

## PENAL CODE

### TITLE 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS

#### CHAPTER 49. INTOXICATION AND ALCOHOLIC BEVERAGE OFFENSES

Sec. 49.01. DEFINITIONS. In this chapter:

(1) "Alcohol concentration" means the number of grams of alcohol per:

- (A) 210 liters of breath;
- (B) 100 milliliters of blood; or
- (C) 67 milliliters of urine.

(2) "Intoxicated" means:

(A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body; or

(B) having an alcohol concentration of 0.08 or more.

(3) "Motor vehicle" has the meaning assigned by Section 32.34(a).

(4) "Watercraft" means a vessel, one or more water skis, an aquaplane, or another device used for transporting or carrying a person on water, other than a device propelled only by the current of water.

(5) "Amusement ride" has the meaning assigned by Section 2151.002, Occupations Code.

(6) "Mobile amusement ride" has the meaning assigned by Section 2151.002, Occupations Code.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1999, 76th Leg., ch. 234, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1364, Sec. 8, eff. Jan. 1, 2000; Acts 2001, 77th Leg., ch. 1420, Sec. 14.707, eff. Sept. 1, 2001.

Sec. 49.02. **PUBLIC INTOXICATION.** (a) A person commits an offense if the person appears in a public place while intoxicated to the degree that the person may endanger the person or another.

(a-1) For the purposes of this section, a premises licensed or permitted under the Alcoholic Beverage Code is a public place.

(b) It is a defense to prosecution under this section that the alcohol or other substance was administered for therapeutic purposes and as a part of the person's professional medical treatment by a licensed physician.

(c) Except as provided by Subsection (e), an offense under this section is a Class C misdemeanor.

(d) An offense under this section is not a lesser included offense under Section 49.04.

(e) An offense under this section committed by a person younger than 21 years of age is punishable in the same manner as if the minor committed an offense to which Section 106.071, Alcoholic Beverage Code, applies.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1997, 75th Leg., ch. 1013, Sec. 12, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 68 (S.B. 904), Sec. 25, eff. September 1, 2007.

Sec. 49.031. **POSSESSION OF ALCOHOLIC BEVERAGE IN MOTOR VEHICLE.** (a) In this section:

(1) "Open container" means a bottle, can, or other receptacle that contains any amount of alcoholic beverage and that is open, that has been opened, that has a broken seal, or the contents of which are partially removed.

(2) "Passenger area of a motor vehicle" means the area of a motor vehicle designed for the seating of the operator and passengers of the vehicle. The term does not include:

(A) a glove compartment or similar storage container that is locked;

(B) the trunk of a vehicle; or

(C) the area behind the last upright seat of the vehicle, if the vehicle does not have a trunk.

(3) "Public highway" means the entire width between and immediately adjacent to the boundary lines of any public road, street, highway, interstate, or other publicly maintained way if any part is open for public use for the purpose of motor vehicle travel. The term includes the right-of-way of a public highway.

(b) A person commits an offense if the person knowingly possesses an open container in a passenger area of a motor vehicle that is located on a public highway, regardless of whether the vehicle is being operated or is stopped or parked. Possession by a person of one or more open containers in a single criminal episode is a single offense.

(c) It is an exception to the application of Subsection (b) that at the time of the offense the defendant was a passenger in:

(1) the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation, including a bus, taxicab, or limousine; or

(2) the living quarters of a motorized house coach or motorized house trailer, including a self-contained camper, a motor home, or a recreational vehicle.

(d) An offense under this section is a Class C misdemeanor.

(e) A peace officer charging a person with an offense under this section, instead of taking the person before a magistrate, shall issue to the person a written citation and notice to appear that contains the time and place the person must appear before a magistrate, the name and address of the person charged, and the offense charged. If the person makes a written promise to appear before the magistrate by signing in duplicate the citation and notice to appear issued by the officer, the officer shall release the person.

Added by Acts 2001, 77th Leg., ch. 969, Sec. 2, eff. Sept. 1, 2001.

Sec. 49.04. **DRIVING WHILE INTOXICATED.** (a) A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.

(b) Except as provided by Subsections (c) and (d) and Section 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.

(c) If it is shown on the trial of an offense under this section that at the time of the offense the person operating the motor vehicle had an open container of alcohol in the person's immediate possession, the offense is a Class B misdemeanor, with a minimum term of confinement of six days.

(d) If it is shown on the trial of an offense under this section that an analysis of a specimen of the person's blood, breath, or urine showed an alcohol concentration level of 0.15 or more at the time the analysis was performed, the offense is a Class A misdemeanor.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.55, eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 960 (H.B. 1199), Sec. 2, eff. September 1, 2011.

Sec. 49.045. **DRIVING WHILE INTOXICATED WITH CHILD PASSENGER.** (a) A person commits an offense if:

(1) the person is intoxicated while operating a motor vehicle in a public place; and  
(2) the vehicle being operated by the person is occupied by a passenger who is younger than 15 years of age.

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

Added by Acts 2003, 78th Leg., ch. 787, Sec. 1, eff. Sept. 1, 2003.

Sec. 49.05. **FLYING WHILE INTOXICATED.** (a) A person commits an offense if the person is intoxicated while operating an aircraft.

(b) Except as provided by Section 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 49.06. **BOATING WHILE INTOXICATED.** (a) A person commits an offense if the person is intoxicated while operating a watercraft.

(b) Except as provided by Section 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 49.065. **ASSEMBLING OR OPERATING AN AMUSEMENT RIDE WHILE INTOXICATED.** (a) A person commits an offense if the person is intoxicated while operating an amusement ride or while assembling a mobile amusement ride.

(b) Except as provided by Subsection (c) and Section 49.09, an offense under this section is a Class B misdemeanor with a minimum term of confinement of 72 hours.

(c) If it is shown on the trial of an offense under this section that at the time of the offense the person operating the amusement ride or assembling the mobile amusement ride had an open container of alcohol in the person's immediate possession, the offense is a Class B misdemeanor with a minimum term of confinement of six days.

Added by Acts 1999, 76th Leg., ch. 1364, Sec. 9, eff. Jan. 1, 2000.

Sec. 49.07. **INTOXICATION ASSAULT.** (a) A person commits an offense if the person, by accident or mistake:

(1) while operating an aircraft, watercraft, or amusement ride while intoxicated, or while operating a motor vehicle in a public place while intoxicated, by reason of that intoxication causes serious bodily injury to another; or

(2) as a result of assembling a mobile amusement ride while intoxicated causes serious bodily injury to another.

(b) In this section, "serious bodily injury" means injury that creates a substantial risk of death or that causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

(c) Except as provided by Section 49.09, an offense under this section is a felony of the third degree.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1999, 76th Leg., ch. 1364, Sec. 10, eff. Jan. 1, 2000.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 662 (H.B. 1212), Sec. 2, eff. September 1, 2007.

Sec. 49.08. **INTOXICATION MANSLAUGHTER.** (a) A person commits an offense if the person:

(1) operates a motor vehicle in a public place, operates an aircraft, a watercraft, or an amusement ride, or assembles a mobile amusement ride; and

(2) is intoxicated and by reason of that intoxication causes the death of another by accident or mistake.

(b) Except as provided by Section 49.09, an offense under this section is a felony of the second degree.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1999, 76th Leg., ch. 1364, Sec. 11, eff. Jan. 1, 2000.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 662 (H.B. 1212), Sec. 3, eff. September 1, 2007.

Subject to veto by the governor, the following section was amended by the 88th Legislature. Pending publication of the current statutes, see H.B. 1163, 88th Legislature, Regular Session, for amendments affecting the following section.

Sec. 49.09. **ENHANCED OFFENSES AND PENALTIES.** (a) Except as provided by Subsection (b), an offense under Section 49.04, 49.05, 49.06, or 49.065 is a Class A misdemeanor, with a minimum term of confinement of 30 days, if it is shown on the trial of the offense that the person has previously been convicted one time of an offense relating to the operating of a motor vehicle while intoxicated, an offense of operating an aircraft while intoxicated, an offense of operating a watercraft while intoxicated, or an offense of operating or assembling an amusement ride while intoxicated.

(b) 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:

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

(2) two times of any other offense relating to the operating of a motor vehicle while intoxicated, operating an aircraft while intoxicated, operating a watercraft while intoxicated, or operating or assembling an amusement ride while intoxicated.

(b-1) An offense under Section 49.07 is:

(1) a felony of the second degree if it is shown on the trial of the offense that the person caused serious bodily injury to a firefighter or emergency medical services personnel while in the actual discharge of an official duty; or

(2) a felony of the first degree if it is shown on the trial of the offense that the person caused serious bodily injury to a peace officer or judge while the officer or judge was in the actual discharge of an official duty.

(b-2) An offense under Section 49.08 is a felony of the first degree if it is shown on the trial of the offense that the person caused the death of a person described by Subsection (b-1).

(b-3) For the purposes of Subsection (b-1):

(1) "Emergency medical services personnel" has the meaning assigned by Section 773.003, Health and Safety Code.

(2) "Firefighter" means:

(A) an individual employed by this state or by a political or legal subdivision of this state who is subject to certification by the Texas Commission on Fire Protection; or

(B) a member of an organized volunteer fire-fighting unit that:

(i) renders fire-fighting services without remuneration; and

(ii) conducts a minimum of two drills each month, each at least two hours long.

(b-4) An offense under Section 49.07 is a felony of the second degree if it is shown on the trial of the offense that the person caused serious bodily injury to another in the nature of a traumatic brain injury that results in a persistent vegetative state.

(c) For the purposes of this section:

(1) "Offense relating to the operating of a motor vehicle while intoxicated" means:

(A) an offense under Section 49.04 or 49.045;

(B) an offense under Section 49.07 or 49.08, if the vehicle operated was a motor vehicle;

(C) an offense under Article 6701I-1, Revised Statutes, as that law existed before September 1, 1994;

(D) an offense under Article 6701I-2, Revised Statutes, as that law existed before January 1, 1984;

(E) an offense under Section 19.05(a)(2), as that law existed before September 1, 1994, if the vehicle operated was a motor vehicle; or

(F) an offense under the laws of another state that prohibit the operation of a motor vehicle while intoxicated.

(2) "Offense of operating an aircraft while intoxicated" means:

(A) an offense under Section 49.05;

(B) an offense under Section 49.07 or 49.08, if the vehicle operated was an aircraft;

(C) an offense under Section 1, Chapter 46, Acts of the 58th Legislature, Regular Session, 1963 (Article 46f-3, Vernon's Texas Civil Statutes), as that law existed before September 1, 1994;

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

(E) an offense under the laws of another state that prohibit the operation of an aircraft while intoxicated.

(3) "Offense of operating a watercraft while intoxicated" means:

(A) an offense under Section 49.06;

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

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

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

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

(4) "Offense of operating or assembling an amusement ride while intoxicated" means:

(A) an offense under Section 49.065;

(B) an offense under Section 49.07 or 49.08, if the offense involved the operation or assembly of an amusement ride; or

(C) an offense under the law of another state that prohibits the operation of an amusement ride while intoxicated or the assembly of a mobile amusement ride while intoxicated.

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

(e) Repealed by Acts 2005, 79th Leg., Ch. 996, Sec. 3, eff. September 1, 2005.

(f) Repealed by Acts 2005, 79th Leg., Ch. 996, Sec. 3, eff. September 1, 2005.

(g) A conviction may be used for purposes of enhancement under this section or enhancement under Subchapter D, Chapter 12, but not under both this section and Subchapter D. 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.

(h) This subsection applies only to a person convicted of a second or subsequent offense relating to the operating of a motor vehicle while intoxicated committed within five years of the date on which the most recent preceding offense was committed. The court shall enter an order that requires the defendant to have a device installed, on each motor vehicle owned or operated by the defendant, that uses a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol is detected in the breath of the operator, and that requires that before the first anniversary of the ending date of the period of license suspension under Section 521.344, Transportation Code, the defendant not operate any motor vehicle that is not equipped with that

device. The court shall require the defendant to obtain the device at the defendant's own cost on or before that ending date, require the defendant to provide evidence to the court on or before that ending date that the device has been installed on each appropriate vehicle, and order the device to remain installed on each vehicle until the first anniversary of that ending date. If the court determines the offender is unable to pay for the device, the court may impose a reasonable payment schedule not to extend beyond the first anniversary of the date of installation. The Department of Public Safety shall approve devices for use under this subsection. Section 521.247, Transportation Code, applies to the approval of a device under this subsection and the consequences of that approval. Failure to comply with an order entered under this subsection is punishable by contempt. For the purpose of enforcing this subsection, the court that enters an order under this subsection retains jurisdiction over the defendant until the date on which the device is no longer required to remain installed. To the extent of a conflict between this subsection and Subchapter I, Chapter 42A, Code of Criminal Procedure, this subsection controls.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.56, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 318, Sec. 21, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1364, Sec. 12, 13, eff. Jan. 1, 2000; Acts 2001, 77th Leg., ch. 648, Sec. 1, 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 969, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 787, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1275, Sec. 2(117), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 996 (H.B. 51), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 996 (H.B. 51), Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 662 (H.B. 1212), Sec. 4, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 960 (H.B. 1199), Sec. 3, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.84, eff. January 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 1067 (H.B. 2246), Sec. 2, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 23.010, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 440 (H.B. 2908), Sec. 5, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1298 (H.B. 3582), Sec. 7, eff. September 1, 2019.

Subject to veto by the governor, the following section was amended by the 88th Legislature. Pending publication of the current statutes, see H.B. 1163, 88th Legislature, Regular Session, for amendments affecting the following section.

Sec. 49.10. **NO DEFENSE.** In a prosecution under Section 49.03, 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, the fact that the defendant is or has been entitled to use the alcohol, controlled substance, drug, dangerous drug, or other substance is not a defense.



Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1999, 76th Leg., ch. 1364, Sec. 14, eff. Jan. 1, 2000; Acts 2003, 78th Leg., ch. 787, Sec. 3, eff. Sept. 1, 2003.

Sec. 49.11. **PROOF OF MENTAL STATE UNNECESSARY.** (a) Notwithstanding Section 6.02(b), proof of a culpable mental state is not required for conviction of an offense under this chapter.

(b) Subsection (a) does not apply to an offense under Section 49.031.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 22, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 969, Sec. 4, eff. Sept. 1, 2001.

Sec. 49.12. **APPLICABILITY TO CERTAIN CONDUCT.** Sections 49.07 and 49.08 do not apply to injury to or the death of an unborn child if the conduct charged is conduct committed by the mother of the unborn child.

Added by Acts 2003, 78th Leg., ch. 822, Sec. 2.05, eff. Sept. 1, 2003.