

By: Menéndez

S.B. No. 761

A BILL TO BE ENTITLED

AN ACT

relating to the punishment for certain intoxication offenses and the eligibility for deferred adjudication community supervision of defendants who committed certain intoxication offenses.

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

SECTION 1. Article 42A.102(b), Code of Criminal Procedure, is amended to read as follows:

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

(1) the defendant is charged with an offense:

(A) under Section 49.045, 49.07, or 49.08 [~~Sections 49.04-49.08~~], Penal Code; ~~or~~

(B) under Section 49.04, 49.05, 49.06, or 49.065, Penal Code, and, at the time of the offense, the defendant held a commercial driver's license or a commercial learner's permit;

(C) for which punishment may be increased under Section 49.09, Penal Code; or

(D) 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

1 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the  
2 victim, or a felony described by Article 42A.453(b); and

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

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

6 (A) Section 21.02, Penal Code; or

7 (B) Section 22.021, Penal Code, that is  
8 punishable under Subsection (f) of that section or under Section  
9 12.42(c)(3) or (4), Penal Code; or

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

16 SECTION 2. Article 42A.408, Code of Criminal Procedure, is  
17 amended by adding Subsection (e-1) to read as follows:

18 (e-1) A judge granting deferred adjudication community  
19 supervision to a defendant for an offense under Section 49.04,  
20 49.05, 49.06, or 49.065, Penal Code, shall require the defendant as  
21 a condition of community supervision to have an ignition interlock  
22 device installed on the motor vehicle owned by the defendant or on  
23 the vehicle most regularly driven by the defendant and that the  
24 defendant not operate any motor vehicle that is not equipped with  
25 that device. This subsection applies regardless of whether the  
26 defendant would be required to have an ignition interlock installed  
27 on conviction of the offense for which deferred adjudication

1 community supervision is granted.

2 SECTION 3. Section 411.074(b), Government Code, is amended  
3 to read as follows:

4 (b) A person may not be granted an order of nondisclosure of  
5 criminal history record information under this subchapter and is  
6 not entitled to petition the court for an order under this  
7 subchapter if:

8 (1) the person was convicted or placed on deferred  
9 adjudication community supervision for or has been previously  
10 convicted or placed on any other deferred adjudication community  
11 supervision for:

12 (A) an offense requiring registration as a sex  
13 offender under Chapter 62, Code of Criminal Procedure;

14 (B) an offense under Section 20.04, Penal Code,  
15 regardless of whether the offense is a reportable conviction or  
16 adjudication for purposes of Chapter 62, Code of Criminal  
17 Procedure;

18 (C) an offense under Section 19.02, 19.03,  
19 20A.02, 20A.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal  
20 Code; or

21 (D) any other offense involving family violence,  
22 as defined by Section 71.004, Family Code; [~~or~~]

23 (2) the defendant was placed on deferred adjudication  
24 community supervision for an offense under Section 49.04, 49.05,  
25 49.06, or 49.065, Penal Code; or

26 (3) the court makes an affirmative finding that the  
27 offense for which the order of nondisclosure of criminal history

1 record information is requested involved family violence, as  
2 defined by Section 71.004, Family Code.

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

5 (b) An offense under Section 49.04, 49.045, 49.05, 49.06, or  
6 49.065 is a felony of the third degree if it is shown on the trial of  
7 the offense that the person has previously been convicted:

8 (1) one time of an offense under Section 49.08 or an  
9 offense under the laws of another state if the offense contains  
10 elements that are substantially similar to the elements of an  
11 offense under Section 49.08; or

12 (2) two times of any other offense relating to the  
13 operating of a motor vehicle while intoxicated, operating an  
14 aircraft while intoxicated, operating a watercraft while  
15 intoxicated, or operating or assembling an amusement ride while  
16 intoxicated.

17 (g) A conviction may be used for purposes of enhancement  
18 under this section or enhancement under Subchapter D, Chapter 12,  
19 but not under both this section and Subchapter D. For purposes of  
20 this section, a person is considered to have been convicted of an  
21 offense under Section 49.04, 49.05, 49.06, or 49.065, if the person  
22 was placed on deferred adjudication community supervision for the  
23 offense under Article 42A.102, Code of Criminal Procedure.

24 SECTION 5. The changes in law made by this Act to Articles  
25 42A.102 and 42A.408, Code of Criminal Procedure, apply only to the  
26 eligibility for deferred adjudication community supervision of a  
27 defendant for an offense committed on or after the effective date of

1 this Act. The eligibility for deferred adjudication community  
2 supervision of a defendant for an offense committed before the  
3 effective date of this Act is governed by the law in effect on the  
4 date the offense was committed, and the former law is continued in  
5 effect for that purpose. For purposes of this section, an offense  
6 was committed before the effective date of this Act if any element  
7 of the offense occurred before that date.

8 SECTION 6. The changes in law made by this Act to Section  
9 [49.09](#), Penal Code, apply only to an offense committed on or after  
10 the effective date of this Act. An offense committed before the  
11 effective date of this Act is governed by the law in effect on the  
12 date the offense was committed, and the former law is continued in  
13 effect for that purpose. For purposes of this section, an offense  
14 was committed before the effective date of this Act if any element  
15 of the offense occurred before that date.

16 SECTION 7. This Act takes effect September 1, 2017.