

1-1 By: Smith, et al. (Senate Sponsor - King) H.B. No. 1163  
 1-2 (In the Senate - Received from the House May 3, 2023;  
 1-3 May 15, 2023, read first time and referred to Committee on Criminal  
 1-4 Justice; May 19, 2023, reported favorably by the following vote:  
 1-5 Yeas 7, Nays 0; May 19, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			

1-15 A BILL TO BE ENTITLED  
 1-16 AN ACT

1-17 relating to creating the criminal offense of boating while  
 1-18 intoxicated with a child passenger; changing the eligibility for  
 1-19 deferred adjudication community supervision.

1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-21 SECTION 1. Chapter 49, Penal Code, is amended by adding  
 1-22 Section 49.061 to read as follows:

1-23 Sec. 49.061. BOATING WHILE INTOXICATED WITH CHILD  
 1-24 PASSENGER. (a) A person commits an offense if:

1-25 (1) the person is intoxicated while operating a  
 1-26 watercraft; and

1-27 (2) the watercraft being operated by the person is  
 1-28 occupied by a passenger who is younger than 15 years of age.

1-29 (b) An offense under this section is a state jail felony.

1-30 SECTION 2. Sections 49.09(b) and (d), Penal Code, are  
 1-31 amended to read as follows:

1-32 (b) An offense under Section 49.04, 49.045, 49.05, 49.06,  
 1-33 49.061, or 49.065 is a felony of the third degree if it is shown on  
 1-34 the trial of the offense that the person has previously been  
 1-35 convicted:

1-36 (1) one time of an offense under Section 49.08 or an  
 1-37 offense under the laws of another state if the offense contains  
 1-38 elements that are substantially similar to the elements of an  
 1-39 offense under Section 49.08; or

1-40 (2) two times of any other offense relating to the  
 1-41 operating of a motor vehicle while intoxicated, operating an  
 1-42 aircraft while intoxicated, operating a watercraft while  
 1-43 intoxicated, or operating or assembling an amusement ride while  
 1-44 intoxicated.

1-45 (d) For the purposes of this section, a conviction for an  
 1-46 offense under Section 49.04, 49.045, 49.05, 49.06, 49.061, 49.065,  
 1-47 49.07, or 49.08 that occurs on or after September 1, 1994, is a  
 1-48 final conviction, whether the sentence for the conviction is  
 1-49 imposed or probated.

1-50 SECTION 3. Section 49.09(c)(3), Penal Code, is amended to  
 1-51 read as follows:

1-52 (3) "Offense of operating a watercraft while  
 1-53 intoxicated" means:

1-54 (A) an offense under Section 49.06 or 49.061;

1-55 (B) an offense under Section 49.07 or 49.08, if  
 1-56 the vehicle operated was a watercraft;

1-57 (C) an offense under Section 31.097, Parks and  
 1-58 Wildlife Code, as that law existed before September 1, 1994;

1-59 (D) an offense under Section 19.05(a)(2), as that  
 1-60 law existed before September 1, 1994, if the vehicle operated was a  
 1-61 watercraft; or

2-1 (E) an offense under the laws of another state  
2-2 that prohibit the operation of a watercraft while intoxicated.

2-3 SECTION 4. Section 49.10, Penal Code, is amended to read as  
2-4 follows:

2-5 Sec. 49.10. NO DEFENSE. In a prosecution under Section  
2-6 49.031 [~~49.03~~], 49.04, 49.045, 49.05, 49.06, 49.061, 49.065, 49.07,  
2-7 or 49.08, the fact that the defendant is or has been entitled to use  
2-8 the alcohol, controlled substance, drug, dangerous drug, or other  
2-9 substance is not a defense.

2-10 SECTION 5. Section 106.041(g), Alcoholic Beverage Code, is  
2-11 amended to read as follows:

2-12 (g) An offense under this section is not a lesser included  
2-13 offense under Section 49.04, 49.045, [~~or~~] 49.06, or 49.061, Penal  
2-14 Code.

2-15 SECTION 6. Article 16.23(b), Code of Criminal Procedure, is  
2-16 amended to read as follows:

2-17 (b) Subsection (a) does not apply to a person who is accused  
2-18 of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.061,  
2-19 49.065, 49.07, or 49.08, Penal Code.

2-20 SECTION 7. Article 17.441(a), Code of Criminal Procedure,  
2-21 is amended to read as follows:

2-22 (a) Except as provided by Subsection (b), a magistrate shall  
2-23 require on release that a defendant charged with a subsequent  
2-24 offense under Section 49.04, 49.05, [~~or~~] 49.06, or 49.061, Penal  
2-25 Code, or an offense under Section 49.045, 49.07, or 49.08 of that  
2-26 code:

2-27 (1) have installed on the motor vehicle owned by the  
2-28 defendant or on the vehicle most regularly driven by the defendant,  
2-29 a device that uses a deep-lung breath analysis mechanism to make  
2-30 impractical the operation of a motor vehicle if ethyl alcohol is  
2-31 detected in the breath of the operator; and

2-32 (2) not operate any motor vehicle unless the vehicle  
2-33 is equipped with that device.

2-34 SECTION 8. Article 18.01(j), Code of Criminal Procedure, is  
2-35 amended to read as follows:

2-36 (j) Any magistrate who is an attorney licensed by this state  
2-37 may issue a search warrant under Article 18.02(a)(10) to collect a  
2-38 blood specimen from a person who:

2-39 (1) is arrested for an offense under Section 49.04,  
2-40 49.045, 49.05, 49.06, 49.061, 49.065, 49.07, or 49.08, Penal Code;  
2-41 and

2-42 (2) refuses to submit to a breath or blood alcohol  
2-43 test.

2-44 SECTION 9. Article 18.067, Code of Criminal Procedure, is  
2-45 amended to read as follows:

2-46 Art. 18.067. EXECUTION OF WARRANT FOR BLOOD SPECIMEN IN  
2-47 INTOXICATION OFFENSE. Notwithstanding any other law, a warrant  
2-48 issued under Article 18.02(a)(10) to collect a blood specimen from  
2-49 a person suspected of committing an intoxication offense under  
2-50 Section 49.04, 49.045, 49.05, 49.06, 49.061, 49.065, 49.07, or  
2-51 49.08, Penal Code, may be executed:

2-52 (1) in any county adjacent to the county in which the  
2-53 warrant was issued; and

2-54 (2) by any law enforcement officer authorized to make  
2-55 an arrest in the county of execution.

2-56 SECTION 10. Article 42A.102(b), Code of Criminal Procedure,  
2-57 is amended to read as follows:

2-58 (b) In all other cases, the judge may grant deferred  
2-59 adjudication community supervision unless:

2-60 (1) the defendant is charged with an offense:

2-61 (A) under Section 20A.02, 20A.03, 49.045, 49.05,  
2-62 49.061, 49.065, 49.07, or 49.08, Penal Code;

2-63 (B) under Section 49.04 or 49.06, Penal Code,  
2-64 and, at the time of the offense:

2-65 (i) the defendant held a commercial  
2-66 driver's license or a commercial learner's permit; or

2-67 (ii) the defendant's alcohol concentration,  
2-68 as defined by Section 49.01, Penal Code, was 0.15 or more;

2-69 (C) for which punishment may be increased under

3-1 Section 49.09, Penal Code;

3-2 (D) for which punishment may be increased under

3-3 Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it

3-4 is shown that the defendant has been previously convicted of an

3-5 offense for which punishment was increased under any one of those

3-6 subsections; or

3-7 (E) under Section 481.1123, Health and Safety

3-8 Code, that is punishable under Subsection (d), (e), or (f) of that

3-9 section;

3-10 (2) the defendant:

3-11 (A) is charged with an offense under Section

3-12 21.11, 22.011, 22.021, 43.04, or 43.05, Penal Code, regardless of

3-13 the age of the victim, or a felony described by Article 42A.453(b),

3-14 other than a felony described by Subdivision (1)(A) or (3)(B) of

3-15 this subsection; and

3-16 (B) has previously been placed on community

3-17 supervision for an offense under Paragraph (A);

3-18 (3) the defendant is charged with an offense under:

3-19 (A) Section 21.02, Penal Code; or

3-20 (B) Section 22.021, Penal Code, that is

3-21 punishable under Subsection (f) of that section or under Section

3-22 12.42(c)(3) or (4), Penal Code; or

3-23 (4) the defendant is charged with an offense under

3-24 Section 19.02, Penal Code, except that the judge may grant deferred

3-25 adjudication community supervision on determining that the

3-26 defendant did not cause the death of the deceased, did not intend to

3-27 kill the deceased or another, and did not anticipate that a human

3-28 life would be taken.

3-29 SECTION 11. Articles 42A.408(c) and (d), Code of Criminal

3-30 Procedure, are amended to read as follows:

3-31 (c) The court shall require as a condition of community

3-32 supervision that a defendant described by Subsection (b) have an

3-33 ignition interlock device installed on the motor vehicle owned by

3-34 the defendant or on the vehicle most regularly driven by the

3-35 defendant and that the defendant not operate any motor vehicle

3-36 unless the vehicle is equipped with that device if:

3-37 (1) it is shown on the trial of the offense that an

3-38 analysis of a specimen of the defendant's blood, breath, or urine

3-39 showed an alcohol concentration level of 0.15 or more at the time

3-40 the analysis was performed;

3-41 (2) the defendant is placed on community supervision

3-42 after conviction of an offense under Sections 49.04-49.061

3-43 [~~49.04-49.06~~], Penal Code, for which the defendant is punished

3-44 under Section 49.09(a) or (b), Penal Code; or

3-45 (3) the court determines under Subsection (d) that the

3-46 defendant has one or more previous convictions under Sections

3-47 49.04-49.08, Penal Code.

3-48 (d) Before placing on community supervision a defendant

3-49 convicted of an offense under Sections 49.04-49.08, Penal Code, the

3-50 court shall determine from criminal history record information

3-51 maintained by the Department of Public Safety whether the defendant

3-52 has one or more previous convictions under any of those sections. A

3-53 previous conviction may not be used for purposes of restricting a

3-54 defendant to the operation of a motor vehicle equipped with an

3-55 ignition interlock device under Subsection (c) if:

3-56 (1) the previous conviction was a final conviction

3-57 under Section 49.04, 49.045, 49.05, 49.06, 49.061, 49.07, or 49.08,

3-58 Penal Code, and was for an offense committed before the beginning of

3-59 the 10-year period preceding the date of the instant offense for

3-60 which the defendant was convicted and placed on community

3-61 supervision; and

3-62 (2) the defendant has not been convicted of an offense

3-63 under Section 49.04, 49.045, 49.05, 49.06, 49.061, 49.07, or 49.08,

3-64 Penal Code, committed within the 10-year period preceding the date

3-65 of the instant offense for which the defendant was convicted and

3-66 placed on community supervision.

3-67 SECTION 12. Section 12.203(a), Parks and Wildlife Code, is

3-68 amended to read as follows:

3-69 (a) A person may apply to the committee for a reward to be

4-1 paid from the operation game thief fund if the person furnishes  
 4-2 information leading to the arrest and conviction of a person for a  
 4-3 violation of this code or any of the following laws or a regulation  
 4-4 adopted under this code or any of the following laws:

4-5 (1) Subchapter B, Chapter 365, Health and Safety Code;

4-6 (2) Subchapter E, Chapter 191, Natural Resources Code;

4-7 (3) Chapter 28 or Section 30.05, 31.03, 31.11, 37.10,  
 4-8 49.06, 49.061, 49.07, or 49.08, Penal Code;

4-9 (4) Chapter 160, Tax Code; or

4-10 (5) Subchapter E, Chapter 7, or Subchapter D, Chapter  
 4-11 26, Water Code.

4-12 SECTION 13. Section 524.011(a), Transportation Code, is  
 4-13 amended to read as follows:

4-14 (a) An officer arresting a person shall comply with  
 4-15 Subsection (b) if:

4-16 (1) the person is arrested for an offense under  
 4-17 Section 49.04, 49.045, [~~or~~] 49.06, or 49.061, Penal Code, or an  
 4-18 offense under Section 49.07 or 49.08 of that code involving the  
 4-19 operation of a motor vehicle or watercraft, submits to the taking of  
 4-20 a specimen of breath or blood and an analysis of the specimen shows  
 4-21 the person had an alcohol concentration of a level specified by  
 4-22 Section 49.01(2)(B), Penal Code; or

4-23 (2) the person is a minor arrested for an offense under  
 4-24 Section 106.041, Alcoholic Beverage Code, or Section 49.04, 49.045,  
 4-25 [~~or~~] 49.06, or 49.061, Penal Code, or an offense under Section 49.07  
 4-26 or 49.08, Penal Code, involving the operation of a motor vehicle or  
 4-27 watercraft and:

4-28 (A) the minor is not requested to submit to the  
 4-29 taking of a specimen; or

4-30 (B) the minor submits to the taking of a specimen  
 4-31 and an analysis of the specimen shows that the minor had an alcohol  
 4-32 concentration of greater than .00 but less than the level specified  
 4-33 by Section 49.01(2)(B), Penal Code.

4-34 SECTION 14. Section 524.015(b), Transportation Code, is  
 4-35 amended to read as follows:

4-36 (b) A suspension may not be imposed under this chapter on a  
 4-37 person who is acquitted of a criminal charge under Section 49.04,  
 4-38 49.045, 49.06, 49.061, 49.07, or 49.08, Penal Code, or Section  
 4-39 106.041, Alcoholic Beverage Code, arising from the occurrence that  
 4-40 was the basis for the suspension. If a suspension was imposed before  
 4-41 the acquittal, the department shall rescind the suspension and  
 4-42 shall remove any reference to the suspension from the person's  
 4-43 computerized driving record.

4-44 SECTION 15. Section 524.022(b), Transportation Code, is  
 4-45 amended to read as follows:

4-46 (b) A period of suspension under this chapter for a minor  
 4-47 is:

4-48 (1) 60 days if the minor has not been previously  
 4-49 convicted of an offense under Section 106.041, Alcoholic Beverage  
 4-50 Code, or Section 49.04, 49.045, [~~or~~] 49.06, or 49.061, Penal Code,  
 4-51 or an offense under Section 49.07 or 49.08, Penal Code, involving  
 4-52 the operation of a motor vehicle or a watercraft;

4-53 (2) 120 days if the minor has been previously  
 4-54 convicted once of an offense listed by Subdivision (1); or

4-55 (3) 180 days if the minor has been previously  
 4-56 convicted twice or more of an offense listed by Subdivision (1).

4-57 SECTION 16. Section 524.023, Transportation Code, is  
 4-58 amended to read as follows:

4-59 Sec. 524.023. APPLICATION OF SUSPENSION UNDER OTHER LAWS.

4-60 (a) If a person is convicted of an offense under Section 106.041,  
 4-61 Alcoholic Beverage Code, or Section 49.04, 49.045, 49.06, 49.061,  
 4-62 49.07, or 49.08, Penal Code, and if any conduct on which that  
 4-63 conviction is based is a ground for a driver's license suspension  
 4-64 under this chapter and Section 106.041, Alcoholic Beverage Code,  
 4-65 Subchapter O, Chapter 521, or Subchapter H, Chapter 522, each of the  
 4-66 suspensions shall be imposed.

4-67 (b) The court imposing a driver's license suspension under  
 4-68 Section 106.041, Alcoholic Beverage Code, or Chapter 521 or 522 as  
 4-69 required by Subsection (a) shall credit a period of suspension

5-1 imposed under this chapter toward the period of suspension required  
5-2 under Section 106.041, Alcoholic Beverage Code, or Subchapter O,  
5-3 Chapter 521, or Subchapter H, Chapter 522, unless the person was  
5-4 convicted of an offense under Article 67011-1, Revised Statutes, as  
5-5 that law existed before September 1, 1994, Section 19.05(a)(2),  
5-6 Penal Code, as that law existed before September 1, 1994, Section  
5-7 49.04, 49.045, 49.06, 49.061, 49.07, or 49.08, Penal Code, or  
5-8 Section 106.041, Alcoholic Beverage Code, before the date of the  
5-9 conviction on which the suspension is based, in which event credit  
5-10 may not be given.

5-11 SECTION 17. Section 524.042(a), Transportation Code, is  
5-12 amended to read as follows:

5-13 (a) A suspension of a driver's license under this chapter is  
5-14 stayed on the filing of an appeal petition only if:

5-15 (1) the person's driver's license has not been  
5-16 suspended as a result of an alcohol-related or drug-related  
5-17 enforcement contact during the five years preceding the date of the  
5-18 person's arrest; and

5-19 (2) the person has not been convicted during the 10  
5-20 years preceding the date of the person's arrest of an offense under:

5-21 (A) Article 67011-1, Revised Statutes, as that  
5-22 law existed before September 1, 1994;

5-23 (B) Section 19.05(a)(2), Penal Code, as that law  
5-24 existed before September 1, 1994;

5-25 (C) Section 49.04, 49.045, ~~or~~ 49.06, or 49.061,  
5-26 Penal Code;

5-27 (D) Section 49.07 or 49.08, Penal Code, if the  
5-28 offense involved the operation of a motor vehicle or a watercraft;  
5-29 or

5-30 (E) Section 106.041, Alcoholic Beverage Code.

5-31 SECTION 18. Section 724.012(b), Transportation Code, is  
5-32 amended to read as follows:

5-33 (b) Subject to Subsection (a-1), a peace officer shall  
5-34 require the taking of a specimen of the person's breath or blood  
5-35 under any of the following circumstances if the officer arrests the  
5-36 person for an offense under Chapter 49, Penal Code, involving the  
5-37 operation of a motor vehicle or a watercraft and the person refuses  
5-38 the officer's request to submit to the taking of a specimen  
5-39 voluntarily:

5-40 (1) the person was the operator of a motor vehicle or a  
5-41 watercraft involved in an accident that the officer reasonably  
5-42 believes occurred as a result of the offense and, at the time of the  
5-43 arrest, the officer reasonably believes that as a direct result of  
5-44 the accident an individual other than the person has suffered  
5-45 bodily injury and been transported to a hospital or other medical  
5-46 facility for medical treatment;

5-47 (2) the offense for which the officer arrests the  
5-48 person is an offense under Section 49.045 or 49.061, Penal Code; or

5-49 (3) at the time of the arrest, the officer possesses or  
5-50 receives reliable information from a credible source that the  
5-51 person:

5-52 (A) has been previously convicted of or placed on  
5-53 community supervision for an offense under Section 49.045, 49.061,  
5-54 49.07, or 49.08, Penal Code, or an offense under the laws of another  
5-55 state containing elements substantially similar to the elements of  
5-56 an offense under those sections; or

5-57 (B) on two or more occasions, has been previously  
5-58 convicted of or placed on community supervision for an offense  
5-59 under Section 49.04, 49.05, 49.06, or 49.065, Penal Code, or an  
5-60 offense under the laws of another state containing elements  
5-61 substantially similar to the elements of an offense under those  
5-62 sections.

5-63 SECTION 19. This Act takes effect September 1, 2023.

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