

By: Canales

H.B. No. 2907

A BILL TO BE ENTITLED

AN ACT

relating to allowing deferred adjudication community supervision for first-time offenders charged with certain intoxication offenses, requiring the use of an ignition interlock device on conviction of or placement on deferred adjudication for certain intoxication offenses, and authorizing ethyl alcohol monitoring as a condition of community supervision for certain intoxication offenses; imposing a fee.

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

SECTION 1. Section 2, Article 42.12, Code of Criminal Procedure, is amended by adding Subdivision (5) to read as follows:

(5) "Ethyl alcohol monitoring device" means:

(A) a device worn by the defendant that detects ethyl alcohol in the defendant's perspiration through transdermal testing; or

(B) a portable ethyl alcohol detection device carried by the defendant that:

(i) requires the defendant at specified or random intervals to submit a breath sample;

(ii) analyzes and records the sample;

(iii) transmits the results of the analysis; and

(iv) is capable by facial recognition technology or other technological means of verifying that the

breath sample was provided by the defendant.

SECTION 2. Section 5, Article 42.12, Code of Criminal Procedure, is amended by amending Subsection (d) and adding Subsection (d-1) to read as follows:

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

(1) the defendant is charged with an offense:

(A) under Section 49.07 or 49.08 [~~Sections 49.04-49.08~~], Penal Code; ~~or~~

(B) under Section 49.04, 49.045, 49.05, 49.06, or 49.065, Penal Code, if it is shown that the defendant has been previously convicted of or placed on deferred adjudication for an offense under any of those sections or under Section 49.07 or 49.08, Penal Code; or

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

(2) the defendant:

(A) is charged with an offense under Section 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the victim, or a felony described by Section 13B(b) of this article; and

(B) has previously been placed on community supervision for any offense under Paragraph (A) of this subdivision;

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

(A) Section 21.02, Penal Code; or

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

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

(d-1) For a defendant charged with an offense under Section 49.04, 49.045, 49.05, 49.06, or 49.065, Penal Code, the judge may defer adjudication and place the defendant on community supervision only if, at the time of the offense for which the defendant was arrested, the defendant:

(1) did not cause a traffic accident or the injury or death of another;

(2) if requested by a peace officer, provided a blood, breath, or urine specimen and the analysis of the specimen showed an alcohol concentration lower than 0.15 at the time the analysis was performed; and

(3) was not charged with another offense, other than a Class C misdemeanor, arising from the same incident as the offense under Section 49.04, 49.045, 49.05, 49.06, or 49.065.

SECTION 3. Section 13, Article 42.12, Code of Criminal Procedure, is amended by amending Subsections (a), (f), (g), (h), (i), and (n) and adding Subsection (o) to read as follows:

(a) A judge placing [~~granting community supervision to~~] a

1 defendant on community supervision for ~~[convicted of]~~ an offense  
2 under Chapter 49, Penal Code, shall require as a condition of  
3 community supervision that the defendant submit to:

4 (1) not less than 72 hours of continuous confinement  
5 in county jail if the defendant was punished under Section  
6 49.09(a), Penal Code; not less than five days of confinement in  
7 county jail if the defendant was punished under Section 49.09(a),  
8 Penal Code, and was subject to Section 49.09(h), Penal Code; not  
9 less than 10 days of confinement in county jail if the defendant was  
10 punished under Section 49.09(b) or (c), Penal Code; or not less than  
11 30 days of confinement in county jail if the defendant was convicted  
12 under Section 49.07, Penal Code; and

13 (2) an evaluation by a supervision officer or by a  
14 person, program, or facility approved by the Department of State  
15 Health Services ~~[Texas Commission on Alcohol and Drug Abuse]~~ for  
16 the purpose of having the facility prescribe and carry out a course  
17 of conduct necessary for the rehabilitation of the defendant's drug  
18 or alcohol dependence condition.

19 (f) If a judge places ~~[grants community supervision to]~~ a  
20 defendant on community supervision for ~~[convicted of]~~ an offense  
21 under Sections 49.04-49.08, Penal Code, and if before receiving  
22 community supervision the defendant has not submitted to an  
23 evaluation under Section 9 of this article, the judge shall require  
24 the defendant to submit to the evaluation as a condition of  
25 community supervision. If the evaluation indicates to the judge  
26 that the defendant is in need of treatment for drug or alcohol  
27 dependency, the judge shall require the defendant to submit to that

1 treatment as a condition of community supervision in a program or  
 2 facility approved or licensed by the Department of State Health  
 3 Services [~~Texas Commission on Alcohol and Drug Abuse~~] or in a  
 4 program or facility that complies with standards established by the  
 5 community justice assistance division of the Texas Department of  
 6 Criminal Justice, after consultation by the division with the  
 7 department [~~commission~~].

8 (g) A jury that recommends that a defendant be placed on  
 9 community supervision for [~~a person convicted of~~] an offense under  
 10 Sections 49.04-49.08, Penal Code, may recommend that any driver's  
 11 license issued to the defendant under Chapter 521, Transportation  
 12 Code, not be suspended. This subsection does not apply to a  
 13 defendant [~~person~~] punished under Section 49.09(a) or (b), Penal  
 14 Code, and subject to Section 49.09(h) of that code.

15 (h) The judge shall require [~~If~~] a defendant placed on  
 16 community supervision for [~~person convicted of~~] an offense under  
 17 Sections 49.04-49.08, Penal Code, [~~is placed on community~~  
 18 ~~supervision, the judge shall require,~~] as a condition of the  
 19 community supervision, to [~~that the defendant~~] attend and  
 20 successfully complete before the 181st day after the day community  
 21 supervision is granted an educational program jointly approved by  
 22 the Department of State Health Services [~~Texas Commission on~~  
 23 ~~Alcohol and Drug Abuse~~], the Department of Public Safety, the  
 24 Traffic Safety Section of the Texas Department of Transportation,  
 25 and the community justice assistance division of the Texas  
 26 Department of Criminal Justice designed to rehabilitate persons who  
 27 have driven while intoxicated. The Department of State Health

1 Services [~~Texas Commission on Alcohol and Drug Abuse~~] shall publish  
2 the jointly approved rules and shall monitor, coordinate, and  
3 provide training to persons providing the educational programs.  
4 The Department of State Health Services [~~Texas Commission on~~  
5 ~~Alcohol and Drug Abuse~~] is responsible for the administration of  
6 the certification of approved educational programs and may charge a  
7 nonrefundable application fee for the initial certification of  
8 approval and for renewal of a certificate. The judge may waive the  
9 educational program requirement or may grant an extension of time  
10 to successfully complete the program that expires not later than  
11 one year after the beginning date of the defendant's [~~person's~~]  
12 community supervision, however, if the defendant by a motion in  
13 writing shows good cause. In determining good cause, the judge may  
14 consider but is not limited to: the defendant's school and work  
15 schedule, the defendant's health, the distance that the defendant  
16 must travel to attend an educational program, and the fact that the  
17 defendant resides out of state, has no valid driver's license, or  
18 does not have access to transportation. The judge shall set out the  
19 finding of good cause for waiver in the judgment. If a defendant is  
20 required, as a condition of community supervision, to attend an  
21 educational program or if the court waives the educational program  
22 requirement, the court clerk shall immediately report that fact to  
23 the Department of Public Safety, on a form prescribed by the  
24 department, for inclusion in the defendant's [~~person's~~] driving  
25 record. If the court grants an extension of time in which the  
26 defendant [~~person~~] may complete the program, the court clerk shall  
27 immediately report that fact to the Department of Public Safety on a

1 form prescribed by the department. The report must include the  
2 beginning date of the defendant's [~~person's~~] community  
3 supervision. Upon the defendant's [~~person's~~] successful  
4 completion of the educational program, the defendant's [~~person's~~]  
5 instructor shall give notice to the Department of Public Safety for  
6 inclusion in the defendant's [~~person's~~] driving record and to the  
7 community supervision and corrections department. The community  
8 supervision and corrections department shall then forward the  
9 notice to the court clerk for filing. If the Department of Public  
10 Safety does not receive notice that a defendant required to  
11 complete an educational program has successfully completed the  
12 program within the period required by this section, as shown on  
13 department records, the department shall revoke the defendant's  
14 driver's license, permit, or privilege or prohibit the defendant  
15 [~~person~~] from obtaining a license or permit, as provided by  
16 Sections [521.344](#)(e) and (f), Transportation Code. The Department  
17 of Public Safety may not reinstate a license suspended under this  
18 subsection unless the defendant [~~person~~] whose license was  
19 suspended makes application to the department for reinstatement of  
20 the defendant's [~~person's~~] license and pays to the department a  
21 reinstatement fee of \$100. The Department of Public Safety shall  
22 remit all fees collected under this subsection to the comptroller  
23 for deposit in the general revenue fund. This subsection does not  
24 apply to a defendant if a jury recommends community supervision for  
25 the defendant and also recommends that the defendant's driver's  
26 license not be suspended.

27 (i) (1) If a defendant is placed on community supervision for

1 ~~[person convicted of]~~ an offense under Sections 49.04-49.08, Penal  
2 Code, ~~[is placed on community supervision,]~~ the court may require  
3 as a condition of community supervision that the defendant have a  
4 device installed, on the motor vehicle owned by the defendant or on  
5 the vehicle most regularly driven by the defendant, that uses a  
6 deep-lung breath analysis mechanism to make impractical the  
7 operation of the motor vehicle if ethyl alcohol is detected in the  
8 breath of the operator and that the defendant not operate any motor  
9 vehicle that is not equipped with that device.

10           (2) ~~[If it is shown on the trial of the offense that an~~  
11 ~~analysis of a specimen of the person's blood, breath, or urine~~  
12 ~~showed an alcohol concentration level of 0.15 or more at the time~~  
13 ~~the analysis was performed, or if the person is convicted of an~~  
14 ~~offense under Sections 49.04-49.06, Penal Code, and punished under~~  
15 ~~Section 49.09(a) or (b), Penal Code, or of a second or subsequent~~  
16 ~~offense under Section 49.07 or 49.08, Penal Code, and the person~~  
17 ~~after conviction of either offense is placed on community~~  
18 ~~supervision, the court shall require as a condition of community~~  
19 ~~supervision that the defendant have the device installed on the~~  
20 ~~appropriate vehicle and that the defendant not operate any motor~~  
21 ~~vehicle unless the vehicle is equipped with that device.]~~ Before  
22 placing a defendant on community supervision for ~~[a person~~  
23 ~~convicted of]~~ an offense under Sections 49.04-49.08, Penal Code,  
24 the court shall determine from criminal history record information  
25 maintained by the Department of Public Safety whether the defendant  
26 ~~[person]~~ has previously been convicted of or placed on deferred  
27 adjudication for an offense ~~[one or more previous convictions]~~



1 under Sections 49.04-49.08, Penal Code[, ~~or has one previous~~  
2 ~~conviction under Sections 49.04-49.07, Penal Code, or one previous~~  
3 ~~conviction under Section 49.08, Penal Code~~].

4         (3) If it is shown on the trial of the offense that an  
5 analysis of a specimen of the defendant's [person's] blood, breath,  
6 or urine showed an alcohol concentration level of 0.15 or more at  
7 the time the analysis was performed, if the defendant refused to  
8 submit a specimen of the defendant's blood, breath, or urine when  
9 requested by a peace officer, or if the court determines that the  
10 defendant [person] has previously been convicted of or placed on  
11 deferred adjudication for an offense under Sections 49.04-49.08  
12 [one or more such previous convictions], the court shall require as  
13 a condition of community supervision that the defendant have that  
14 device installed on each [the] motor vehicle owned by the defendant  
15 or on the vehicle most regularly driven by the defendant and that  
16 the defendant not operate any motor vehicle that [unless the  
17 ~~vehicle~~] is not equipped with the device described in this

18 subsection.  
19         (4) If the defendant is not otherwise restricted to  
20 the operation of a motor vehicle equipped with a device described by  
21 this subsection at the discretion of the court under Subdivision  
22 (1) or as required by Subdivision (3), the court shall order the  
23 appropriate supervision officer to use an empirically validated  
24 risk assessment screening instrument to determine the risk that the  
25 defendant will commit a subsequent offense under Sections  
26 49.04-49.08, Penal Code. If the assessment shows that the  
27 defendant is at high risk for committing a subsequent offense under

1 one of those sections, the court shall require as a condition of  
2 community supervision that the defendant have a device described by  
3 this subsection installed on each motor vehicle owned by the  
4 defendant or on the vehicle most regularly driven by the defendant  
5 and that the defendant not operate any motor vehicle that is not  
6 equipped with that device.

7           (5) If the court orders a device under this  
8 subsection, the ~~[The]~~ court shall require the defendant to obtain  
9 the device at the defendant's own cost before the 30th day after the  
10 date of conviction unless the court finds that to do so would not be  
11 in the best interest of justice and enters its findings on record.

12           (6) The court shall require the defendant to provide  
13 evidence to the court within the 30-day period that the device has  
14 been installed on the appropriate vehicle and order the device to  
15 remain installed on that vehicle for a period not less than 50  
16 percent of the supervision period.

17           (7) If the court determines the defendant ~~[offender]~~  
18 is unable to pay for the device, the court may impose a reasonable  
19 payment schedule not to exceed twice the period of the court's  
20 order.

21           (8) The Department of Public Safety shall approve  
22 devices for use under this subsection. Section [521.247](#),  
23 Transportation Code, applies to the approval of a device under this  
24 subsection and the consequences of that approval.

25           (9) Notwithstanding the provisions of this section, if  
26 a defendant ~~[person]~~ is required to operate a motor vehicle in the  
27 course and scope of the defendant's ~~[person's]~~ employment and if the

vehicle is owned by the employer, the defendant [~~person~~] may operate that vehicle without installation of an approved ignition interlock device if the employer has been notified of that driving privilege restriction and if proof of that notification is with the vehicle. This employment exemption does not apply, however, if the business entity that owns the vehicle is owned or controlled by the defendant [~~person whose driving privilege has been restricted~~].

(10) A previous conviction or placement on deferred adjudication may not be used for purposes of restricting a defendant [~~person~~] to the operation of a motor vehicle equipped with an interlock ignition device under this subsection if:

(A) [~~(1)~~] the [~~previous conviction was a final conviction under Section 49.04, 49.045, 49.05, 49.06, 49.07, or 49.08, Penal Code, and was for an~~] offense for which the defendant was convicted or placed on deferred adjudication was an offense under Section 49.04, 49.045, 49.05, 49.06, 49.07, or 49.08, Penal Code, committed more than 10 years before the instant offense for which the defendant [~~person~~] was [~~convicted and~~] placed on community supervision; and

(B) [~~(2)~~] the defendant [~~person~~] has not been convicted of or placed on deferred adjudication for an offense under Section 49.04, 49.045, 49.05, 49.06, 49.07, or 49.08 of that code, committed within 10 years before the date of [~~on which~~] the instant offense for which the defendant [~~person~~] was [~~convicted and~~] placed on community supervision.

(11) The vendor of ignition interlock devices who installs a device under this subsection shall pay to the local

1 community supervision and corrections department a one-time fee of  
2 \$360 to help defray the cost of monitoring compliance with a court  
3 order issued under this subsection.

4 (12) If, at the time of the offense, the defendant  
5 refused a request of a peace officer to provide a specimen of the  
6 defendant's breath or blood for alcohol testing, the vendor of an  
7 ignition interlock device who installs the device under this  
8 subsection on the vehicle of the defendant, or provides an ethyl  
9 alcohol monitoring device ordered for the defendant under  
10 Subsection (o), shall ensure that the device is capable of  
11 verifying by facial recognition technology or other technological  
12 means that a breath sample is provided by the defendant.

13 (13) If a defendant required as a condition of  
14 community supervision to have installed an ignition interlock  
15 device on the defendant's vehicle under this subsection certifies  
16 to the court by affidavit that the defendant is not subject to that  
17 condition because the defendant does not own or have access to a  
18 vehicle, the judge shall require the defendant to submit to ethyl  
19 alcohol monitoring under Subsection (o), unless the judge  
20 determines the defendant is indigent.

21 (n) Notwithstanding any other provision of this section or  
22 other law, the judge who places on community supervision a  
23 defendant who was younger than 21 years of age at the time of the  
24 offense and was placed on community supervision ~~[convicted]~~ for an  
25 offense under Sections 49.04-49.08, Penal Code, shall:

26 (1) order that the defendant's driver's license be  
27 suspended for 90 days beginning on the date that the defendant

1 ~~[person]~~ is placed on community supervision; and

2           (2) require as a condition of community supervision  
3 that the defendant not operate a motor vehicle unless the vehicle is  
4 equipped with the device described by Subsection (i) of this  
5 section or, if the defendant does not own or have access to a  
6 vehicle, require the defendant to submit to ethyl alcohol  
7 monitoring under Subsection (o), unless the court finds that the  
8 defendant is indigent.

9           (o)(1) This subsection applies to a defendant for whom a  
10 judge may order or is required to order the installation and use of  
11 an ignition interlock device under Subsection (i), including a  
12 defendant who certifies to the court the inability to comply with an  
13 ignition interlock device requirement because the defendant does  
14 not own or have access to a vehicle.

15           (2) Notwithstanding Subsection (i) and subject to  
16 Subdivision (6), in lieu of or in addition to requiring a defendant  
17 to install and use an ignition interlock device under that  
18 subsection, the judge may require the defendant to submit to ethyl  
19 alcohol monitoring under this subsection. The judge must specify  
20 the date by which the defendant must begin wearing or using the  
21 ethyl alcohol monitoring device.

22           (3) The judge may revoke community supervision if:

23                   (A) the defendant refuses to wear or use the  
24 ethyl alcohol monitoring device;

25                   (B) the defendant tampers with or otherwise  
26 attempts to disable the device;

27                   (C) the device shows that the defendant has

1 violated a condition of community supervision; or

2 (D) the defendant fails to pay the costs of ethyl  
3 alcohol monitoring, if:

4 (i) payment is ordered under Subdivision  
5 (4) as a condition of community supervision; and

6 (ii) the judge determines that the  
7 defendant is not indigent and is financially able to make the  
8 payments as ordered.

9 (4) The cost of the ethyl alcohol monitoring device  
10 may be ordered paid as a condition of community supervision by the  
11 defendant to the court or to the entity designated by the judge  
12 under Subdivision (5) or waived or reduced based on the defendant's  
13 ability to pay. The court may impose a reasonable payment schedule  
14 for the cost of the device, in whole or in part, as applicable, for a  
15 period not to exceed twice the period of the court's order requiring  
16 ethyl alcohol monitoring.

17 (5) The judge may designate an appropriate entity to  
18 verify that the defendant is wearing or using the ethyl alcohol  
19 monitoring device appropriately and to monitor the device.

20 (6) Except as provided by Section 49.09(i), a judge  
21 may not order ethyl alcohol monitoring in lieu of an ignition  
22 interlock device under this subsection for a defendant subject to  
23 Section 49.09(h), Penal Code. The judge may order ethyl alcohol  
24 monitoring in addition to the ignition interlock device required  
25 under that section.

26 SECTION 4. Section 49.09, Penal Code, is amended by  
27 amending Subsection (h) and adding Subsection (i) to read as

1 follows:

2           (h) This subsection applies only to a person convicted of a  
3 second or subsequent offense relating to the operating of a motor  
4 vehicle while intoxicated committed within five years of the date  
5 on which the most recent preceding offense was committed. The court  
6 shall enter an order that requires the defendant to have a device  
7 installed, on each motor vehicle owned or operated by the  
8 defendant, that uses a deep-lung breath analysis mechanism to make  
9 impractical the operation of the motor vehicle if ethyl alcohol is  
10 detected in the breath of the operator, and that requires that  
11 before the first anniversary of the ending date of the period of  
12 license suspension under Section 521.344, Transportation Code, the  
13 defendant not operate any motor vehicle that is not equipped with  
14 that device. The court shall require the defendant to obtain the  
15 device at the defendant's own cost on or before that ending date,  
16 require the defendant to provide evidence to the court on or before  
17 that ending date that the device has been installed on each  
18 appropriate vehicle, and order the device to remain installed on  
19 each vehicle until the first anniversary of that ending date. If  
20 the court determines the offender is unable to pay for the device,  
21 the court may impose a reasonable payment schedule not to extend  
22 beyond the first anniversary of the date of installation. The  
23 Department of Public Safety shall approve devices for use under  
24 this subsection. Section 521.247, Transportation Code, applies to  
25 the approval of a device under this subsection and the consequences  
26 of that approval. Failure to comply with an order entered under  
27 this subsection is punishable by contempt. For purposes of this

subsection, a person is considered to be convicted of an offense if the person is placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, for an offense under Section 49.04, 49.045, 49.05, 49.06, or 49.065. For the purpose of enforcing this subsection, the court that enters an order under this subsection retains jurisdiction over the defendant until the date on which the device is no longer required to remain installed. To the extent of a conflict between this subsection and Section 13 [~~13(i)~~], Article 42.12, Code of Criminal Procedure, this subsection controls.

(i) If a defendant otherwise required under Subsection (h) to have installed an ignition interlock device on the defendant's vehicle certifies to the court by affidavit that the defendant is not subject to that requirement because the defendant does not own or have access to a vehicle, the judge shall require the defendant to submit to ethyl alcohol monitoring under Subsection 13(o), Article 42.12, Code of Criminal Procedure, unless the judge determines the defendant is indigent.

SECTION 5. (a) The Legislative Budget Board shall perform or contract for the performance of a study to analyze the efficacy of this Act in reducing recidivism and promoting public safety during the three-year period following the passage of this Act.

(b) The Legislative Budget Board shall submit to the legislature two reports on the study conducted under this section along with any recommendations based on the results of the study. The first report must be submitted not later than December 1, 2016, and the second report must be submitted not later than December 1,



1 2018.

2 (c) This section expires January 1, 2019.

3 SECTION 6. The change in law made by this Act applies only  
4 to a defendant who is placed on community supervision on or after  
5 the effective date of this Act, regardless of whether the offense  
6 for which the defendant is placed on community supervision is  
7 committed before, on, or after that date.

8 SECTION 7. This Act takes effect September 1, 2015.