

1-1 By: Smith, Frullo, Metcalf H.B. No. 2505
 1-2 (Senate Sponsor - Huffman)
 1-3 (In the Senate - Received from the House May 5, 2021;
 1-4 May 10, 2021, read first time and referred to Committee on Criminal
 1-5 Justice; May 20, 2021, reported favorably by the following vote:
 1-6 Yeas 6, Nays 0; May 20, 2021, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14			X	
1-15	X			

1-16 A BILL TO BE ENTITLED
 1-17 AN ACT

1-18 relating to creating the criminal offense of boating while
 1-19 intoxicated with a child passenger; changing the eligibility for
 1-20 deferred adjudication community supervision.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Chapter 49, Penal Code, is amended by adding
 1-23 Section 49.061 to read as follows:

1-24 Sec. 49.061. BOATING WHILE INTOXICATED WITH CHILD
 1-25 PASSENGER. (a) A person commits an offense if:

1-26 (1) the person is intoxicated while operating a
 1-27 watercraft; and

1-28 (2) the watercraft being operated by the person is
 1-29 occupied by a passenger who is younger than 15 years of age.

1-30 (b) An offense under this section is a state jail felony.

1-31 SECTION 2. Sections 49.09(b) and (d), Penal Code, are
 1-32 amended to read as follows:

1-33 (b) An offense under Section 49.04, 49.045, 49.05, 49.06,
 1-34 49.061, or 49.065 is a felony of the third degree if it is shown on
 1-35 the trial of the offense that the person has previously been
 1-36 convicted:

1-37 (1) one time of an offense under Section 49.08 or an
 1-38 offense under the laws of another state if the offense contains
 1-39 elements that are substantially similar to the elements of an
 1-40 offense under Section 49.08; or

1-41 (2) two times of any other offense relating to the
 1-42 operating of a motor vehicle while intoxicated, operating an
 1-43 aircraft while intoxicated, operating a watercraft while
 1-44 intoxicated, or operating or assembling an amusement ride while
 1-45 intoxicated.

1-46 (d) For the purposes of this section, a conviction for an
 1-47 offense under Section 49.04, 49.045, 49.05, 49.06, 49.061, 49.065,
 1-48 49.07, or 49.08 that occurs on or after September 1, 1994, is a
 1-49 final conviction, whether the sentence for the conviction is
 1-50 imposed or probated.

1-51 SECTION 3. Section 49.09(c)(3), Penal Code, is amended to
 1-52 read as follows:

1-53 (3) "Offense of operating a watercraft while
 1-54 intoxicated" means:

1-55 (A) an offense under Section 49.06 or 49.061;

1-56 (B) an offense under Section 49.07 or 49.08, if
 1-57 the vehicle operated was a watercraft;

1-58 (C) an offense under Section 31.097, Parks and
 1-59 Wildlife Code, as that law existed before September 1, 1994;

1-60 (D) an offense under Section 19.05(a)(2), as that
 1-61 law existed before September 1, 1994, if the vehicle operated was a

2-1 watercraft; or

2-2 (E) an offense under the laws of another state
2-3 that prohibit the operation of a watercraft while intoxicated.

2-4 SECTION 4. Section 49.10, Penal Code, is amended to read as
2-5 follows:

2-6 Sec. 49.10. NO DEFENSE. In a prosecution under Section
2-7 49.031 [~~49.03~~], 49.04, 49.045, 49.05, 49.06, 49.061, 49.065, 49.07,
2-8 or 49.08, the fact that the defendant is or has been entitled to use
2-9 the alcohol, controlled substance, drug, dangerous drug, or other
2-10 substance is not a defense.

2-11 SECTION 5. Section 106.041(g), Alcoholic Beverage Code, is
2-12 amended to read as follows:

2-13 (g) An offense under this section is not a lesser included
2-14 offense under Section 49.04, 49.045, [~~or~~] 49.06, or 49.061, Penal
2-15 Code.

2-16 SECTION 6. Article 16.23(b), Code of Criminal Procedure, is
2-17 amended to read as follows:

2-18 (b) Subsection (a) does not apply to a person who is accused
2-19 of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.061,
2-20 49.065, 49.07, or 49.08, Penal Code.

2-21 SECTION 7. Article 17.441(a), Code of Criminal Procedure,
2-22 is amended to read as follows:

2-23 (a) Except as provided by Subsection (b), a magistrate shall
2-24 require on release that a defendant charged with a subsequent
2-25 offense under Section 49.04, 49.05, [~~or~~] 49.06, or 49.061, Penal
2-26 Code, or an offense under Section 49.045, 49.07, or 49.08 of that
2-27 code:

2-28 (1) have installed on the motor vehicle owned by the
2-29 defendant or on the vehicle most regularly driven by the defendant,
2-30 a device that uses a deep-lung breath analysis mechanism to make
2-31 impractical the operation of a motor vehicle if ethyl alcohol is
2-32 detected in the breath of the operator; and

2-33 (2) not operate any motor vehicle unless the vehicle
2-34 is equipped with that device.

2-35 SECTION 8. Article 18.01(j), Code of Criminal Procedure, is
2-36 amended to read as follows:

2-37 (j) Any magistrate who is an attorney licensed by this state
2-38 may issue a search warrant under Article 18.02(a)(10) to collect a
2-39 blood specimen from a person who:

2-40 (1) is arrested for an offense under Section 49.04,
2-41 49.045, 49.05, 49.06, 49.061, 49.065, 49.07, or 49.08, Penal Code;
2-42 and

2-43 (2) refuses to submit to a breath or blood alcohol
2-44 test.

2-45 SECTION 9. Article 42A.102(b), Code of Criminal Procedure,
2-46 as amended by Chapters 1137 (H.B. 2758) and 1298 (H.B. 3582), Acts
2-47 of the 86th Legislature, Regular Session, 2019, is reenacted and
2-48 amended to read as follows:

2-49 (b) In all other cases, the judge may grant deferred
2-50 adjudication community supervision unless:

2-51 (1) the defendant is charged with an offense:

2-52 (A) under Section 20A.02, [~~or~~] 20A.03, [~~or~~]
2-53 49.045, 49.05, 49.061, 49.065, 49.07, or 49.08, Penal Code;

2-54 (B) under Section 49.04 or 49.06, Penal Code,
2-55 and, at the time of the offense:

2-56 (i) the defendant held a commercial
2-57 driver's license or a commercial learner's permit; or

2-58 (ii) the defendant's alcohol concentration,
2-59 as defined by Section 49.01, Penal Code, was 0.15 or more;

2-60 (C) for which punishment may be increased under
2-61 Section 49.09, Penal Code; or

2-62 (D) for which punishment may be increased under
2-63 Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it
2-64 is shown that the defendant has been previously convicted of an
2-65 offense for which punishment was increased under any one of those
2-66 subsections;

2-67 (2) the defendant:

2-68 (A) is charged with an offense under Section
2-69 21.11, 22.011, 22.021, 43.04, or 43.05, Penal Code, regardless of

3-1 the age of the victim, or a felony described by Article 42A.453(b),
 3-2 other than a felony described by Subdivision (1)(A) or (3)(B) of
 3-3 this subsection; and

3-4 (B) has previously been placed on community
 3-5 supervision for an offense under Paragraph (A);

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

3-7 (A) Section 21.02, Penal Code; or

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

3-11 (4) the defendant is charged with an offense under
 3-12 Section 19.02, Penal Code, except that the judge may grant deferred
 3-13 adjudication community supervision on determining that the
 3-14 defendant did not cause the death of the deceased, did not intend to
 3-15 kill the deceased or another, and did not anticipate that a human
 3-16 life would be taken.

3-17 SECTION 10. Articles 42A.408(c) and (d), Code of Criminal
 3-18 Procedure, are amended to read as follows:

3-19 (c) The court shall require as a condition of community
 3-20 supervision that a defendant described by Subsection (b) have an
 3-21 ignition interlock device installed on the motor vehicle owned by
 3-22 the defendant or on the vehicle most regularly driven by the
 3-23 defendant and that the defendant not operate any motor vehicle
 3-24 unless the vehicle is equipped with that device if:

3-25 (1) it is shown on the trial of the offense that an
 3-26 analysis of a specimen of the defendant's blood, breath, or urine
 3-27 showed an alcohol concentration level of 0.15 or more at the time
 3-28 the analysis was performed;

3-29 (2) the defendant is placed on community supervision
 3-30 after conviction of an offense under Sections 49.04-49.061
 3-31 [~~49.04-49.06~~], Penal Code, for which the defendant is punished
 3-32 under Section 49.09(a) or (b), Penal Code; or

3-33 (3) the court determines under Subsection (d) that the
 3-34 defendant has one or more previous convictions under Sections
 3-35 49.04-49.08, Penal Code.

3-36 (d) Before placing on community supervision a defendant
 3-37 convicted of an offense under Sections 49.04-49.08, Penal Code, the
 3-38 court shall determine from criminal history record information
 3-39 maintained by the Department of Public Safety whether the defendant
 3-40 has one or more previous convictions under any of those sections. A
 3-41 previous conviction may not be used for purposes of restricting a
 3-42 defendant to the operation of a motor vehicle equipped with an
 3-43 ignition interlock device under Subsection (c) if:

3-44 (1) the previous conviction was a final conviction
 3-45 under Section 49.04, 49.045, 49.05, 49.06, 49.061, 49.07, or 49.08,
 3-46 Penal Code, and was for an offense committed before the beginning of
 3-47 the 10-year period preceding the date of the instant offense for
 3-48 which the defendant was convicted and placed on community
 3-49 supervision; and

3-50 (2) the defendant has not been convicted of an offense
 3-51 under Section 49.04, 49.045, 49.05, 49.06, 49.061, 49.07, or 49.08,
 3-52 Penal Code, committed within the 10-year period preceding the date
 3-53 of the instant offense for which the defendant was convicted and
 3-54 placed on community supervision.

3-55 SECTION 11. Section 12.203(a), Parks and Wildlife Code, is
 3-56 amended to read as follows:

3-57 (a) A person may apply to the committee for a reward to be
 3-58 paid from the operation game thief fund if the person furnishes
 3-59 information leading to the arrest and conviction of a person for a
 3-60 violation of this code or any of the following laws or a regulation
 3-61 adopted under this code or any of the following laws:

3-62 (1) Subchapter B, Chapter 365, Health and Safety Code;

3-63 (2) Subchapter E, Chapter 191, Natural Resources Code;

3-64 (3) Chapter 28 or Section 30.05, 31.03, 31.11, 37.10,
 3-65 49.06, 49.061, 49.07, or 49.08, Penal Code;

3-66 (4) Chapter 160, Tax Code; or

3-67 (5) Subchapter E, Chapter 7, or Subchapter D, Chapter
 3-68 26, Water Code.

3-69 SECTION 12. Section 524.011(a), Transportation Code, is

4-1 amended to read as follows:

4-2 (a) An officer arresting a person shall comply with
4-3 Subsection (b) if:

4-4 (1) the person is arrested for an offense under
4-5 Section 49.04, 49.045, ~~or~~ 49.06, or 49.061, Penal Code, or an
4-6 offense under Section 49.07 or 49.08 of that code involving the
4-7 operation of a motor vehicle or watercraft, submits to the taking of
4-8 a specimen of breath or blood and an analysis of the specimen shows
4-9 the person had an alcohol concentration of a level specified by
4-10 Section 49.01(2)(B), Penal Code; or

4-11 (2) the person is a minor arrested for an offense under
4-12 Section 106.041, Alcoholic Beverage Code, or Section 49.04, 49.045,
4-13 ~~or~~ 49.06, or 49.061, Penal Code, or an offense under Section 49.07
4-14 or 49.08, Penal Code, involving the operation of a motor vehicle or
4-15 watercraft and:

4-16 (A) the minor is not requested to submit to the
4-17 taking of a specimen; or

4-18 (B) the minor submits to the taking of a specimen
4-19 and an analysis of the specimen shows that the minor had an alcohol
4-20 concentration of greater than .00 but less than the level specified
4-21 by Section 49.01(2)(B), Penal Code.

4-22 SECTION 13. Section 524.015(b), Transportation Code, is
4-23 amended to read as follows:

4-24 (b) A suspension may not be imposed under this chapter on a
4-25 person who is acquitted of a criminal charge under Section 49.04,
4-26 49.045, 49.06, 49.061, 49.07, or 49.08, Penal Code, or Section
4-27 106.041, Alcoholic Beverage Code, arising from the occurrence that
4-28 was the basis for the suspension. If a suspension was imposed
4-29 before the acquittal, the department shall rescind the suspension
4-30 and shall remove any reference to the suspension from the person's
4-31 computerized driving record.

4-32 SECTION 14. Section 524.022(b), Transportation Code, is
4-33 amended to read as follows:

4-34 (b) A period of suspension under this chapter for a minor
4-35 is:

4-36 (1) 60 days if the minor has not been previously
4-37 convicted of an offense under Section 106.041, Alcoholic Beverage
4-38 Code, or Section 49.04, 49.045, ~~or~~ 49.06, or 49.061, Penal Code,
4-39 or an offense under Section 49.07 or 49.08, Penal Code, involving
4-40 the operation of a motor vehicle or a watercraft;

4-41 (2) 120 days if the minor has been previously
4-42 convicted once of an offense listed by Subdivision (1); or

4-43 (3) 180 days if the minor has been previously
4-44 convicted twice or more of an offense listed by Subdivision (1).

4-45 SECTION 15. Section 524.023, Transportation Code, is
4-46 amended to read as follows:

4-47 Sec. 524.023. APPLICATION OF SUSPENSION UNDER OTHER LAWS.

4-48 (a) If a person is convicted of an offense under Section 106.041,
4-49 Alcoholic Beverage Code, or Section 49.04, 49.045, 49.06, 49.061,
4-50 49.07, or 49.08, Penal Code, and if any conduct on which that
4-51 conviction is based is a ground for a driver's license suspension
4-52 under this chapter and Section 106.041, Alcoholic Beverage Code,
4-53 Subchapter O, Chapter 521, or Subchapter H, Chapter 522, each of the
4-54 suspensions shall be imposed.

4-55 (b) The court imposing a driver's license suspension under
4-56 Section 106.041, Alcoholic Beverage Code, or Chapter 521 or 522 as
4-57 required by Subsection (a) shall credit a period of suspension
4-58 imposed under this chapter toward the period of suspension required
4-59 under Section 106.041, Alcoholic Beverage Code, or Subchapter O,
4-60 Chapter 521, or Subchapter H, Chapter 522, unless the person was
4-61 convicted of an offense under Article 67011-1, Revised Statutes, as
4-62 that law existed before September 1, 1994, Section 19.05(a)(2),
4-63 Penal Code, as that law existed before September 1, 1994, Section
4-64 49.04, 49.045, 49.06, 49.061, 49.07, or 49.08, Penal Code, or
4-65 Section 106.041, Alcoholic Beverage Code, before the date of the
4-66 conviction on which the suspension is based, in which event credit
4-67 may not be given.

4-68 SECTION 16. Section 524.042(a), Transportation Code, is
4-69 amended to read as follows:

5-1 (a) A suspension of a driver's license under this chapter is
5-2 stayed on the filing of an appeal petition only if:

5-3 (1) the person's driver's license has not been
5-4 suspended as a result of an alcohol-related or drug-related
5-5 enforcement contact during the five years preceding the date of the
5-6 person's arrest; and

5-7 (2) the person has not been convicted during the 10
5-8 years preceding the date of the person's arrest of an offense under:

5-9 (A) Article 67011-1, Revised Statutes, as that
5-10 law existed before September 1, 1994;

5-11 (B) Section 19.05(a)(2), Penal Code, as that law
5-12 existed before September 1, 1994;

5-13 (C) Section 49.04, 49.045, ~~49.06~~, 49.061,
5-14 Penal Code;

5-15 (D) Section 49.07 or 49.08, Penal Code, if the
5-16 offense involved the operation of a motor vehicle or a watercraft;
5-17 or

5-18 (E) Section 106.041, Alcoholic Beverage Code.

5-19 SECTION 17. Section 724.012(b), Transportation Code, is
5-20 amended to read as follows:

5-21 (b) A peace officer shall require the taking of a specimen
5-22 of the person's breath or blood under any of the following
5-23 circumstances if the officer arrests the person for an offense
5-24 under Chapter 49, Penal Code, involving the operation of a motor
5-25 vehicle or a watercraft and the person refuses the officer's
5-26 request to submit to the taking of a specimen voluntarily:

5-27 (1) the person was the operator of a motor vehicle or a
5-28 watercraft involved in an accident that the officer reasonably
5-29 believes occurred as a result of the offense and, at the time of the
5-30 arrest, the officer reasonably believes that as a direct result of
5-31 the accident:

5-32 (A) any individual has died or will die;

5-33 (B) an individual other than the person has
5-34 suffered serious bodily injury; or

5-35 (C) an individual other than the person has
5-36 suffered bodily injury and been transported to a hospital or other
5-37 medical facility for medical treatment;

5-38 (2) the offense for which the officer arrests the
5-39 person is an offense under Section 49.045, Penal Code; or

5-40 (3) at the time of the arrest, the officer possesses or
5-41 receives reliable information from a credible source that the
5-42 person:

5-43 (A) has been previously convicted of or placed on
5-44 community supervision for an offense under Section 49.045, 49.07,
5-45 or 49.08, Penal Code, or an offense under the laws of another state
5-46 containing elements substantially similar to the elements of an
5-47 offense under those sections; or

5-48 (B) on two or more occasions, has been previously
5-49 convicted of or placed on community supervision for an offense
5-50 under Section 49.04, 49.05, 49.06, 49.061, or 49.065, Penal Code,
5-51 or an offense under the laws of another state containing elements
5-52 substantially similar to the elements of an offense under those
5-53 sections.

5-54 SECTION 18. To the extent of any conflict, this Act prevails
5-55 over another Act of the 87th Legislature, Regular Session, 2021,
5-56 relating to nonsubstantive additions to and corrections in enacted
5-57 codes.

5-58 SECTION 19. This Act takes effect September 1, 2021.

5-59 * * * * *