By:  Menéndez S.B. No. 106

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, 49.05, 49.065, 49.07, or 49.08 [~~Sections 49.04-49.08~~], Penal Code; [~~or~~]

(B)  under Section 49.04 or 49.06, Penal Code, and, at the time of the offense:

(i)  the defendant held a commercial driver's license or a commercial learner's permit; or

(ii)  the defendant's alcohol concentration, as defined by Section 49.01, Penal Code, was 0.16 or more;

(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.

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 or 49.06, Penal Code, shall 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 any motor vehicle that is not equipped with that device, unless the judge finds that restricting the defendant to the operation of a motor vehicle equipped with an ignition interlock device would not be in the best interest of society and enters that finding in the record. This subsection applies regardless of whether the defendant would be required to have an ignition interlock device installed on conviction of the offense for which deferred adjudication community supervision is granted. If the judge determines the defendant is unable to pay for the ignition interlock device, the judge may impose a reasonable payment schedule, as provided by Subsection (f). If the defendant provides the court evidence under Section 708.158, Transportation Code, sufficient to establish that the defendant is indigent for purposes of that section, the judge may enter a finding that the defendant is indigent in the record and reduce the costs to the defendant by ordering a waiver of the installation charge for the ignition interlock device and a 50 percent reduction of the monthly device monitoring fee. A reduction in costs ordered under this subsection does not apply to any fees that may be assessed against the defendant if the ignition interlock device detects ethyl alcohol on the breath of the person attempting to operate the motor vehicle.

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

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

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

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

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

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

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

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

(3)  the court makes an affirmative finding that the offense for which the order of nondisclosure of criminal history record information is requested involved family violence, as defined by Section 71.004, Family Code.

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

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

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

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

(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 or 49.06 if the person was placed on deferred adjudication community supervision for the offense under Article 42A.102, Code of Criminal Procedure.

SECTION 5.  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 6.  The changes in law made by this Act to Section 49.09, Penal Code, apply 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 7.  This Act takes effect September 1, 2017.