

By: Murr, Moody, White, Wray, Wu

H.B. No. 3582

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the punishment for certain intoxication offenses and
3 the eligibility for deferred adjudication community supervision of
4 defendants who committed certain intoxication offenses; enhancing
5 a criminal penalty.

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

7 SECTION 1. Article 17.441(a), Code of Criminal Procedure,
8 is amended to read as follows:

9 (a) Except as provided by Subsection (b), a magistrate shall
10 require on release that a defendant charged with a subsequent
11 offense under Section 49.04, 49.05, or 49.06 [~~Sections~~
12 ~~49.04-49.06~~], Penal Code, or an offense under Section 49.045,
13 49.07, or 49.08 of that code:

14 (1) have installed on the motor vehicle owned by the
15 defendant or on the vehicle most regularly driven by the defendant,
16 a device that uses a deep-lung breath analysis mechanism to make
17 impractical the operation of a motor vehicle if ethyl alcohol is
18 detected in the breath of the operator; and

19 (2) not operate any motor vehicle unless the vehicle
20 is equipped with that device.

21 SECTION 2. Article 42A.102(b), Code of Criminal Procedure,
22 is amended to read as follows:

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

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

2 (A) under Section 49.045, 49.05, 49.065, 49.07,
3 or 49.08 [~~Sections 49.04-49.08~~], Penal Code; [~~or~~]

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

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

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

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

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

17 (2) the defendant:

18 (A) is charged with an offense under Section
19 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the
20 victim, or a felony described by Article 42A.453(b); and

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

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

24 (A) Section 21.02, Penal Code; or

25 (B) Section 22.021, Penal Code, that is
26 punishable under Subsection (f) of that section or under Section
27 12.42(c)(3) or (4), Penal Code; or

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

7 SECTION 3. Article 42A.408, Code of Criminal Procedure, is
8 amended by adding Subsection (e-1) to read as follows:

9 (e-1) A judge granting deferred adjudication community
10 supervision to a defendant for an offense under Section 49.04 or
11 49.06, Penal Code, shall require that the defendant as a condition
12 of community supervision have an ignition interlock device
13 installed on the motor vehicle owned by the defendant or on the
14 vehicle most regularly driven by the defendant and that the
15 defendant not operate any motor vehicle that is not equipped with
16 that device, unless the judge finds that restricting the defendant
17 to the operation of a motor vehicle equipped with an ignition
18 interlock device would not be in the best interest of society and
19 enters that finding in the record. This subsection applies
20 regardless of whether the defendant would be required to have an
21 ignition interlock device installed on conviction of the offense
22 for which deferred adjudication community supervision is granted.
23 If the judge determines the defendant is unable to pay for the
24 ignition interlock device, the judge may impose a reasonable
25 payment schedule, as provided by Subsection (f). If the defendant
26 provides the court evidence under Section 708.158, Transportation
27 Code, sufficient to establish that the defendant is indigent for

1 purposes of that section, the judge may enter in the record a
2 finding that the defendant is indigent and reduce the costs to the
3 defendant by ordering a waiver of the installation charge for the
4 ignition interlock device and a 50 percent reduction of the monthly
5 device monitoring fee. A reduction in costs ordered under this
6 subsection does not apply to any fees that may be assessed against
7 the defendant if the ignition interlock device detects ethyl
8 alcohol on the breath of the person attempting to operate the motor
9 vehicle.

10 SECTION 4. Section 411.072(a), Government Code, is amended
11 to read as follows:

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

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

16 (A) under:

17 (i) Section 49.04 or 49.06, Penal Code; or

18 (ii) Chapter 20, 21, 22, 25, 42, 43, 46, or
19 71, Penal Code; or

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

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

27 SECTION 5. Section 411.0725(a), Government Code, is amended

1 to read as follows:

2 (a) This section applies only to a person placed on deferred
3 adjudication community supervision under Subchapter C, Chapter
4 [42A](#), Code of Criminal Procedure, who:

5 (1) is not eligible to receive an order of
6 nondisclosure of criminal history record information under Section
7 [411.072](#); and

8 (2) was placed on deferred adjudication community
9 supervision for an offense other than an offense under Section
10 [49.04](#) or [49.06](#), Penal Code.

11 SECTION 6. Subchapter E-1, Chapter [411](#), Government Code, is
12 amended by adding Section 411.0726 to read as follows:

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

19 (1) under Section [49.04](#) or [49.06](#), Penal Code; and

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

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

27 (1) receives a discharge and dismissal under Article

1 42A.111, Code of Criminal Procedure;

2 (2) satisfies the requirements of Section 411.074; and

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

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

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

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

25 (f) A person may petition the court that placed the person
26 on deferred adjudication community supervision for an order of
27 nondisclosure of criminal history record information under this

1 section only on or after:

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

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

16 SECTION 7. Sections 49.09(b) and (g), Penal Code, are
17 amended to read as follows:

18 (b) An offense under Section 49.04, 49.045, 49.05, 49.06, or
19 49.065 is a felony of the third degree if it is shown on the trial of
20 the offense that the person has previously been convicted:

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

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

10 SECTION 8. The change in law made by this Act to Article
11 17.441, Code of Criminal Procedure, applies to a defendant released
12 on bond on or after the effective date of this Act, regardless of
13 whether the offense for which the person was arrested occurred
14 before, on, or after that date.

15 SECTION 9. The changes in law made by this Act to Articles
16 42A.102 and 42A.408, Code of Criminal Procedure, apply only to the
17 eligibility for deferred adjudication community supervision of a
18 defendant for an offense committed on or after the effective date of
19 this Act. The eligibility for deferred adjudication community
20 supervision of a defendant for an offense committed before the
21 effective date of this Act is governed by the law in effect on the
22 date the offense was committed, and the former law is continued in
23 effect for that purpose. For purposes of this section, an offense
24 was committed before the effective date of this Act if any element
25 of the offense occurred before that date.

26 SECTION 10. The changes in law made by this Act to Section
27 49.09, Penal Code, apply only to an offense committed on or after

1 the effective date of this Act. An offense committed before the
2 effective date of this Act is governed by the law in effect on the
3 date the offense was committed, and the former law is continued in
4 effect for that purpose. For purposes of this section, an offense
5 was committed before the effective date of this Act if any element
6 of the offense occurred before that date.

7 SECTION 11. This Act takes effect September 1, 2019.