

BILL ANALYSIS

Senate Research Center
85R6438 GCB-F

S.B. 761
By: Menéndez
Criminal Justice
5/5/2017
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

District attorneys from across the state have encountered a problem where defendants who are being charged with their first driving while intoxicated (DWI) offense are pleading to a lesser crime, such as obstructing a highway, in order to avoid jail time. This system has created an option that lacks necessary rehabilitation, and permanently leaves a criminal charge on their record.

S.B. 761 provides prosecutors with the option to offer deferred adjudication to first time DWI offenders. In doing so, one of the most important advantages of S.B. 761 is the option to allow rehabilitation for this defendant. Deferred adjudication was historically available for DWI offenses up until the mid-1980s when various interest groups sought its restriction due to the lack of community protection for the repeat DWI offender. S.B. 761 solves this issue by holding a repeat defendant who completed deferred adjudication accountable, by recognizing their initial charge upon subsequent conviction.

Furthermore, in allowing judges to grant deferred adjudication under community supervision, S.B. 761 entails the use of an ignition interlock device on the motor vehicle that the defendant owns or primarily uses. What sets S.B. 761 apart from past legislative attempts is that prosecutors from across the state have worked together to solve the specific issues that S.B. 761 sets to amend. In addition, this proposed legislation has gained support of formerly concerned interest groups.

As proposed, S.B. 761 amends current law relating to the punishment for certain intoxication offenses and the eligibility for deferred adjudication community supervision of defendants who committed certain intoxication offenses.

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 Article 42A.102(b), Code of Criminal Procedure, as follows:

(b) Authorizes the judge, in all other cases, to grant deferred adjudication community supervision unless:

(1) the defendant is charged with an offense:

(A) under Section 49.045 (Driving While Intoxicated with Child Passenger), 49.07 (Intoxication Assault), or 49.08 (Intoxication Manslaughter), rather than Sections 49.04 (Driving While Intoxicated) through 49.08, Penal Code;

(B) under Section 49.04, 49.05 (Flying While Intoxicated), 49.06 (Boating While Intoxicated), or 49.065 (Assembling or Operating an Amusement Ride While Intoxicated), Penal Code, and, at the time of the offense, the

defendant held a commercial driver's license or a commercial learner's permit;

(C) for which punishment may be increased under Section 49.09 (Enhanced Offenses and Penalties), Penal Code; or

(D) creates this paragraph from existing text;

(2) through (4) makes no changes to these subdivisions.

SECTION 2. Amends Article 42A.408, Code of Criminal Procedure, by adding Subsection (e-1), as follows:

(e-1) Requires a judge granting deferred adjudication community supervision to a defendant for an offense under Section 49.04, 49.05, 49.06, or 49.065, Penal Code, to require the defendant as a condition of community supervision to 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 that is not equipped with that device. Provides this subsection applies regardless of whether the defendant would be required to have an ignition interlock installed on conviction of the offense for which deferred adjudication community supervision is granted.

SECTION 3. Amends Section 411.074(b), Government Code, as follows:

(b) Prohibits a person from being granted an order of nondisclosure of criminal history record information under this subchapter and provides that the person is not entitled to petition the court for an order under this subchapter if:

(1) makes a nonsubstantive change;

(2) the defendant was placed on deferred adjudication community supervision for an offense under Section 49.04, 49.05, 49.06, or 49.065, Penal Code; or

(3) creates this subdivision from existing text.

SECTION 4. Amends Sections 49.09(b) and (g), Penal Code, as follows:

(b) Provides that an offense under Section 49.04, 49.045, 49.05, 49.06, 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 of certain offenses.

(g) Authorizes a conviction to be used for purposes of enhancement under this section or enhancement under Subchapter D (Exceptional Sentences), Chapter 12 (Punishments), but not under both this section and Subchapter D. Provides that for purposes of this section, a person is considered to have been convicted of an offense under Section 49.04, 49.05, 49.06, or 49.065, if the person was placed on deferred adjudication community supervision for the offense under Article 42A.102 (Eligibility for Deferred Adjudication Community Supervision), Code of Criminal Procedure.

SECTION 5. Makes application of Articles 42A.102 and 42A.408, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 6. Makes application of Section 49.09, Penal Code, as amended by this Act, prospective.

SECTION 7. Effective date: September 1, 2017.