

1-1 By: Murr, et al. H.B. No. 3582  
 1-2 (Senate Sponsor - Menéndez, Zaffirini)  
 1-3 (In the Senate - Received from the House May 2, 2019;  
 1-4 May 3, 2019, read first time and referred to Committee on Criminal  
 1-5 Justice; May 10, 2019, reported adversely, with favorable  
 1-6 Committee Substitute by the following vote: Yeas 5, Nays 0;  
 1-7 May 10, 2019, sent to printer.)

1-8 COMMITTEE VOTE

|                 | Yea | Nay | Absent | PNV |
|-----------------|-----|-----|--------|-----|
| 1-9 Whitmire    | X   |     |        |     |
| 1-10 Huffman    | X   |     |        |     |
| 1-11 Buckingham | X   |     |        |     |
| 1-12 Flores     |     |     | X      |     |
| 1-13 Hughes     |     |     | X      |     |
| 1-14 Miles      | X   |     |        |     |
| 1-15 Perry      | X   |     |        |     |

1-17 COMMITTEE SUBSTITUTE FOR H.B. No. 3582 By: Whitmire

1-18 A BILL TO BE ENTITLED  
 1-19 AN ACT

1-20 relating to the punishment for certain intoxication offenses, the  
 1-21 conditions of bond for defendants charged with certain intoxication  
 1-22 offenses, and the eligibility for deferred adjudication community  
 1-23 supervision of defendants who committed certain intoxication  
 1-24 offenses.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Article 17.441(a), Code of Criminal Procedure,  
 1-27 is amended to read as follows:

1-28 (a) Except as provided by Subsection (b), a magistrate shall  
 1-29 require on release that a defendant charged with a subsequent  
 1-30 offense under Section 49.04, 49.05, or 49.06 [Sections  
 1-31 ~~49.04-49.06~~], Penal Code, or an offense under Section 49.045,  
 1-32 49.07, or 49.08 of that code:

1-33 (1) have installed on the motor vehicle owned by the  
 1-34 defendant or on the vehicle most regularly driven by the defendant,  
 1-35 a device that uses a deep-lung breath analysis mechanism to make  
 1-36 impractical the operation of a motor vehicle if ethyl alcohol is  
 1-37 detected in the breath of the operator; and

1-38 (2) not operate any motor vehicle unless the vehicle  
 1-39 is equipped with that device.

1-40 SECTION 2. Article 42A.102(b), Code of Criminal Procedure,  
 1-41 is amended to read as follows:

1-42 (b) In all other cases, the judge may grant deferred  
 1-43 adjudication community supervision unless:

1-44 (1) the defendant is charged with an offense:

1-45 (A) under Section 49.045, 49.05, 49.065, 49.07,  
 1-46 or 49.08 [Sections 49.04-49.08], Penal Code; [or]

1-47 (B) under Section 49.04 or 49.06, Penal Code,  
 1-48 and, at the time of the offense:

1-49 (i) the defendant held a commercial  
 1-50 driver's license or a commercial learner's permit; or

1-51 (ii) the defendant's alcohol concentration,  
 1-52 as defined by Section 49.01, Penal Code, was 0.15 or more;

1-53 (C) for which punishment may be increased under  
 1-54 Section 49.09, Penal Code; or

1-55 (D) for which punishment may be increased under  
 1-56 Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it  
 1-57 is shown that the defendant has been previously convicted of an  
 1-58 offense for which punishment was increased under any one of those  
 1-59 subsections;

1-60 (2) the defendant:

2-1 (A) is charged with an offense under Section  
2-2 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the  
2-3 victim, or a felony described by Article 42A.453(b); and

2-4 (B) has previously been placed on community  
2-5 supervision for an offense under Paragraph (A);

2-6 (3) the defendant is charged with an offense under:

2-7 (A) Section 21.02, Penal Code; or

2-8 (B) Section 22.021, Penal Code, that is  
2-9 punishable under Subsection (f) of that section or under Section  
2-10 12.42(c)(3) or (4), Penal Code; or

2-11 (4) the defendant is charged with an offense under  
2-12 Section 19.02, Penal Code, except that the judge may grant deferred  
2-13 adjudication community supervision on determining that the  
2-14 defendant did not cause the death of the deceased, did not intend to  
2-15 kill the deceased or another, and did not anticipate that a human  
2-16 life would be taken.

2-17 SECTION 3. Article 42A.408, Code of Criminal Procedure, is  
2-18 amended by adding Subsections (e-1) and (e-2) to read as follows:

2-19 (e-1) Except as provided by Subsection (e-2), a judge  
2-20 granting deferred adjudication community supervision to a  
2-21 defendant for an offense under Section 49.04 or 49.06, Penal Code,  
2-22 shall require that the defendant as a condition of community  
2-23 supervision have an ignition interlock device installed on the  
2-24 motor vehicle owned by the defendant or on the vehicle most  
2-25 regularly driven by the defendant and that the defendant not  
2-26 operate any motor vehicle that is not equipped with that device.

2-27 (e-2) A judge may waive the ignition interlock requirement  
2-28 under Subsection (e-1) for a defendant if, based on a controlled  
2-29 substance and alcohol evaluation of the defendant, the judge  
2-30 determines and enters in the record that restricting the defendant  
2-31 to the use of an ignition interlock is not necessary for the safety  
2-32 of the community.

2-33 SECTION 4. Section 411.072(a), Government Code, is amended  
2-34 to read as follows:

2-35 (a) This section applies only to a person who:

2-36 (1) was placed on deferred adjudication community  
2-37 supervision under Subchapter C, Chapter 42A, Code of Criminal  
2-38 Procedure, for a misdemeanor other than a misdemeanor:

2-39 (A) under:

2-40 (i) Section 49.04 or 49.06, Penal Code; or

2-41 (ii) Chapter 20, 21, 22, 25, 42, 43, 46, or  
2-42 71, Penal Code; or

2-43 (B) with respect to which an affirmative finding  
2-44 under Article 42A.105(f), Code of Criminal Procedure, or former  
2-45 Section 5(k), Article 42.12, Code of Criminal Procedure, was filed  
2-46 in the papers of the case; and

2-47 (2) has never been previously convicted of or placed  
2-48 on deferred adjudication community supervision for another offense  
2-49 other than a traffic offense that is punishable by fine only.

2-50 SECTION 5. Section 411.0725(a), Government Code, is amended  
2-51 to read as follows:

2-52 (a) This section applies only to a person placed on deferred  
2-53 adjudication community supervision under Subchapter C, Chapter  
2-54 42A, Code of Criminal Procedure, who:

2-55 (1) is not eligible to receive an order of  
2-56 nondisclosure of criminal history record information under Section  
2-57 411.072; and

2-58 (2) was placed on deferred adjudication community  
2-59 supervision for an offense other than an offense under Section  
2-60 49.04 or 49.06, Penal Code.

2-61 SECTION 6. Subchapter E-1, Chapter 411, Government Code, is  
2-62 amended by adding Section 411.0726 to read as follows:

2-63 Sec. 411.0726. PROCEDURE FOR DEFERRED ADJUDICATION  
2-64 COMMUNITY SUPERVISION; CERTAIN DRIVING WHILE INTOXICATED AND  
2-65 BOATING WHILE INTOXICATED MISDEMEANORS. (a) This section applies  
2-66 only to a person who was placed on deferred adjudication community  
2-67 supervision under Subchapter C, Chapter 42A, Code of Criminal  
2-68 Procedure, for a misdemeanor:

2-69 (1) under Section 49.04 or 49.06, Penal Code; and

3-1 (2) with respect to which no affirmative finding under  
3-2 Article 42A.105(f), Code of Criminal Procedure, was filed in the  
3-3 papers of the case.

3-4 (b) Notwithstanding any other provision of this subchapter  
3-5 or Subchapter F, a person may petition the court that placed the  
3-6 person on deferred adjudication community supervision for an order  
3-7 of nondisclosure if the person:

3-8 (1) receives a discharge and dismissal under Article  
3-9 42A.111, Code of Criminal Procedure;

3-10 (2) satisfies the requirements of Section 411.074; and

3-11 (3) has never been previously convicted of or placed  
3-12 on deferred adjudication community supervision for another  
3-13 offense, other than a traffic offense that is punishable by fine  
3-14 only.

3-15 (c) A petition for an order of nondisclosure of criminal  
3-16 history record information filed under this section must include  
3-17 evidence that the person is entitled to file the petition.

3-18 (d) Except as provided by Subsection (e), after notice to  
3-19 the state, an opportunity for a hearing, and a determination that  
3-20 the person is entitled to file the petition and issuance of an order  
3-21 of nondisclosure of criminal history record information is in the  
3-22 best interest of justice, the court shall issue an order  
3-23 prohibiting criminal justice agencies from disclosing to the public  
3-24 criminal history record information related to the offense giving  
3-25 rise to the deferred adjudication community supervision.

3-26 (e) A court may not issue an order of nondisclosure of  
3-27 criminal history record information under this section if the  
3-28 attorney representing the state presents evidence sufficient to the  
3-29 court demonstrating that the commission of the offense for which  
3-30 the order is sought resulted in a motor vehicle accident involving  
3-31 another person, including a passenger in a motor vehicle operated  
3-32 by the person seeking the order of nondisclosure.

3-33 (f) A person may petition the court that placed the person  
3-34 on deferred adjudication community supervision for an order of  
3-35 nondisclosure of criminal history record information under this  
3-36 section only on or after the second anniversary of the date of  
3-37 completion of the deferred adjudication community supervision and  
3-38 the discharge and dismissal of the case.

3-39 SECTION 7. Sections 49.09(b) and (g), Penal Code, are  
3-40 amended to read as follows:

3-41 (b) An offense under Section 49.04, 49.045, 49.05, 49.06, or  
3-42 49.065 is a felony of the third degree if it is shown on the trial of  
3-43 the offense that the person has previously been convicted:

3-44 (1) one time of an offense under Section 49.08 or an  
3-45 offense under the laws of another state if the offense contains  
3-46 elements that are substantially similar to the elements of an  
3-47 offense under Section 49.08; or

3-48 (2) two times of any other offense relating to the  
3-49 operating of a motor vehicle while intoxicated, operating an  
3-50 aircraft while intoxicated, operating a watercraft while  
3-51 intoxicated, or operating or assembling an amusement ride while  
3-52 intoxicated.

3-53 (g) A conviction may be used for purposes of enhancement  
3-54 under this section or enhancement under Subchapter D, Chapter 12,  
3-55 but not under both this section and Subchapter D. For purposes of  
3-56 this section, a person is considered to have been convicted of an  
3-57 offense under Section 49.04 or 49.06 if the person was placed on  
3-58 deferred adjudication community supervision for the offense under  
3-59 Article 42A.102, Code of Criminal Procedure.

3-60 SECTION 8. (a) The change in law made by this Act to Article  
3-61 17.441, Code of Criminal Procedure, applies to a defendant released  
3-62 on bond on or after the effective date of this Act, regardless of  
3-63 whether the offense for which the person was arrested occurred  
3-64 before, on, or after that date.

3-65 (b) The changes in law made by this Act to Articles 42A.102  
3-66 and 42A.408, Code of Criminal Procedure, apply only to the  
3-67 eligibility for deferred adjudication community supervision of a  
3-68 defendant for an offense committed on or after the effective date of  
3-69 this Act. The eligibility for deferred adjudication community

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

4-7 (c) The changes in law made by this Act to Section 49.09,  
4-8 Penal Code, apply only to an offense committed on or after the  
4-9 effective date of this Act. An offense committed before the  
4-10 effective date of this Act is governed by the law in effect on the  
4-11 date the offense was committed, and the former law is continued in  
4-12 effect for that purpose. For purposes of this subsection, an  
4-13 offense was committed before the effective date of this Act if any  
4-14 element of the offense occurred before that date.

4-15 SECTION 9. This Act takes effect September 1, 2019.

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