

House Bill 3582
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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 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; [Ø]

(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

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SECTION 1. Same as House version.

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 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; [Ø]

(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 0.15 or more;

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

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(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 subsections;

(2) the defendant:

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

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

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

(A) Section 21.02, Penal Code; or

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

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

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

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

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(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 subsections;

(2) the defendant:

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

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

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

(A) Section 21.02, Penal Code; or

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

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

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

(e-1) Except as provided by Subsection (e-2), a judge granting deferred adjudication community supervision to a defendant for an offense under Section 49.04 or 49.06, Penal Code, shall require that the defendant as a condition of community supervision have an ignition interlock device

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

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installed on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant and that the defendant not operate any motor vehicle that is not equipped with that device.

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

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

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

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

(A) under:

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

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

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

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

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

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

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

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

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SECTION 4. Same as House version.

SECTION 5. Same as House version.

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

Sec. 411.0726. PROCEDURE FOR DEFERRED ADJUDICATION COMMUNITY SUPERVISION; CERTAIN DRIVING WHILE INTOXICATED AND BOATING WHILE INTOXICATED MISDEMEANORS.

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

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

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

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

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

(2) satisfies the requirements of Section 411.074; and

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

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

(d) Except as provided by Subsection (e), after notice to the state, an opportunity for a hearing, and a determination that the person is entitled to file the petition and issuance of an

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

Sec. 411.0726. PROCEDURE FOR DEFERRED ADJUDICATION COMMUNITY SUPERVISION; CERTAIN DRIVING WHILE INTOXICATED AND BOATING WHILE INTOXICATED MISDEMEANORS.

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

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

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

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

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

(2) satisfies the requirements of Section 411.074; and

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

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

(d) Except as provided by Subsection (e), after notice to the state, an opportunity for a hearing, and a determination that the person is entitled to file the petition and issuance of an

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order of nondisclosure of criminal history record information is in the best interest of justice, the court shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication community supervision.

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

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

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

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

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order of nondisclosure of criminal history record information is in the best interest of justice, the court shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication community supervision.

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

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

the second anniversary of the date of completion of the deferred adjudication community supervision and the discharge and dismissal of the case.

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

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

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

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

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

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

SECTION 7. Same as House version.

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

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

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

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

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

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

SECTION 9. Same as House version.

CONFERENCE