

BILL ANALYSIS

Senate Research Center
87R13341 LHC-F

H.B. 2505
By: Smith et al. (Huffman)
Criminal Justice
5/18/2021
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In Texas, boating while intoxicated is a Class B misdemeanor offense. However, concerns have been raised regarding the conduct constituting this offense because the conduct currently does not include any context regarding passengers and thus does not account for situations in which younger passengers are onboard. Additionally, while the penalty for driving while intoxicated is a state jail felony when there is a child passenger involved, there is no similar penalty increase when a child is aboard. H.B. 2505 seeks to address these issues by creating a separate state jail felony offense for boating while intoxicated with a child passenger.

H.B. 2505 amends current law relating to creating the criminal offense of boating while intoxicated with a child passenger changes the eligibility for deferred adjudication community supervision.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 49, Penal Code, by adding Section 49.061, as follows:

Sec. 49.061. BOATING WHILE INTOXICATED WITH CHILD PASSENGER. (a) Provides that a person commits an offense if the person is intoxicated while operating a watercraft and if the watercraft being operated by the person is occupied by a passenger who is younger than 15 years of age.

(b) Provides that an offense under this section is a state jail felony.

SECTION 2. Amends Sections 49.09(b) and (d), Penal Code, as follows:

(b) Provides that an offense under certain sections, including Section 49.061 is a felony of the third degree if it is shown on the trial of the offense that the person has previously been convicted of a certain offense.

(d) Provides that, for the purposes of Section 49.09 (Enhanced Offenses and Penalties), a conviction for an offense under certain sections, including Section 49.061 that occurs on or after September 1, 1994, is a final conviction, whether the sentence for the conviction is imposed or probated.

SECTION 3. Amends Section 49.09(c)(3), Penal Code, to redefine "offense of operating a watercraft while intoxicated" for Section 49.09.

SECTION 4. Amends Section 49.10, Penal Code, as follows:

Sec. 49.10. NO DEFENSE. Provides that, in a prosecution under certain sections, including Section 49.031 (Possession of Alcoholic Beverage in Motor Vehicle), and Section 49.061 the fact that the defendant is or has been entitled to use the alcohol,

controlled substance, drug, dangerous drug, or other substance is not a defense. Deletes existing text referring to a prosecution under Section 49.03.

SECTION 5. Amends Section 106.041(g), Alcoholic Beverage Code, to provide that an offense under Section 106.041 (Driving or Operating Watercraft Under the Influence of Alcohol by Minor) is not a lesser included offense under certain sections, including Section 49.061, Penal Code. Makes a nonsubstantive change.

SECTION 6. Amends Article 16.23(b), Code of Criminal Procedure, to provide that Subsection (a) (relating to requiring each law enforcement agency to make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency's jurisdiction if certain conditions apply) does not apply to a person who is accused of a certain offenses under Section 49.061, Penal Code.

SECTION 7. Amends Article 17.441(a), Code of Criminal Procedure, to require a magistrate, except as provided by Subsection (b) (relating to prohibiting the magistrate from requiring the installation of a vehicle ignition interlock device if the magistrate finds it is not in the best interest of justice), to require on release that a defendant charged with a subsequent offense under certain sections, including Section 49.061, Penal Code, to meet certain requirements. Makes a nonsubstantive change.

SECTION 8. Amends Article 18.01(j), Code of Criminal Procedure, to authorize any magistrate who is an attorney licensed by this state to issue a search warrant under Article 18.02(a)(10) (relating to authorizing a search warrant to be issued to search for and seize property or items, except the personal writings by the accused, constituting evidence of an offense or constituting evidence tending to show that a particular person committed an offense) to collect a blood specimen from a person who is arrested for an offense under Section 49.061, Penal Code.

SECTION 9. Reenacts Article 42A.102(b), Code of Criminal Procedure, as amended by Chapters 1137 (H.B. 2758) and 1298 (H.B. 3582), Acts of the 86th Legislature, Regular Session, 2019, and amends it, to authorize the judge, in all other cases, to grant deferred adjudication community supervision unless the defendant is charged with an offense under Section 20A.02, 20A.03, 49.045, 49.05, 49.061, 49.065, 49.07, or 49.08, Penal Code. Makes nonsubstantive changes.

SECTION 10. Amends Articles 42A.408(c) and (d), Code of Criminal Procedure, as follows:

(c) Requires the court to require as a condition of community supervision that a defendant described by Subsection (b) (relating to authorizing the court to require as a condition of community supervision that a defendant have an ignition interlock device installed on their motor vehicle) have an ignition interlock device 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 unless the vehicle is equipped with that device if the defendant is placed on community supervision after conviction of an offense under Sections 49.04-49.061, rather than Sections 49.04-49.06, Penal Code, for which the defendant is punished under Section 49.09(a) (relating to providing that a certain offense is a Class A misdemeanor, with a minimum term of confinement of 30 days, if it is shown on the trial of the offense that the person has previously been convicted one time of a certain offense) or (b), Penal Code.

(d) Prohibits a previous conviction from being used for purposes of restricting a defendant to the operation of a motor vehicle equipped with an ignition interlock device under Subsection (c) if the previous conviction was a final conviction under certain sections, including Section 49.061, Penal Code, and was for an offense committed before the beginning of the 10-year period preceding the date of the instant offense for which the defendant was convicted and placed on community supervision. Makes a conforming changes.

SECTION 11. Amends Section 12.203(a), Parks and Wildlife Code, as follows:

(a) Authorizes a person to apply to the Operation Game Thief Committee for a reward to be paid from the operation game thief fund if the person furnishes information leading to the arrest and conviction of a person for a violation of this code or any of the following laws or a regulation adopted under this code or certain laws including Section 49.061, Penal Code.

SECTION 12. Amends Section 524.011(a), Transportation Code, as follows:

(a) Requires an officer arresting a person to comply with Subsection (b) (relating to requiring a peace officer to perform certain actions) if:

(1) the person is arrested for an offense under certain sections, including Section 49.061, Penal Code, involving the operation of a motor vehicle or watercraft, submits to the taking of a specimen of breath or blood and an analysis of the specimen shows the person had an alcohol concentration of a level specified by Section 49.01(2)(B) (relating to defining "intoxicated" to mean having an alcohol concentration of 0.08 or more), Penal Code; or

(2) the person is a minor arrested for an offense under certain sections, including Section 49.061, Penal Code, involving the operation of a motor vehicle or watercraft and certain conditions apply to the minor.

Makes nonsubstantive changes.

SECTION 13. Amends Section 524.015(b), Transportation Code, to prohibit a suspension from being imposed under Chapter 524 (Administrative Suspension of Driver's License for Failure to Pass Test for Intoxication) on a person who is acquitted of a criminal charge under certain sections, including Section 49.061, Penal Code, arising from the occurrence that was the basis for the suspension.

SECTION 14. Amends Section 524.022(b), Transportation Code, to provide that a period of suspension under Chapter 524 for a minor is 60 days if the minor has not been previously convicted of an offense under certain sections, including Section 49.061, Penal Code, involving the operation of a motor vehicle or a watercraft. Makes a nonsubstantive change.

SECTION 15. Amends Section 524.023, Transportation Code, as follows:

Sec. 524.023. APPLICATION OF SUSPENSION UNDER OTHER LAWS. (a) Requires that each of the suspensions, if a person is convicted of an offense under certain sections, including Section 49.061, Penal Code, and if any conduct on which that conviction is based is a ground for a driver's license suspension under certain other provisions be imposed.

(b) Requires the court imposing a driver's license suspension under certain provisions as required by Subsection (a) to credit a period of suspension imposed under Chapter 524 toward the period of suspension required under these provisions unless the person was convicted of an offense under certain sections, including Section 49.061, Penal Code, before the date of the conviction on which the suspension is based, in which event credit is prohibited from being given.

SECTION 16. Amends Section 524.042(a), Transportation Code, as follows:

(a) Provides that a suspension of a driver's license under Chapter 524 is stayed on the filing of an appeal petition only if the person has not been convicted during the 10 years preceding the date of the person's arrest of an offense under certain sections, including Section 49.061, Penal Code. Makes a nonsubstantive change.

SECTION 17. Amends Section 724.012(b), Transportation Code, as follows:

(b) Requires a peace officer to require the taking of a specimen of the person's breath or blood under any of the following circumstances if the officer arrests the person for an offense under Chapter 49, Penal Code, involving the operation of a motor vehicle or a watercraft and the person refuses the officer's request to submit to the taking of a specimen voluntarily at the time of the arrest, the officer possesses or receives reliable information from a credible source that the person on two or more occasions, has been previously convicted of or placed on community supervision for an offense under certain sections, including Section 49.061, Penal Code, or an offense under the laws of another state containing elements substantially similar to the elements of an offense under those sections.

SECTION 18. Provides that, to the extent of any conflict, this Act prevails over another Act of the 87th Legislature, Regular Session, 2021, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 19. Effective date: September 1, 2021.