

BILL ANALYSIS

C.S.H.B. 3181
By: Anderson, Rodney
Corrections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There are concerns that an alarming rate of DWI offenders who meet the criteria for mandatory use of an ignition interlock device avoid using the device by certifying that they do not own a vehicle in which an ignition interlock device can be installed. However, it has been reported that many of these offenders also apply for an occupational driver's license, indicating their intention to continue driving while on probation. It has been suggested that alternative technologies, such as transdermal sensors in ankle bracelets or hand-held breath sampling devices, should be used in place of an ignition interlock device for offenders that have certified that they do not own a vehicle. C.S.H.B. 3181 seeks to close a reported loophole through which high-risk DWI offenders are able to avoid mandatory electronic alcohol detection technologies inherent in ignition interlock devices by requiring the use of other devices capable of detecting unlawful alcohol consumption.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3181 amends the Code of Criminal Procedure to require a judge, in the case of a defendant for whom the judge otherwise is required to order the installation and use of an ignition interlock device as a condition of community supervision, to require instead that the defendant submit to ethyl alcohol monitoring if the defendant submits an affidavit stating the defendant does not own or regularly drive any motor vehicle. The bill authorizes the judge, if a defendant for whom a judge may order the installation and use of an ignition interlock device as a condition of community supervision submits an affidavit stating the defendant does not own or regularly drive any motor vehicle, to require the defendant to submit to ethyl alcohol monitoring. The bill authorizes the judge to additionally order a defendant for whom a judge orders the installation and use of an ignition interlock device as a condition of community supervision to submit to ethyl alcohol monitoring. The bill requires the judge to specify the date by which the defendant is required to begin wearing or using the ethyl alcohol monitoring device. The bill defines "ethyl alcohol monitoring device" as a device worn by a defendant that detects ethyl alcohol in the defendant's perspiration through transdermal testing or a portable ethyl alcohol detection device carried by a defendant that requires the defendant at specified or random intervals to submit a breath sample, analyzes and records the sample, transmits the results of the analysis, and is capable of verifying that the breath sample was provided by the defendant.

C.S.H.B. 3181 authorizes a judge to revoke community supervision and order the defendant to the term of confinement specified in the defendant's sentence if the defendant refuses to wear or use the ethyl alcohol monitoring device, if the defendant tampers with or otherwise attempts to disable the device, if the device shows that the defendant has violated a condition of community supervision, or if the defendant fails to pay the costs of ethyl alcohol monitoring if such payment is ordered as a condition of community supervision and the judge determines that the defendant is not indigent and is financially able to make the payments as ordered. The bill authorizes the cost of the ethyl alcohol monitoring device to be ordered paid as a condition of community supervision by the defendant to the court or paid to the entity designated by the judge to verify that the defendant is wearing or using the ethyl alcohol monitoring device appropriately or waived or reduced based on the defendant's ability to pay. The bill authorizes the court to impose a reasonable payment schedule for the cost of the device, in whole or in part, as applicable, for a period not to exceed twice the period of the court's order requiring ethyl alcohol monitoring. The bill authorizes the judge to designate an appropriate entity to verify that the defendant is wearing or using the ethyl alcohol monitoring device appropriately, and to monitor the device. The bill prohibits a judge from ordering ethyl alcohol monitoring instead of an ignition interlock device for a defendant 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, regardless of whether the defendant submits an affidavit stating that the defendant does not own or regularly drive any motor vehicle, and authorizes the judge in such a case to order ethyl alcohol monitoring in addition to the required ignition interlock device.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3181 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 2, Article 42.12, Code of Criminal Procedure, is amended.

SECTION 2. Section 13, Article 42.12, Code of Criminal Procedure, is amended by adding Subsection (o) to read as follows:

(o)(1) This subsection applies to a defendant for whom a judge may order or is required to order the installation and use of an ignition interlock device under Subsection (i).

(2) Notwithstanding Subsection (i) and subject to Subdivision (6), in lieu of or in

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Section 13, Article 42.12, Code of Criminal Procedure, is amended by adding Subsection (o) to read as follows:

(o)(1) Notwithstanding Subsection (i) and subject to Subdivision (8), if a defendant for whom a judge is required to order the installation and use of an ignition interlock device under Subsection (i) submits an affidavit stating the defendant does not own or regularly drive any motor vehicle, the judge shall, instead of imposing the ignition interlock condition, require the defendant to submit to ethyl alcohol monitoring under this subsection.

(2) If a defendant for whom a judge may order the installation and use of an ignition

addition to requiring a defendant to install and use an ignition interlock device under that subsection, the judge may require the defendant to submit to ethyl alcohol monitoring under this subsection.

The judge must specify the date by which the defendant must begin wearing or using the ethyl alcohol monitoring device.

(3) The judge may revoke community supervision and order the defendant to the term of confinement specified in the defendant's sentence if:

(A) the defendant refuses to wear or use the ethyl alcohol monitoring device;

(B) the defendant tampers with or otherwise attempts to disable the device;

(C) the device shows that the defendant has violated a condition of community supervision; or

(D) the defendant fails to pay the costs of ethyl alcohol monitoring, if:

(i) payment is ordered under Subdivision (4) as a condition of community supervision; and

(ii) the judge determines that the defendant is not indigent and is financially able to make the payments as ordered.

(4) The cost of the ethyl alcohol monitoring device may be ordered paid as a condition of community supervision by the defendant to the court or to the entity designated by the judge under Subdivision (5) or waived or reduced based on the defendant's ability to pay. The court may impose a reasonable payment schedule for the cost of the device, in whole or in part, as applicable, for a period not to exceed twice the period of the court's order requiring ethyl alcohol monitoring.

(5) The judge may designate an appropriate entity to verify that the defendant is wearing or using the ethyl alcohol monitoring device appropriately, and to monitor the device.

(6) A judge may not order ethyl alcohol monitoring in lieu of an ignition interlock device under this subsection for a defendant subject to Section 49.09(h), Penal Code.

interlock device under Subsection (i) submits an affidavit stating the defendant does not own or regularly drive any motor vehicle, the judge may require the defendant to submit to ethyl alcohol monitoring under this section.

(3) For a defendant for whom a judge orders the installation and use of an ignition interlock device under Subsection (i), the judge may additionally order the defendant to submit to ethyl alcohol monitoring under this subsection.

(4) The judge must specify the date by which the defendant must begin wearing or using the ethyl alcohol monitoring device ordered under this subsection.

(5) The judge may revoke community supervision and order the defendant to the term of confinement specified in the defendant's sentence if:

(A) the defendant refuses to wear or use the ethyl alcohol monitoring device;

(B) the defendant tampers with or otherwise attempts to disable the device;

(C) the device shows that the defendant has violated a condition of community supervision; or

(D) the defendant fails to pay the costs of ethyl alcohol monitoring, if:

(i) payment is ordered under Subdivision (6) as a condition of community supervision; and

(ii) the judge determines that the defendant is not indigent and is financially able to make the payments as ordered.

(6) The cost of the ethyl alcohol monitoring device may be ordered paid as a condition of community supervision by the defendant to the court or to the entity designated by the judge under Subdivision (7) or waived or reduced based on the defendant's ability to pay. The court may impose a reasonable payment schedule for the cost of the device, in whole or in part, as applicable, for a period not to exceed twice the period of the court's order requiring ethyl alcohol monitoring.

(7) The judge may designate an appropriate entity to verify that the defendant is wearing or using the ethyl alcohol monitoring device appropriately, and to monitor the device.

(8) A judge may not order ethyl alcohol monitoring instead of an ignition interlock device under this subsection for a defendant subject to Section 49.09(h), Penal Code.

The judge may order ethyl alcohol monitoring in addition to the ignition interlock device required under that section.

SECTION 3. The change in law made by this Act applies only to a defendant who is placed on community supervision on or after the effective date of this Act, regardless of whether the offense for which the defendant is placed on community supervision is committed before, on, or after that date.

SECTION 4. This Act takes effect September 1, 2015.

regardless of whether the defendant submits an affidavit stating that the defendant does not own or regularly drive any motor vehicle. The judge may order ethyl alcohol monitoring in addition to the ignition interlock device required under that section.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.