86R6735 LHC-D

By:  Metcalf H.B. No. 2481

A BILL TO BE ENTITLED

AN ACT

relating to the administration of a veterans treatment court program and the eligibility for deferred adjudication community supervision of certain defendants who are eligible to participate in a veterans treatment court program and who committed certain intoxication offenses and the conditions of that supervision.

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

SECTION 1.  Article 42A.102, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsection (c) 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, if, 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 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the victim, or a felony described by Article 42A.453(b); and

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

(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 community supervision 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.

(c)  A judge may grant deferred adjudication community supervision to a defendant charged with an offense under Section 49.04, 49.05, 49.06, or 49.065, Penal Code, only if:

(1)  the defendant is eligible to participate in a veterans treatment court program under Section 124.002, Government Code; and

(2)  the judge requires as a condition of community supervision that the defendant successfully complete a veterans treatment court program under Chapter 124, Government Code.

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

(e-1)  A judge granting deferred adjudication community supervision to a defendant for an offense under Section 49.04, 49.05, 49.06, or 49.065, Penal Code, may require that the defendant as a condition of community supervision have an ignition interlock device installed on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant and that the defendant not operate for a period of at least six months any motor vehicle that is not equipped with that device.

SECTION 3.  Section 124.003(b), Government Code, is amended to read as follows:

(b)  A veterans treatment court program established under this chapter shall make, establish, and publish local procedures to ensure maximum participation of eligible defendants in the program [~~county or counties in which those defendants reside~~].

SECTION 4.  Sections 124.006(a) and (d), Government Code, are amended to read as follows:

(a)  A veterans treatment court program that accepts placement of a defendant may transfer responsibility for supervising the defendant's participation in the program to another veterans treatment court program that is located in the county where the defendant works or resides or in a county adjacent to the county where the defendant works or resides. The defendant's supervision may be transferred under this section only with the consent of both veterans treatment court programs and the defendant.

(d)  If a defendant is charged with an offense in a county that does not operate a veterans treatment court program, the court in which the criminal case is pending may place the defendant in a veterans treatment court program located in the county where the defendant works or resides or in a county adjacent to the county where the defendant works or resides, provided that a program is operated in that county and the defendant agrees to the placement. A defendant placed in a veterans treatment court program in accordance with this subsection must agree to abide by all rules, requirements, and instructions of the program. The court may enforce the rules, requirements, and instructions of the program.

SECTION 5.  Section 411.072(a), Government Code, is amended to read as follows:

(a)  This section applies only to a person who:

(1)  was placed on deferred adjudication community supervision under Subchapter C, Chapter 42A, Code of Criminal Procedure, for a misdemeanor other than a misdemeanor:

(A)  under Chapter 20, 21, 22, 25, 42, 43, 46, 49, or 71, Penal Code; or

(B)  with respect to which an affirmative finding under Article 42A.105(f), Code of Criminal Procedure, or former Section 5(k), Article 42.12, Code of Criminal Procedure, was filed in the papers of the case; and

(2)  has never been previously convicted of or placed on deferred adjudication community supervision for another offense other than a traffic offense that is punishable by fine only.

SECTION 6.  Section 411.0725(a), Government Code, is amended to read as follows:

(a)  This section applies only to a person placed on deferred adjudication community supervision under Subchapter C, Chapter 42A, Code of Criminal Procedure, who:

(1)  is not eligible to receive an order of nondisclosure of criminal history record information under Section 411.072; and

(2)  was placed on deferred adjudication community supervision for an offense other than an offense under Chapter 49, Penal Code.

SECTION 7.  Subchapter E-1, Chapter 411, Government Code, is amended by adding Section 411.0726 to read as follows:

Sec. 411.0726.  PROCEDURE FOR DEFERRED ADJUDICATION COMMUNITY SUPERVISION; CERTAIN DRIVING WHILE INTOXICATED MISDEMEANORS. (a) This section applies only to a person who was placed on deferred adjudication community supervision under Subchapter C, Chapter 42A, Code of Criminal Procedure, for a misdemeanor:

(1)  under Section 49.04, Penal Code; and

(2)  with respect to which no affirmative finding under Article 42A.105(f), Code of Criminal Procedure, was filed in the papers of the case.

(b)  Notwithstanding any other provision of this subchapter or Subchapter F, a person may petition the court that placed the person on deferred adjudication community supervision for an order of nondisclosure if the person:

(1)  receives a discharge and dismissal under Article 42A.111, Code of Criminal Procedure;

(2)  satisfies the requirements of Section 411.074; and

(3)  has never been previously convicted of or placed on deferred adjudication community supervision for another offense, other than a traffic offense that is punishable by fine only.

(c)  A petition for an order of nondisclosure of criminal history record information filed under this section must include evidence that the person is entitled to file the petition.

(d)  Except as provided by Subsection (e), after notice to the state, an opportunity for a hearing, and a determination that the person is entitled to file the petition and issuance of an order of nondisclosure of criminal history record information is in the best interest of justice, the court shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication community supervision.

(e)  A court may not issue an order of nondisclosure of criminal history record information under this section if the attorney representing the state presents evidence sufficient to the court demonstrating that the commission of the offense for which the order is sought resulted in a motor vehicle accident involving another person, including a passenger in a motor vehicle operated by the person seeking the order of nondisclosure.

(f)  A person may petition the court that placed the person on deferred adjudication community supervision for an order of nondisclosure of criminal history record information under this section only on or after:

(1)  the second anniversary of the date of completion of the deferred adjudication community supervision and the discharge and dismissal of the case, if the person successfully complied with a condition of community supervision that, for a period of not less than six months, restricted the person's operation of a motor vehicle to a motor vehicle equipped with an ignition interlock device; or

(2)  the fifth anniversary of the date of completion of the deferred adjudication community supervision and the discharge and dismissal of the case, if the court that placed the person on deferred adjudication community supervision did not order the person to comply with a condition of community supervision described by Subdivision (1) for the period described by that subdivision.

SECTION 8.  Section 411.0727(e), Government Code, is amended to read as follows:

(e)  A person is not entitled to petition the court for an order of nondisclosure of criminal history record information under this section if the person's entry into the veterans treatment court program arose as the result of placement on deferred adjudication community supervision or a conviction for [~~of~~] an offense involving the operation of a motor vehicle while intoxicated.

SECTION 9.  Section 49.09(g), Penal Code, is amended to read as follows:

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

SECTION 10.  The changes in law made by this Act to Articles 42A.102 and 42A.408, Code of Criminal Procedure, apply only to the eligibility for deferred adjudication community supervision of a defendant for an offense committed on or after the effective date of this Act. The eligibility for deferred adjudication community supervision of a defendant for an offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 11.  The change in law made by this Act to Section 49.09, Penal Code, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 12.  This Act takes effect September 1, 2019.