  
3 than an offense that is punishable as a Class C misdemeanor.

4 SECTION 3. Sections 49.09(a), (b), (d), and (g), Penal  
5 Code, are amended to read as follows:

6 (a) Except as provided by Subsection (b), an offense under  
7 Section 49.04, 49.05, 49.06, or 49.065 is a Class A misdemeanor,  
8 with a minimum term of confinement of 30 days, if it is shown on the  
9 trial of the offense that the person has been one time previously  
10 ~~[been]~~ convicted of or placed on deferred adjudication for [one  
11 ~~time of]~~ an offense relating to the operating of a motor vehicle  
12 while intoxicated, an offense of operating an aircraft while  
13 intoxicated, an offense of operating a watercraft while  
14 intoxicated, or an offense of operating or assembling an amusement  
15 ride while intoxicated.

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

19 (1) one time previously convicted of or placed on  
20 deferred adjudication for an offense under Section 49.08 or an  
21 offense under the laws of another state if the offense contains  
22 elements that are substantially similar to the elements of an  
23 offense under Section 49.08; or

24 (2) two times previously convicted of or placed on  
25 deferred adjudication for any other offense relating to the  
26 operating of a motor vehicle while intoxicated, operating an  
27 aircraft while intoxicated, operating a watercraft while

1 intoxicated, or operating or assembling an amusement ride while  
2 intoxicated.

3 (d) For the purposes of this section, a conviction for an  
4 offense listed in Subsection (c) [~~under Section 49.04, 49.045,~~  
5 ~~49.05, 49.06, 49.065, 49.07, or 49.08~~] that occurs on or after  
6 September 1, 1994, is a final conviction, whether the sentence for  
7 the conviction is imposed or probated.

8 (g) A conviction or deferred adjudication may be used for  
9 purposes of enhancement under this section or enhancement under  
10 Subchapter D, Chapter 12, but not under both this section and  
11 Subchapter D.

12 SECTION 4. Section 521.341, Transportation Code, is amended  
13 to read as follows:

14 Sec. 521.341. REQUIREMENTS FOR AUTOMATIC LICENSE  
15 SUSPENSION. (a) Except as provided by Sections 521.344(d)-(i), a  
16 license is automatically suspended on final conviction of the  
17 license holder of:

18 (1) an offense under Section 19.05, Penal Code,  
19 committed as a result of the holder's criminally negligent  
20 operation of a motor vehicle;

21 (2) an offense under Section 38.04, Penal Code, if the  
22 holder used a motor vehicle in the commission of the offense;

23 (3) an offense under Section 49.04 or 49.08, Penal  
24 Code;

25 (4) an offense under Section 49.07, Penal Code, if the  
26 holder used a motor vehicle in the commission of the offense;

27 (5) an offense punishable as a felony under the motor

1 vehicle laws of this state;

2 (6) an offense under Section 550.021; or

3 (7) an offense under Section 521.451 or 521.453.

4 (b) For purposes of Subsections (a)(3) and (4), a person is  
5 considered to be finally convicted of an offense if:

6 (1) a sentence is imposed;

7 (2) the defendant receives community supervision or  
8 deferred adjudication; or

9 (3) the court defers final disposition of the case.

10 SECTION 5. Section 521.342, Transportation Code, is amended  
11 by adding Subsection (d) to read as follows:

12 (d) For purposes of this section, a person is considered to  
13 be convicted of an offense if:

14 (1) a sentence is imposed;

15 (2) the defendant receives community supervision or  
16 deferred adjudication; or

17 (3) the court defers final disposition of the case.

18 SECTION 6. Section 521.344, Transportation Code, is amended  
19 by adding Subsection (b-1) and amending Subsections (d) and (i) to  
20 read as follows:

21 (b-1) For purposes of this section, "date of conviction"  
22 includes, as applicable, the date that the court places the person  
23 on community supervision or on deferred adjudication.

24 (d) Except as provided by Subsection (e) and Section  
25 521.342(b), during a period of community supervision, including  
26 deferred adjudication community supervision, [~~probation~~] the  
27 department may not revoke the person's license if the person is

1 required under Section 13(h) or (j), Article 42.12, Code of  
2 Criminal Procedure, to successfully complete an educational  
3 program designed to rehabilitate persons who have operated motor  
4 vehicles while intoxicated, unless the person was punished under  
5 Section 49.09(a) or (b), Penal Code, and was subject to Section  
6 49.09(h) of that code. The department may not revoke the license of  
7 a person:

8 (1) for whom the jury has recommended that the license  
9 not be revoked under Section 13(g), Article 42.12, Code of Criminal  
10 Procedure; or

11 (2) who is placed under community supervision under  
12 that article and is required as a condition of community  
13 supervision to not operate a motor vehicle unless the vehicle is  
14 equipped with the device described by Section 13(i) of that  
15 article, unless the person was punished under Section 49.09(a) or  
16 (b), Penal Code, and was subject to Section 49.09(g) of that code.

17 (i) On the date that a suspension order under Section  
18 521.343(c) is to expire, the period of suspension or the  
19 corresponding period in which the department is prohibited from  
20 issuing a license is automatically increased to two years unless  
21 the department receives notice of successful completion of the  
22 educational program as required by Section 13, Article 42.12, Code  
23 of Criminal Procedure. At the time a person is convicted of or  
24 placed on deferred adjudication for an offense under Section 49.04,  
25 Penal Code, the court shall warn the person of the effect of this  
26 subsection. On the person's successful completion of the program,  
27 the person's instructor shall give notice to the department and to



1 the community supervision and corrections department in the manner  
2 required by Section 13, Article 42.12, Code of Criminal Procedure.  
3 If the department receives proof of completion after a period has  
4 been extended under this subsection, the department shall  
5 immediately end the suspension or prohibition.

6 SECTION 7. The changes in law made by this Act apply only to  
7 an offense committed on or after the effective date of this Act. An  
8 offense committed before the effective date of this Act is governed  
9 by the law in effect when the offense was committed, and the former  
10 law is continued in effect for that purpose. For purposes of this  
11 section, an offense was committed before the effective date of this  
12 Act if any element of the offense was committed before that date.

13 SECTION 8. This Act takes effect September 1, 2007.