

By: Murr, Moody, White, Wray, Wu

H.B. No. 3582

Substitute the following for H.B. No. 3582:

By: White

C.S.H.B. No. 3582

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; enhancing a criminal penalty.

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

1 offense for which punishment was increased under any one of those
2 subsections;

3 (2) the defendant:

4 (A) is charged with an offense under Section
5 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the
6 victim, or a felony described by Article 42A.453(b); and

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

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

10 (A) Section 21.02, Penal Code; or

11 (B) Section 22.021, Penal Code, that is
12 punishable under Subsection (f) of that section or under Section
13 12.42(c)(3) or (4), Penal Code; or

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

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

22 (e-1) A judge granting deferred adjudication community
23 supervision to a defendant for an offense under Section 49.04 or
24 49.06, Penal Code, shall require that the defendant as a condition
25 of community supervision have an ignition interlock device
26 installed on the motor vehicle owned by the defendant or on the
27 vehicle most regularly driven by the defendant and that the

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

23 SECTION 3. Section 411.072(a), Government Code, is amended
24 to read as follows:

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

26 (1) was placed on deferred adjudication community
27 supervision under Subchapter C, Chapter 42A, Code of Criminal

1 Procedure, for a misdemeanor other than a misdemeanor:

2 (A) under:

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

4 (ii) Chapter 20, 21, 22, 25, 42, 43, 46, or
5 71, Penal Code; or

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

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

13 SECTION 4. Section 411.0725(a), Government Code, is amended
14 to read as follows:

15 (a) This section applies only to a person placed on deferred
16 adjudication community supervision under Subchapter C, Chapter
17 42A, Code of Criminal Procedure, who:

18 (1) is not eligible to receive an order of
19 nondisclosure of criminal history record information under Section
20 411.072; and

21 (2) was placed on deferred adjudication community
22 supervision for an offense other than an offense under Section
23 49.04 or 49.06, Penal Code.

24 SECTION 5. Subchapter E-1, Chapter 411, Government Code, is
25 amended by adding Section 411.0726 to read as follows:

26 Sec. 411.0726. PROCEDURE FOR DEFERRED ADJUDICATION
27 COMMUNITY SUPERVISION; CERTAIN DRIVING WHILE INTOXICATED AND

1 BOATING WHILE INTOXICATED MISDEMEANORS. (a) This section applies
2 only to a person who was placed on deferred adjudication community
3 supervision under Subchapter C, Chapter 42A, Code of Criminal
4 Procedure, for a misdemeanor:

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

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

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

13 (1) receives a discharge and dismissal under Article
14 42A.111, Code of Criminal Procedure;

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

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

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

23 (d) Except as provided by Subsection (e), after notice to
24 the state, an opportunity for a hearing, and a determination that
25 the person is entitled to file the petition and issuance of an order
26 of nondisclosure of criminal history record information is in the
27 best interest of justice, the court shall issue an order

1 prohibiting criminal justice agencies from disclosing to the public
2 criminal history record information related to the offense giving
3 rise to the deferred adjudication community supervision.

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

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

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

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

1 subdivision.

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

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

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

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

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

23 SECTION 7. The changes in law made by this Act to Articles
24 42A.102 and 42A.408, Code of Criminal Procedure, apply only to the
25 eligibility for deferred adjudication community supervision of a
26 defendant for an offense committed on or after the effective date of
27 this Act. The eligibility for deferred adjudication community

1 supervision of a defendant for 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 8. The changes in law made by this Act to Section
8 [49.09](#), Penal Code, apply only to an offense committed on or after
9 the effective date of this Act. 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 section, an offense
13 was committed before the effective date of this Act if any element
14 of the offense occurred before that date.

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