

By: Murr

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.

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

1 subsections;

2 (2) the defendant:

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

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

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

9 (A) Section 21.02, Penal Code; or

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

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

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

21 (e-1) A judge granting deferred adjudication community  
22 supervision to a defendant for an offense under Section 49.04 or  
23 49.06, Penal Code, shall require that the defendant as a condition  
24 of community supervision have an ignition interlock device  
25 installed on the motor vehicle owned by the defendant or on the  
26 vehicle most regularly driven by the defendant and that the  
27 defendant not operate any motor vehicle that is not equipped with

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

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

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

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

1 (A) under:  
2 (i) Section 49.04 or 49.06, Penal Code; or  
3 (ii) Chapter 20, 21, 22, 25, 42, 43, 46, or  
4 71, Penal Code; or

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

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

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

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

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

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

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

25 Sec. 411.0726. PROCEDURE FOR DEFERRED ADJUDICATION  
26 COMMUNITY SUPERVISION; CERTAIN DRIVING WHILE INTOXICATED AND  
27 BOATING WHILE INTOXICATED MISDEMEANORS. (a) This section applies

1 only to a person who was placed on deferred adjudication community  
2 supervision under Subchapter C, Chapter 42A, Code of Criminal  
3 Procedure, for a misdemeanor:

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

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

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

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

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

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

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

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

1 criminal history record information related to the offense giving  
2 rise to the deferred adjudication community supervision.

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

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

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

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

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

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

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

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

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

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

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

6 SECTION 8. The changes in law made by this Act to Section  
7 49.09, Penal Code, apply only to an offense committed on or after  
8 the effective date of this Act. An offense committed before the  
9 effective date of this Act is governed by the law in effect on the  
10 date the offense was committed, and the former law is continued in  
11 effect for that purpose. For purposes of this section, an offense  
12 was committed before the effective date of this Act if any element  
13 of the offense occurred before that date.

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