

- SUBJECT:** Allowing deferred adjudication for certain first intoxication offenses
- COMMITTEE:** Corrections — committee substitute recommended
- VOTE:** 9 ayes — White, Allen, Bailes, Bowers, Dean, Morales, Neave, Sherman, Stephenson
- 0 nays
- WITNESSES:** For — Jennifer Tharp, Comal County Criminal District Attorney; Laura Nodolf, Midland County District Attorneys Office; Jaime Gutierrez, Mothers Against Drunk Driving; (*Registered, but did not testify*: Eric Carcerano, Chambers County District Attorney’s Office; Ron Lewis, Coalition of Ignition Interlock Manufacturers; Alexandra Guio, Dallas County Criminal District Attorney John Creuzot; Brandy Nannini, Responsibility.org; Reginald Smith and Douglas Smith, Texas Criminal Justice Coalition; Mike Gomez, Texas Municipal Police Association)
- Against — None
- On — Allen Place, Texas Criminal Defense Lawyers Association; (*Registered, but did not testify*: Carey Green, Texas Department of Criminal Justice; Mollee Westfall)
- BACKGROUND:** Under Code of Criminal Procedure art. 42A.102, deferred adjudication is a form of probation under which a judge, after receiving a plea of guilty or no contest, postpones the determination of guilt while the defendant serves probation. It can result in the defendant being discharged and dismissed upon successful completion of the probation.
- Art. 42A.102(b) lists numerous offenses and circumstances under which judges are prohibited from granting deferred adjudication. These include defendants charged with driving while intoxicated, driving while intoxicated with a child passenger, flying while intoxicated, boating while intoxicated, assembling or operating an amusement ride while intoxicated,

intoxication assault, and intoxication manslaughter.

Penal Code sec. 49.09 establishes increased penalties for certain intoxication offenses, including driving while intoxicated and boating while intoxicated, if the person had a previous conviction for certain intoxication offenses. Penalties also can be enhanced under this section if offenses have certain other elements, such as causing serious bodily injury or death.

Government Code sec. 411.081 governs orders of nondisclosure. Under this section, if a person placed on deferred adjudication receives a discharge and fulfills certain requirements, the person may petition the court for an order of nondisclosure. Orders of nondisclosure prohibit criminal justice agencies from disclosing to the public criminal history record information related to the offense.

Some have noted that the lack of ability to offer deferred adjudication for certain first-time intoxication offenses with low blood alcohol level can hinder the ability of prosecutors to craft appropriate penalties and could result in some pleading guilty to lesser crimes, making it more difficult to address repeat offenders.

**DIGEST:**

CSHB 3582 would allow judges to grant deferred adjudication for certain driving while intoxicated and boating while intoxicated offenses, would require that defendants in these cases install ignition interlock devices, and would establish procedures for defendants in these cases to ask a court for an order of nondisclosure of the criminal record information related to deferred adjudication.

**Deferred adjudication.** The bill would allow judges to grant deferred adjudication for first-time driving- and boating-while-intoxicated offenses, unless at the time of the offense the defendant held a commercial driver's license or a commercial learner's permit or the defendant's alcohol concentration was 0.16 or more.

Deferred adjudication would continue to be prohibited for the other

intoxication offenses for which it is currently prohibited. The bill would add a new prohibition on deferred adjudication for any of the intoxication offenses that qualify for an increased penalty under Penal Code sec. 49.09.

**Ignition interlock device.** Judges granting deferred adjudication for driving or boating while intoxicated would have to require defendants as a condition of probation to have an ignition interlock device installed on their vehicle or the vehicle they most regularly drive. Judges also would have to require that the defendant not operate any motor vehicle that was not equipped with that device, unless the judge found that the restriction would not be in the best interest of society. These provisions would apply regardless of whether the defendant would be required to have an ignition interlock device installed if convicted of the offense.

A judge could impose a payment schedule for the device after determining the defendant was unable to pay for the device. A judge also could reduce the cost to indigent defendants by ordering the installation charge waived and a 50 percent reduction of the monthly monitoring fee. Reductions would not apply to fees that may be assessed if the ignition interlock device detects alcohol on the breath of the person attempting drive.

**Orders of nondisclosure.** The bill would establish procedures for applying for and granting orders of nondisclosure of criminal history records for defendants placed on deferred adjudication for misdemeanors for driving or boating while intoxicated.

The procedures would apply only if the defendant were placed on deferred adjudication for driving or boating while intoxicated and there was no affirmative finding by the judge that it was not in the best interest of justice for the defendant to have an automatic order of nondisclosure.

Individuals could ask the court for an order of nondisclosure if they:

- received a discharge and dismissal of the deferred adjudication;
- met current requirements for not having a conviction during the term of deferred adjudication or a waiting period and other

requirements and for not having previous convictions for certain offenses; and

- had not been previously convicted of or placed on deferred adjudication for another offense, other than a traffic offense punishable only by fine.

Courts would be required to issue the order after notice to the state, an opportunity for a hearing, and a determination that the person was entitled to file the petition and that an order of nondisclosure was in the best interest of justice. As an exception to this, courts could not issue orders of nondisclosure if the prosecutor gave the court evidence that the offense resulted in a motor vehicle accident involving another person, including a passenger.

The bill would establish two waiting periods before a person could ask the court for an order of nondisclosure. The waiting period would be two years after the successful completion of the deferred adjudication, if the person successfully complied for at least six months with the requirement to drive only a vehicle with an ignition interlock device. The waiting period would be five years after the successful completion of the deferred adjudication, if the court had not ordered the person to comply with a six-month requirement to drive only a vehicle with an ignition interlock device.

**Other provisions.** The bill would add driving while intoxicated with a child passenger to the list of offenses in Penal Code ch. 49.09 that can carry enhanced penalties if the defendant has certain other previous offenses.

For the purpose of enhancing penalties for certain intoxication and alcoholic beverage offenses, a deferred adjudication for driving or boating while intoxicated would be considered a conviction.

The bill would take effect September 1, 2019, and would apply only to offenses committed on or after that date and to the eligibility for deferred adjudication for offenses committed on or after that date.

