By:  Smith, Frullo, Metcalf H.B. No. 2505

(Senate Sponsor - Huffman)

(In the Senate - Received from the House May 5, 2021; May 10, 2021, read first time and referred to Committee on Criminal Justice; May 20, 2021, reported favorably by the following vote: Yeas 6, Nays 0; May 20, 2021, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Whitmire        X

Huffman         X

Bettencourt     X

Birdwell        X

Hinojosa        X

Miles                     X

Nichols         X

A BILL TO BE ENTITLED

AN ACT

relating to creating the criminal offense of boating while intoxicated with a child passenger; changing the eligibility for deferred adjudication community supervision.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Chapter 49, Penal Code, is amended by adding Section 49.061 to read as follows:

Sec. 49.061.  BOATING WHILE INTOXICATED WITH CHILD PASSENGER. (a) A person commits an offense if:

(1)  the person is intoxicated while operating a watercraft; and

(2)  the watercraft being operated by the person is occupied by a passenger who is younger than 15 years of age.

(b)  An offense under this section is a state jail felony.

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

(b)  An offense under Section 49.04, 49.045, 49.05, 49.06, 49.061, 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.

(d)  For the purposes of this section, a conviction for an offense under Section 49.04, 49.045, 49.05, 49.06, 49.061, 49.065, 49.07, or 49.08 that occurs on or after September 1, 1994, is a final conviction, whether the sentence for the conviction is imposed or probated.

SECTION 3.  Section 49.09(c)(3), Penal Code, is amended to read as follows:

(3)  "Offense of operating a watercraft while intoxicated" means:

(A)  an offense under Section 49.06 or 49.061;

(B)  an offense under Section 49.07 or 49.08, if the vehicle operated was a watercraft;

(C)  an offense under Section 31.097, Parks and Wildlife Code, as that law existed before September 1, 1994;

(D)  an offense under Section 19.05(a)(2), as that law existed before September 1, 1994, if the vehicle operated was a watercraft; or

(E)  an offense under the laws of another state that prohibit the operation of a watercraft while intoxicated.

SECTION 4.  Section 49.10, Penal Code, is amended to read as follows:

Sec. 49.10.  NO DEFENSE. In a prosecution under Section 49.031 [~~49.03~~], 49.04, 49.045, 49.05, 49.06, 49.061, 49.065, 49.07, or 49.08, 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.

SECTION 5.  Section 106.041(g), Alcoholic Beverage Code, is amended to read as follows:

(g)  An offense under this section is not a lesser included offense under Section 49.04, 49.045, [~~or~~] 49.06, or 49.061, Penal Code.

SECTION 6.  Article 16.23(b), Code of Criminal Procedure, is amended to read as follows:

(b)  Subsection (a) does not apply to a person who is accused of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.061, 49.065, 49.07, or 49.08, Penal Code.

SECTION 7.  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, or 49.061, 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 8.  Article 18.01(j), Code of Criminal Procedure, is amended to read as follows:

(j)  Any magistrate who is an attorney licensed by this state may issue a search warrant under Article 18.02(a)(10) to collect a blood specimen from a person who:

(1)  is arrested for an offense under Section 49.04, 49.045, 49.05, 49.06, 49.061, 49.065, 49.07, or 49.08, Penal Code; and

(2)  refuses to submit to a breath or blood alcohol test.

SECTION 9.  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, is reenacted and 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 20A.02, [~~or~~] 20A.03, [~~or~~] 49.045, 49.05, 49.061, 49.065, 49.07, or 49.08, Penal Code;

(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

(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, 22.021, 43.04, or 43.05, Penal Code, regardless of the age of the victim, or a felony described by Article 42A.453(b), other than a felony described by Subdivision (1)(A) or (3)(B) of this subsection; 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 10.  Articles 42A.408(c) and (d), Code of Criminal Procedure, are amended to read as follows:

(c)  The court shall require as a condition of community supervision that a defendant described by Subsection (b) 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:

(1)  it is shown on the trial of the offense that an analysis of a specimen of the defendant's blood, breath, or urine showed an alcohol concentration level of 0.15 or more at the time the analysis was performed;

(2)  the defendant is placed on community supervision after conviction of an offense under Sections 49.04-49.061 [~~49.04-49.06~~], Penal Code, for which the defendant is punished under Section 49.09(a) or (b), Penal Code; or

(3)  the court determines under Subsection (d) that the defendant has one or more previous convictions under Sections 49.04-49.08, Penal Code.

(d)  Before placing on community supervision a defendant convicted of an offense under Sections 49.04-49.08, Penal Code, the court shall determine from criminal history record information maintained by the Department of Public Safety whether the defendant has one or more previous convictions under any of those sections. A previous conviction may not be used for purposes of restricting a defendant to the operation of a motor vehicle equipped with an ignition interlock device under Subsection (c) if:

(1)  the previous conviction was a final conviction under Section 49.04, 49.045, 49.05, 49.06, 49.061, 49.07, or 49.08, 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; and

(2)  the defendant has not been convicted of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.061, 49.07, or 49.08, Penal Code, committed within the 10-year period preceding the date of the instant offense for which the defendant was convicted and placed on community supervision.

SECTION 11.  Section 12.203(a), Parks and Wildlife Code, is amended to read as follows:

(a)  A person may apply to the 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 any of the following laws:

(1)  Subchapter B, Chapter 365, Health and Safety Code;

(2)  Subchapter E, Chapter 191, Natural Resources Code;

(3)  Chapter 28 or Section 30.05, 31.03, 31.11, 37.10, 49.06, 49.061, 49.07, or 49.08, Penal Code;

(4)  Chapter 160, Tax Code; or

(5)  Subchapter E, Chapter 7, or Subchapter D, Chapter 26, Water Code.

SECTION 12.  Section 524.011(a), Transportation Code, is amended to read as follows:

(a)  An officer arresting a person shall comply with Subsection (b) if:

(1)  the person is arrested for an offense under Section 49.04, 49.045, [~~or~~] 49.06, or 49.061, Penal Code, or an offense under Section 49.07 or 49.08 of that 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), Penal Code; or

(2)  the person is a minor arrested for an offense under Section 106.041, Alcoholic Beverage Code, or Section 49.04, 49.045, [~~or~~] 49.06, or 49.061, Penal Code, or an offense under Section 49.07 or 49.08, Penal Code, involving the operation of a motor vehicle or watercraft and:

(A)  the minor is not requested to submit to the taking of a specimen; or

(B)  the minor submits to the taking of a specimen and an analysis of the specimen shows that the minor had an alcohol concentration of greater than.00 but less than the level specified by Section 49.01(2)(B), Penal Code.

SECTION 13.  Section 524.015(b), Transportation Code, is amended to read as follows:

(b)  A suspension may not be imposed under this chapter on a person who is acquitted of a criminal charge under Section 49.04, 49.045, 49.06, 49.061, 49.07, or 49.08, Penal Code, or Section 106.041, Alcoholic Beverage Code, arising from the occurrence that was the basis for the suspension. If a suspension was imposed before the acquittal, the department shall rescind the suspension and shall remove any reference to the suspension from the person's computerized driving record.

SECTION 14.  Section 524.022(b), Transportation Code, is amended to read as follows:

(b)  A period of suspension under this chapter for a minor is:

(1)  60 days if the minor has not been previously convicted of an offense under Section 106.041, Alcoholic Beverage Code, or Section 49.04, 49.045, [~~or~~] 49.06, or 49.061, Penal Code, or an offense under Section 49.07 or 49.08, Penal Code, involving the operation of a motor vehicle or a watercraft;

(2)  120 days if the minor has been previously convicted once of an offense listed by Subdivision (1); or

(3)  180 days if the minor has been previously convicted twice or more of an offense listed by Subdivision (1).

SECTION 15.  Section 524.023, Transportation Code, is amended to read as follows:

Sec. 524.023.  APPLICATION OF SUSPENSION UNDER OTHER LAWS. (a) If a person is convicted of an offense under Section 106.041, Alcoholic Beverage Code, or Section 49.04, 49.045, 49.06, 49.061, 49.07, or 49.08, Penal Code, and if any conduct on which that conviction is based is a ground for a driver's license suspension under this chapter and Section 106.041, Alcoholic Beverage Code, Subchapter O, Chapter 521, or Subchapter H, Chapter 522, each of the suspensions shall be imposed.

(b)  The court imposing a driver's license suspension under Section 106.041, Alcoholic Beverage Code, or Chapter 521 or 522 as required by Subsection (a) shall credit a period of suspension imposed under this chapter toward the period of suspension required under Section 106.041, Alcoholic Beverage Code, or Subchapter O, Chapter 521, or Subchapter H, Chapter 522, unless the person was convicted of an offense under Article 6701l-1, Revised Statutes, as that law existed before September 1, 1994, Section 19.05(a)(2), Penal Code, as that law existed before September 1, 1994, Section 49.04, 49.045, 49.06, 49.061, 49.07, or 49.08, Penal Code, or Section 106.041, Alcoholic Beverage Code, before the date of the conviction on which the suspension is based, in which event credit may not be given.

SECTION 16.  Section 524.042(a), Transportation Code, is amended to read as follows:

(a)  A suspension of a driver's license under this chapter is stayed on the filing of an appeal petition only if:

(1)  the person's driver's license has not been suspended as a result of an alcohol-related or drug-related enforcement contact during the five years preceding the date of the person's arrest; and

(2)  the person has not been convicted during the 10 years preceding the date of the person's arrest of an offense under:

(A)  Article 6701l-1, Revised Statutes, as that law existed before September 1, 1994;

(B)  Section 19.05(a)(2), Penal Code, as that law existed before September 1, 1994;

(C)  Section 49.04, 49.045, [~~or~~] 49.06, or 49.061, Penal Code;

(D)  Section 49.07 or 49.08, Penal Code, if the offense involved the operation of a motor vehicle or a watercraft; or

(E)  Section 106.041, Alcoholic Beverage Code.

SECTION 17.  Section 724.012(b), Transportation Code, is amended to read as follows:

(b)  A peace officer shall 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:

(1)  the person was the operator of a motor vehicle or a watercraft involved in an accident that the officer reasonably believes occurred as a result of the offense and, at the time of the arrest, the officer reasonably believes that as a direct result of the accident:

(A)  any individual has died or will die;

(B)  an individual other than the person has suffered serious bodily injury; or

(C)  an individual other than the person has suffered bodily injury and been transported to a hospital or other medical facility for medical treatment;

(2)  the offense for which the officer arrests the person is an offense under Section 49.045, Penal Code; or

(3)  at the time of the arrest, the officer possesses or receives reliable information from a credible source that the person:

(A)  has been previously convicted of or placed on community supervision for an offense under Section 49.045, 49.07, or 49.08, Penal Code, or an offense under the laws of another state containing elements substantially similar to the elements of an offense under those sections; or

(B)  on two or more occasions, has been previously convicted of or placed on community supervision for an offense under Section 49.04, 49.05, 49.06, 49.061, or 49.065, 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.  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.  This Act takes effect September 1, 2021.

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