

By: Menéndez

S.B. No. 106

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 a finding that the
14 defendant is indigent in the record 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 411.074(b), Government Code, is amended
23 to read as follows:

24 (b) A person may not be granted an order of nondisclosure of
25 criminal history record information under this subchapter and is
26 not entitled to petition the court for an order under this
27 subchapter if:

1 (1) the person was convicted or placed on deferred
2 adjudication community supervision for or has been previously
3 convicted or placed on any other deferred adjudication community
4 supervision for:

5 (A) an offense requiring registration as a sex
6 offender under Chapter 62, Code of Criminal Procedure;

7 (B) an offense under Section 20.04, Penal Code,
8 regardless of whether the offense is a reportable conviction or
9 adjudication for purposes of Chapter 62, Code of Criminal
10 Procedure;

11 (C) an offense under Section 19.02, 19.03,
12 20A.02, 20A.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal
13 Code; or

14 (D) any other offense involving family violence,
15 as defined by Section 71.004, Family Code; [~~or~~]

16 (2) the defendant was placed on deferred adjudication
17 community supervision for an offense under Section 49.04 or 49.06,
18 Penal Code; or

19 (3) the court makes an affirmative finding that the
20 offense for which the order of nondisclosure of criminal history
21 record information is requested involved family violence, as
22 defined by Section 71.004, Family Code.

23 SECTION 4. Sections 49.09(b) and (g), Penal Code, are
24 amended to read as follows:

25 (b) An offense under Section 49.04, 49.045, 49.05, 49.06, or
26 49.065 is a felony of the third degree if it is shown on the trial of
27 the offense that the person has previously been convicted:

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

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

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

17 SECTION 5. The changes in law made by this Act to Articles
18 42A.102 and 42A.408, Code of Criminal Procedure, apply only to the
19 eligibility for deferred adjudication community supervision of a
20 defendant for an offense committed on or after the effective date of
21 this Act. The eligibility for deferred adjudication community
22 supervision of a defendant for an offense committed before the
23 effective date of this Act is governed by the law in effect on the
24 date the offense was committed, and the former law is continued in
25 effect for that purpose. For purposes of this section, an offense
26 was committed before the effective date of this Act if any element
27 of the offense occurred before that date.

1 SECTION 6. The changes in law made by this Act to Section
2 49.09, Penal Code, apply only to an offense committed on or after
3 the effective date of this Act. An offense committed before the
4 effective date of this Act is governed by the law in effect on the
5 date the offense was committed, and the former law is continued in
6 effect for that purpose. For purposes of this section, an offense
7 was committed before the effective date of this Act if any element
8 of the offense occurred before that date.

9 SECTION 7. This Act takes effect September 1, 2017.