

BILL ANALYSIS

Senate Research Center

H.B. 3582
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

It has been suggested that granting deferred adjudication community supervision to certain first-time DWI offenders would allow these offenders to receive the treatment for alcoholism they need and reduce the risk of reoffending. H.B. 3582 seeks to provide this by authorizing judges to grant deferred adjudication community supervision for defendants who commit certain intoxication offenses and revises certain aspects of the law relating to DWI.

H.B. 3582 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, and enhances a criminal penalty.

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 17.441(a), Code of Criminal Procedure, to require a magistrate, except as provided by Subsection (b), to require on release that a defendant charged with a subsequent offense under Section 49.04 (Driving While Intoxicated), 49.05 (Flying While Intoxicated), or 49.06 (Boating While Intoxicated), Penal Code, rather than requiring on release that a defendant charged with a subsequent offense under Sections 49.04–49.06, Penal Code, or an offense under Section 49.07 (Notification of Investigating Official) or 49.08 (Information Leading to an Inquest) of that code certain actions regarding the operation of a motor vehicle.

SECTION 2. 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), 49.05, 49.065 (Assembling or Operating an Amusement Ride While Intoxicated), 49.07, or 49.08, Penal Code, rather than under Sections 49.04–49.08, 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 (Definitions), Penal Code, was 0.16 or more;

(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)–(4) makes no changes to these subdivisions.

SECTION 3. 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 or 49.06, Penal Code, to require that the defendant as a condition of community supervision 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, unless the judge finds that restricting the defendant to the operation of a motor vehicle equipped with an ignition interlock device would not be in the best interest of society and enters that finding in the record. Provides that this subsection applies regardless of whether the defendant would be required to have an ignition interlock device installed on conviction of the offense for which deferred adjudication community supervision is granted. Authorizes the judge, if the judge determines the defendant is unable to pay for the ignition interlock device, to impose a reasonable payment schedule, as provided by Subsection (f). Authorizes the judge, if the defendant provides the court evidence under Section 708.158 (Indigent Status and Reduction of Surcharges), Transportation Code, sufficient to establish that the defendant is indigent for purposes of that section, to enter in the record a finding that the defendant is indigent and reduce the costs to the defendant by ordering a waiver of the installation charge for the ignition interlock device and a 50 percent reduction of the monthly device monitoring fee. Provides that a reduction in costs ordered under this subsection does not apply to any fees that may be assessed against the defendant if the ignition interlock device detects ethyl alcohol on the breath of the person attempting to operate the motor vehicle.

SECTION 4. Amends Section 411.072(a), Government Code, as follows:

(a) Makes a nonsubstantive change to Paragraph (a)(1)(A). Provides that this section applies only to a person who:

(1) was placed on deferred adjudication community supervision under Subchapter C (Deferred Adjudication Community Supervision), Chapter 42A, Code of Criminal Procedure, for a misdemeanor other than a misdemeanor:

(A) under:

(i) Section 49.04 or 49.06, Penal Code; or

(ii) creates this subparagraph from existing text; or

(B) makes no changes to this paragraph; and

(2) makes no changes to this subdivision.

SECTION 5. Amends Section 411.0725(a), Government Code, as follows:

(a) Provides that this section applies only to a person placed on deferred adjudication community supervision under Subchapter C, Chapter 42A, Code of Criminal Procedure, who:

(1) creates this subdivision from existing text and makes a nonsubstantive change; and

(2) was placed on deferred adjudication community supervision for an offense other than an offense under Section 49.04 or 49.06, Penal Code.

SECTION 6. Amends Subchapter E-1, Chapter 411, Government Code, by adding Section 411.0726, as follows:

Sec. 411.0726. PROCEDURE FOR DEFERRED ADJUDICATION COMMUNITY SUPERVISION; CERTAIN DRIVING WHILE INTOXICATED AND BOATING WHILE INTOXICATED MISDEMEANORS. (a) Provides that this section applies only to a person who was placed on deferred adjudication community supervision under Subchapter C, Chapter 42A, Code of Criminal Procedure, for a misdemeanor:

(1) under Section 49.04 or 49.06, Penal Code; and

(2) with respect to which no affirmative finding under Article 42A.105(f) (relating to requiring a judge, if the judge places on deferred adjudication community supervision a defendant charged with a misdemeanor other than a certain misdemeanor to make an affirmative finding of fact and file a certain statement of that affirmative finding), Code of Criminal Procedure, was filed in the papers of the case.

(b) Authorizes a person, notwithstanding any other provision of this subchapter or Subchapter F, to petition the court that placed the person on deferred adjudication community supervision for an order of nondisclosure if the person:

(1) receives a discharge and dismissal under Article 42A.111 (Dismissal and Discharge), Code of Criminal Procedure;

(2) satisfies the requirements of Section 411.074 (Required Conditions For Receiving an Order of Nondisclosure); and

(3) has never been previously convicted of or placed on deferred adjudication community supervision for another offense, other than a traffic offense that is punishable by fine only.

(c) Requires a petition for an order of nondisclosure of criminal history record information filed under this section to include evidence that the person is entitled to file the petition.

(d) Requires the court, except as provided by Subsection (e), after notice to the state, an opportunity for a hearing, and a determination that the person is entitled to file the petition and issuance of an order of nondisclosure of criminal history record information is in the best interest of justice, to issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication community supervision.

(e) Prohibits a court from issuing an order of nondisclosure of criminal history record information under this section if the attorney representing the state presents evidence sufficient to the court demonstrating that the commission of the offense for which the order is sought resulted in a motor vehicle accident involving another person, including a passenger in a motor vehicle operated by the person seeking the order of nondisclosure.

(f) Authorizes a person to petition the court that placed the person on deferred adjudication community supervision for an order of nondisclosure of criminal history record information under this section only on or after:

(1) the second anniversary of the date of completion of the deferred adjudication community supervision and the discharge and dismissal of the case, if the person successfully complied with a condition of community supervision that, for a period of not less than six months, restricted the person's operation of a motor vehicle to a motor vehicle equipped with an ignition interlock device; or

(2) the fifth anniversary of the date of completion of the deferred adjudication community supervision and the discharge and dismissal of the case, if the court that placed the person on deferred adjudication community supervision did not order the person to comply with a condition of community supervision described by Subdivision (1) for the period described by that subdivision.

SECTION 7. 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) Provides that, for purposes of this section, a person is considered to have been convicted of an offense under Section 49.04 or 49.06 if the person was placed on deferred adjudication community supervision for the offense under Article 42A.102, Code of Criminal Procedure.

SECTION 8. Provides that Article 17.441, Code of Criminal Procedure, applies to a defendant released on bond on or after the effective date of this Act, regardless of whether the offense for which the person was arrested occurred before, on, or after that date.

SECTION 9. Makes application of Articles 42A.102 and 42A.408, Code of Criminal Procedure, as amended by this Act, prospective. Provides that, for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 10. Makes application of Section 49.09, Penal Code, as amended by this Act, prospective. Provides that, for purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 11. Effective date: September 1, 2019.