

AN ACT

relating to the punishment for certain intoxication offenses, the conditions of bond for defendants charged with 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 17.441(a), Code of Criminal Procedure, is amended to read as follows:

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

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

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

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

(b) In all other cases, the judge may grant deferred

1 adjudication community supervision unless:

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

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

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

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

9 (ii) the defendant's alcohol concentration,  
10 as defined by Section 49.01, Penal Code, was 0.15 or more;

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

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

18 (2) the defendant:

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

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

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

25 (A) Section 21.02, Penal Code; or

26 (B) Section 22.021, Penal Code, that is  
27 punishable under Subsection (f) of that section or under Section

1 12.42(c)(3) or (4), Penal Code; or

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

8 SECTION 3. Article 42A.408, Code of Criminal Procedure, is  
9 amended by adding Subsections (e-1) and (e-2) to read as follows:

10 (e-1) Except as provided by Subsection (e-2), a judge  
11 granting deferred adjudication community supervision to a  
12 defendant for an offense under Section 49.04 or 49.06, Penal Code,  
13 shall require that the defendant as a condition of community  
14 supervision have an ignition interlock device installed on the  
15 motor vehicle owned by the defendant or on the vehicle most  
16 regularly driven by the defendant and that the defendant not  
17 operate any motor vehicle that is not equipped with that device. If  
18 the judge determines that the defendant is unable to pay for the  
19 ignition interlock device, the judge may impose a reasonable  
20 payment schedule, as provided by Subsection (f). If the defendant  
21 provides the court evidence under Section 708.158, Transportation  
22 Code, sufficient to establish that the defendant is indigent for  
23 purposes of that section, the judge may enter in the record a  
24 finding that the defendant is indigent and reduce the costs to the  
25 defendant by ordering a waiver of the installation charge for the  
26 ignition interlock device and a 50 percent reduction of the monthly  
27 device monitoring fee. A reduction in costs ordered under this

1 subsection does not apply to any fees that may be assessed against  
2 the defendant if the ignition interlock device detects ethyl  
3 alcohol on the breath of the person attempting to operate the motor  
4 vehicle.

5 (e-2) A judge may waive the ignition interlock requirement  
6 under Subsection (e-1) for a defendant if, based on a controlled  
7 substance and alcohol evaluation of the defendant, the judge  
8 determines and enters in the record that restricting the defendant  
9 to the use of an ignition interlock is not necessary for the safety  
10 of the community.

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

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

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

17 (A) under:

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

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

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

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

1 SECTION 5. Section 411.0725(a), Government Code, is amended  
2 to read as follows:

3 (a) This section applies only to a person placed on deferred  
4 adjudication community supervision under Subchapter C, Chapter  
5 42A, Code of Criminal Procedure, who:

6 (1) is not eligible to receive an order of  
7 nondisclosure of criminal history record information under Section  
8 411.072; and

9 (2) was placed on deferred adjudication community  
10 supervision for an offense other than an offense under Section  
11 49.04 or 49.06, Penal Code.

12 SECTION 6. Subchapter E-1, Chapter 411, Government Code, is  
13 amended by adding Section 411.0726 to read as follows:

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

20 (1) under Section 49.04 or 49.06, Penal Code; and

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

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

1           (1) receives a discharge and dismissal under Article  
2 42A.111, Code of Criminal Procedure;

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

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

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

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

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

26           (f) A person may petition the court that placed the person  
27 on deferred adjudication community supervision for an order of

1 nondisclosure of criminal history record information under this  
2 section only on or after the second anniversary of the date of  
3 completion of the deferred adjudication community supervision and  
4 the discharge and dismissal of the case.

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

7 (b) An offense under Section 49.04, 49.045, 49.05, 49.06, or  
8 49.065 is a felony of the third degree if it is shown on the trial of  
9 the offense that the person has previously been convicted:

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

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

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

26 SECTION 8. (a) The change in law made by this Act to Article  
27 17.441, Code of Criminal Procedure, applies to a defendant released

1 on bond on or after the effective date of this Act, regardless of  
2 whether the offense for which the person was arrested occurred  
3 before, on, or after that date.

4 (b) The changes in law made by this Act to Articles [42A.102](#)  
5 and [42A.408](#), Code of Criminal Procedure, apply only to the  
6 eligibility for deferred adjudication community supervision of a  
7 defendant for an offense committed on or after the effective date of  
8 this Act. The eligibility for deferred adjudication community  
9 supervision of a defendant for an offense committed before the  
10 effective date of this Act is governed by the law in effect on the  
11 date the offense was committed, and the former law is continued in  
12 effect for that purpose. For purposes of this subsection, an  
13 offense was committed before the effective date of this Act if any  
14 element of the offense occurred before that date.

15 (c) The changes in law made by this Act to Section [49.09](#),  
16 Penal Code, apply only to an offense committed on or after the  
17 effective date of this Act. An offense committed before the  
18 effective date of this Act is governed by the law in effect on the  
19 date the offense was committed, and the former law is continued in  
20 effect for that purpose. For purposes of this subsection, an  
21 offense was committed before the effective date of this Act if any  
22 element of the offense occurred before that date.

23 SECTION 9. This Act takes effect September 1, 2019.



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President of the Senate

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Speaker of the House

I certify that H.B. No. 3582 was passed by the House on May 2, 2019, by the following vote: Yeas 142, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 3582 on May 23, 2019, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 3582 on May 26, 2019, by the following vote: Yeas 144, Nays 0, 2 present, not voting.

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Chief Clerk of the House

H.B. No. 3582

I certify that H.B. No. 3582 was passed by the Senate, with amendments, on May 15, 2019, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 3582 on May 25, 2019, by the following vote: Yeas 30, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor