

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1266
By: Whitmire
Criminal Justice
4/30/2005
Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Current Texas law provides judges with specific instructions and orders regarding community supervision.

C.S.S.B. 1266 grants judges the authority and duty to determine who should get probation, what the condition of supervision should be, and when and how supervision should be ended. C.S.S.B. 1266 removes statutory limitations that have acted as barriers to effective systems of community supervision in the public interest.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

ARTICLE 1. COMMUNITY SUPERVISION

SECTION 1.01. Amends Article 42.12, Code of Criminal Procedure, as follows:

Art. 42.12. COMMUNITY SUPERVISION

Sec. 1. PURPOSE. Includes that it is the purpose of this article to place wholly within the state courts the responsibility for determining the imposition of progressive sanctions on defendants in consonance with the powers assigned to the judicial branch of this government by the Constitution of Texas. Provides that it is the purpose of this article to remove from existing statutes the limitations, other than questions of constitutionality, that have acted as barriers to effective systems of sanctions-based community supervision in the public interest.

Sec. 2. DEFINITIONS. Redefines "supervision officer." Makes nonsubstantive changes.

Sec. 3. JUDGE ORDERED COMMUNITY SUPERVISION. (a) Deletes existing text authorizing a judge to impose a fine applicable to the offense and place the defendant on community supervision.

(b) Provides that the maximum period of community supervision for a felony described by Section 3g is 10 years. Provides that the maximum period of community supervision for any other felony of the first, second, or third degree is five, rather than 10 years, subject to the extensions provided by Section 21. Deletes existing text relating to the minimum period of community supervision in a felony case.

(c) Provides that the maximum period of community supervision in a misdemeanor case is two years, subject to extensions provided by Section 21.

(d) Redesignates text from existing Subsection (e). Deletes existing text authorizing a judge to increase the maximum period of community supervision, and the provision that a defendant is not eligible for community supervision if the

defendant is sentenced to serve a term of confinement under Section 12.35, Penal Code.

(e) Redesignates existing text from Subsection (g). Deletes existing text of Subsection (f), providing the minimum and maximum time period for community supervision for a felony described by Section 13B(b).

Sec. 3g. **LIMITATION ON JUDGE ORDERED COMMUNITY SUPERVISION.** Requires the Texas Department of Criminal Justice (TDCJ), rather than the institutional division of TDCJ, to release the defendant to community supervision after he has served 120 days. Makes conforming changes.

Sec. 4. **JURY RECOMMENDED COMMUNITY SUPERVISION.** (a) Authorizes a jury that imposes confinement as punishment for an offense to recommend that the judge suspend the imposition of the confinement, the fine, or both, and place the defendant on community supervision. Requires the judge to follow the recommendation of the jury, rather than suspend imposition of the sentence, if the jury recommends community supervision.

(b) Requires the judge to place the defendant on community supervision for any period permitted under Section 3(b) or 3(c), as appropriate, subject to the extensions provided by Section 21, if the jury recommends community supervision.

(c) Redesignates existing text from Subsection (d). Makes a conforming change. Deletes existing text of Subsection (c) authorizing a judge to increase the maximum period of community supervision.

(d) Redesignates existing text from Subsection (e).

Sec. 5. **DEFERRED ADJUDICATION; COMMUNITY SUPERVISION.** (a) Provides that the maximum period of community supervision for a felony described by Section 3g is 10 years, subject to the extensions provided by Section 21. Prohibits the period of community supervision from exceeding five, rather than 10, years, subject to the extensions provided by Section 21, in any other felony of the first, second, or third degree. Provides that the maximum period of community supervision for a state jail felony, with extensions, is as provided by Section 14. Prohibits a period of community supervision in a misdemeanor case from exceeding two years, subject to the extensions provided by Section 21. Deletes existing text authorizing a judge to place a defendant charged with specific offenses under community supervision, increase the maximum period of community supervision, a fine applicable to the offense including for mental health treatment, and the placement of a defendant in a specific type of jail facility.

(b) Deletes existing text authorizing a court to suspend the imposition of the sentence of a defendant charged with a state jail felony after an adjudication of guilt.

(c) Prohibits a dismissal and discharge under this section from being deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense, notwithstanding a provision in any other law that provides that a defendant who has successfully completed a period of community supervision is finally convicted for purposes of enhancement, or that disqualifies the defendant from a license or other benefit provided by the state or a political subdivision of the state or imposes a civil consequence on the defendant. Provides that a defendant placed on community supervision under this section is nonetheless required to pay costs, fees, and other assessments required by law to be paid on conviction of an offense, other than a fine imposed as punishment for the offense. Requires the court that placed the defendant on deferred adjudication to enter into an order of nondisclosure under Section 411.081 (Application of Subchapter), Government Code, on discharge and dismissal under this section. Deletes existing text authorizing a judge to dismiss the proceedings and discharge

a defendant, other than a defendant charged with an offense requiring the defendant to register as a sex offender or register under other specific sections. Deletes existing text providing guidelines for any defendant who receives a dismissal and discharge under this section.

(d) Redesignates existing text from Subsection (f). Deletes existing text from Subsections (d), (e), and (g).

(e) Redesignates existing text from Subsection (h).

Sec. 6. CONTINUING COURT JURISDICTION IN FELONY CASES. Deletes existing text authorizing a judge to suspend further execution of the sentence if the defendant is otherwise eligible for community supervision or if the defendant had never before been incarcerated serving a sentence for a felony. Makes conforming changes.

Sec. 7. CONTINUING COURT JURISDICTION IN MISDEMEANOR CASES. Makes no changes to this section.

Sec. 8. STATE BOOT CAMP PROGRAM. Deletes existing text authorizing a court to recommend a person for placement in the state boot camp program only if the person is otherwise eligible for community supervision under this article. Makes conforming changes.

Sec. 9. PRESENTENCE INVESTIGATIONS. (a) Authorizes, rather than requires, a judge to direct a supervision officer to report to the judge in writing on the circumstances on the offense with which the defendant is charged, including whether drug or alcohol abuse may have contributed to the commission of the offense, before the imposition of a sentence. Deletes existing text regarding the imposition of a sentence by a judge in a felony or misdemeanor case, except as provided by Subsection (b) or (g).

(b) Redesignates existing text from Subsection (c). Deletes existing text from Subsection (b).

(c) Redesignates existing text from Subsection (d).

(d) Redesignates existing text from Subsection (e).

(e) Redesignates existing text from Subsection (f). Deletes existing text from Subsections (g)-(i).

(f) Redesignates existing text from Subsection (j). Makes conforming changes.

(g) Redesignates existing text from Subsection (k). Authorizes the judge, if a presentence report in a felony case is not ordered, rather than required, under this section, to direct the officer to prepare a postsentence report containing the same information that would have been required for the presentence report.

(h) Redesignates existing text from Section 9A(a). Sets forth definitions for Subsections (i) and (j). Deletes existing heading to Section 9A.

(i) Redesignates existing text from Section 9A(b).

(j) Redesignates existing text from Section 9A(c). Authorizes, rather than requires, the judge to direct a supervision officer approved by specific entities, to evaluate the appropriateness of, and a course of conduct necessary for, treatment, specialized supervision, or rehabilitation of the defendant and to report the results of the evaluation to the judge, if the defendant is a sex offender. Requires an evaluation ordered under this subsection to be made after conviction and before the entry of a final judgment or, if requested by the defendant, after arrest and before conviction.

Sec. 10. AUTHORITY TO IMPOSE, MODIFY, OR REVOKE COMMUNITY SUPERVISION. Makes conforming changes.

Sec. 11. New heading: CONDITIONS OF COMMUNITY SUPERVISION. (a) Requires the judge of the court having jurisdiction of the case to impose reasonable conditions designed to protect or restore the community, protect or restore the community, protect or restore victim, or punish, rehabilitate, or reform the defendant. Authorizes the conditions of community supervision to include any condition listed in this section or designated as available for use in the community justice plan established by the community justice council serving the judge. Deletes existing text relating to requiring the judge to determine, alter, or modify the conditions of community supervision.

(b) Creates subsection from existing text. Sets forth conditions that are authorized to be required by the defendant under this section. Deletes existing text of Subdivisions (11)-(17), (19)-(20), and (23). Makes nonsubstantive changes.

(c) Redesignates existing text of Subsection (b).

(d) Redesignates existing text of Subsection (c). Deletes text of existing Subsection (d).

(e) Makes no changes to this subsection.

(f) Redesignates existing text of Subsection (g). Deletes text of existing Subsection (f).

(g) Redesignates existing text of Subsection (h).

(h) Requires the judge to establish a child safety zone applicable to the defendant that complies with standards for child safety zones established by the community justice assistance division of TDCJ, if the judge grants community supervision to a defendant convicted of an offense for which sex offender registration is required and the victim in the case is younger than 17 years of age.

(i) Authorizes a judge to establish the order in which a defendant is required to complete conditions of community supervision. Deletes text from existing Subsection (i).

Sec. 12. CONFINEMENT AS A CONDITION OF COMMUNITY SUPERVISION. Requires a judge in a felony case who imposes confinement as a condition of community supervision to give the defendant credit on the defendant's sentence in the same manner as if the defendant served the term of confinement in TDCJ. Makes conforming and nonsubstantive changes.

Sec. 12A. DWI COMMUNITY SUPERVISION. Redesignates existing text from Section 13. (a)-(b) Makes no changes to these subsections.

(c) Makes a nonsubstantive change.

(d)-(n) Deletes existing text of these subsections.

Deletes existing sections:

Sec. 13A. COMMUNITY SUPERVISION FOR OFFENSE COMMITTED BECAUSE OF BIAS OR PREJUDICE.

Sec. 13B. DEFENDANTS PLACED ON COMMUNITY SUPERVISION FOR SEXUAL OFFENSES AGAINST CHILDREN.

Sec. 13C. COMMUNITY SUPERVISION FOR MAKING A FIREARM ACCESSIBLE TO A CHILD.

Sec. 13D. DEFENDANTS PLACE ON COMMUNITY SUPERVISION FOR VIOLENT OFFENSES; PROTECTING CHILDREN.

Sec. 14. CHILD ABUSERS AND FAMILY VIOLENCE OFFENDERS; SPECIAL CONDITIONS.

Sec. 13. SUBSTANCE ABUSE FELONY PROGRAM. Redesignates existing text from Section 14. (a)-(c) Makes no changes to these subsections.

(d) Requires the Department of State Health Services (DSHS), rather than the Texas Commission on Alcohol and Drug Abuse, to develop the continuum of care treatment plan.

(e) Makes no changes to this subsection.

Sec. 14. PROCEDURES RELATING TO STATE JAIL FELONY COMMUNITY SUPERVISION. Redesignates existing text from Section 15. (a) Makes no changes to this subsection.

(b) Provides that the maximum period of community supervision a judge may impose under this section is three, rather than five, years, except that the judge is authorized to extend the maximum period of community supervision under this section to not more than five, rather than 10, years.

(c) Makes a nonsubstantive change.

(d) Makes a nonsubstantive change.

(e) and (f) Makes conforming changes.

(g) Makes no changes to this subsection.

(h) Requires, rather than authorizes, a judge to credit against any time a defendant is required to serve in a state jail felony facility time served by the defendant in county jail.

Sec. 15A. ENHANCED DISORDERLY CONDUCT AND PUBLIC INTOXICATION OFFENSES. Deletes entire section.

Sec. 15. COMMUNITY SERVICE. Redesignates text from existing Section 16. (a) Authorizes, rather than requires, a judge to require, as a condition of community supervision, that the defendant work not more than 40 hours annually at a community service project or projects for certain governmental entities or nonprofit organizations, approved in the community justice plan established by the community justice council serving the judge, and designated by the director of TDCJ. Prohibits the judge from requiring that a defendant work at a community service project if the judge makes certain determinations, rather than noting on the order placing the defendant on community supervision.

(b) Authorizes community service work to be performed under this section only for a governmental entity or a nonprofit organization that provides services to the general public that enhance social welfare and the general well-being of the community. Deletes existing text of relating to limitations on the amount of community service work ordered by the judge.

(c) Provides that a defendant required to perform community service under this section is not a state employee for the purposes of Chapter 501 or 504, Labor Code, rather than Article 8309g or 8309h, Revised Statutes.

(d) Deletes existing text of this subsection.

Sec. 16. CHANGE OF RESIDENCE; LEAVING THE STATE. Redesignates existing text from Section 17.

Sec. 17. COMMUNITY CORRECTIONS FACILITIES. Redesignates existing text from Section 18. (a) and (b) Makes no changes to these subsections.

(c) Provides that a defendant granted community supervision under this section earns, rather than many not earn, good conduct credit for time spent in a community corrections facility, and time spent in the facility applies toward completion of a prison sentence if the community supervision is revoked.

(d) Makes no changes to this subsection.

(e) and (f) Makes conforming changes.

(g) and (h) Makes no changes to these subsections.

(i) Makes a conforming change.

Sec. 18. FEES. Redesignates existing text from Section 19. Makes nonsubstantive changes.

Sec. 19. New heading: REVIEW, REDUCTION, AND TERMINATION OF COMMUNITY SUPERVISION. Redesignates existing text from Section 20. (a) Authorizes the period of community supervision to be reduced or terminated by the judge, at any time, after the defendant has completed one-third of the original community supervision period or two years of community supervision, whichever is less.

(b) Requires the judge to review the defendant's case for the purpose of considering termination of community supervision, as soon as practicable after a defendant has completed one-half of the original community supervision period or two years, whichever is greater.

(c) Authorizes the judge to review the defendant's case at any time determined appropriate by the judge for the purpose of determining whether to terminate the period of community supervision, if a judge does not terminate a period of community supervision under Subsection (a) or (b).

(d) Prohibits a judge from refusing to terminate a period of community supervision solely on the ground that the defendant is indigent and unable to pay required restitution, fines, costs, or fees.

(e) Requires the judge, on the expiration of the period of community supervision or on the termination of a period of community supervision, rather than upon the satisfactory fulfillment of the conditions of community supervision, by order duly entered, to amend or modify the original sentence imposed, if necessary, to conform to the community supervision period and to grant a dismissal to or discharge the defendant as provided by Subsection (g), (h), or (i).

(f) Requires the judge to enter a written order on a form provided for that purpose and developed by the office of court administration and the community justice assistance division of TDCJ, on expiration or termination of the period of community supervision. Requires the written order to state whether as a result of the expiration or termination of community supervision, the defendant is granted a dismissal, a discharge, or a discharge subject to enhancement.

(f-1) Provides that a defendant whose period of community supervision expires or is terminated under this section is presumed to be entitled to a dismissal under

Subsection (g), but authorizes the judge to instead discharge the defendant under Subsection (h) on determining that the defendant's compliance with conditions of community supervision was not satisfactory, or discharge the defendant subject to enhancement, after a hearing as provided by Subsection (i).

(g) Requires, rather than authorizes, a judge to set aside the verdict or permit the defendant to withdraw his plea, if the judge grants a dismissal to the defendant, rather than discharges the defendant.

(h) Authorizes the judge to discharge the defendant without permitting the defendant to withdraw the defendant's plea and without setting aside the judgment, if the judge terminates the period of community supervision.

(i) Requires the judge to grant the defendant a discharge subject to enhancement, if the judge terminates the period of supervision after determining, at a hearing at which the defendant is provided the same due process rights as those provided at a revocation hearing, that the defendant failed to comply with a significant condition of community supervision, and as a result evidenced an intentional effort to avoid rehabilitation. Provides that failure to pay a fine, restitution, court cost, or other fee does not constitute noncompliance with a significant condition of community supervision unless the judge determines the defendant was not indigent and intentionally refused to make the payment. Provides that a discharge subject to enhancement is a final conviction for purposes of criminal enhancement. Deletes existing text from Subsection (b).

Sec. 20. VIOLATION OF COMMUNITY SUPERVISION: DETENTION AND HEARING. Redesignates existing text from Section 21. Deletes existing text authorizing a judge, at any time during the period of community supervision, to issue a warrant for violation of any of the conditions of the community supervision and cause a defendant placed on deferred adjudication after being charged with one of those offenses, to be subject to specific control measures and court-ordered-management provisions.

Sec. 21. CONTINUATION OR MODIFICATION. Redesignates existing text from Section 22. (a) Authorizes a judge to impose any other conditions upon specific determinations, if after the completion of a review under Section 19 or a hearing under Section 20, rather than 21, a judge continues or modifies community supervision after determining that the defendant failed to successfully complete or violated a condition community supervision. Deletes existing text of Subdivisions (1)-(4) and Subsection (b).

(b) Redesignates existing text of Subsection (c). Authorizes the judge in a felony case to extend a period of community supervision under this section by imposing a maximum of five one-year extensions for good cause. Prohibits the judge from imposing more than one extension per hearing under Section 20. Prohibits the period of community supervision in a felony case, rather than in a first, second, or third degree felony, with extensions, from exceeding 10 years. Authorizes the judge to extend the period of community supervision in a misdemeanor case for any period the judge determines is necessary, not to exceed an additional two years beyond the three-year limit, if the defendant fails to pay a previously assessed reimbursement for appointed counsel. Makes a conforming change.

(c) Redesignates existing text from Subsection (d). Prohibits the original fine imposed and an increase in the fine imposed under this subsection from exceeding the maximum fine for the offense for which the defendant was sentenced, if a judge imposes a sanction on a defendant by increasing the fine imposed on the defendant.

Deletes existing section:

Sec. 22A. EXTENDING SUPERVISION PERIOD FOR SEX OFFENDERS.

Sec. 22. REVOCATION. Redesignates existing text from Section 23. (a) Makes a conforming change.

(b)(1) Provides that except as otherwise provided by Subdivision (2), by this article, or by other law, no part of the time that defendant is on community supervision shall be considered as any part of the time that he shall be sentenced to serve.

(2) Authorize the judge to grant a defendant credit on the sentence imposed for all or part of the time the defendant was on community supervision if the judge revokes community supervision solely on the basis of an administrative violation of conditions of release.

(c) Makes a conforming change.

Sec. 23. New heading: NO DUE DILIGENCE DEFENSE. Redesignates existing text from Section 24. Prohibits the defendant from raising at a revocation hearing a defense that TDCJ failed to exercise due diligence, notwithstanding Section 24, as that section existed on August 31, 2005, or any case law that provided a defendant with an affirmative defense to revocation based on a failure by a department to exercise due diligence in contacting a defendant who failed to report as required by a condition of community supervision. Deletes existing text regarding an affirmative defense to revocation for an alleged failure to report to a supervision officer as directed for a change of residence address or employment address.

SECTION 1.02. (a) Amends Chapter 42, Code of Criminal Procedure, by adding Article 42.01a, as follows:

Art. 42.01a. COMMUNITY SUPERVISION FORMS. (a) Requires the community justice assistance division of TDCJ and the Office of Court Administration of the Texas Judicial System (OCA) to promulgate a standard form for the dismissal or discharge of a period of community supervision and for the revocation of a period of community supervision.

(b) Requires a judge that orders the dismissal, discharge, or revocation of a period of community supervision under Article 42.12 to use the form promulgated under Subsection (a).

(b) Requires the community justice assistance division of TDCJ and the OCA to promulgate the forms required by Article 42.01a, Code of Criminal Procedure, as added by this Act, as soon as practicable, but in no event later than 10 days after the effective date of this Act.

(c) Requires a judge that on or after October 1, 2005, orders the dismissal, discharge, or the revocation of a period of community supervision to do so on a form promulgated under Article 42.01a, Code of Criminal Procedure, as added by this Act.

(d) Amends Chapter 42, Code of Criminal Procedure, by adding Article 42.01b, as follows:

Art. 42.01b. INTOXICATION OFFENSE REPORTING. (a) Requires the OCA and the Department of Public Safety (DPS) to promulgate a form to track the filing of charges against persons charged with offenses under Chapter 49 (Intoxication and Alcoholic Beverage Offenses), Penal Code, other than offenses under Section 49.02.

(b) Requires DPS to make the forms available to district and county clerks, along with filing instructions. Provides that clerks are required to file forms described by Subsection (a) on a schedule established by DPS.

(e) Requires OCA and DPS to promulgate the form required by Article 42.01b, Code of Criminal Procedure, as added by this Act, as soon as practicable, but in no event later than 10 days after the effective date of this Act. Requires DPS to make the form and instructions for filing the form available to district and county clerks not later than November 1, 2005. Requires each offense under Chapter 49, Penal Code, committed on or after January 1, 2006, other than an offense under Section 49.02, to be reported on the form.

(f) Requires OCA, in the 16-month period following the effective date of this Act, to provide courses to assist the judiciary, prosecutors, community supervision and corrections department employees, and defense counsel in implementing the provisions of this Act. Authorizes OCA to seek the assistance of the Texas Criminal Defense Lawyers Association and the Texas District and County Attorneys Association in offering courses described by this subsection. Requires OCA to begin offering course described by this subsection not later than January 1, 2006.

SECTION 1.03. Amends Section 76.003(a), Government Code, as follows:

(a) Requires a community justice council (council) to be established by the judges described by Section 76.002 in each jurisdiction served by a community supervision and corrections department (department), unless a board or council that was in existence on September 1, 1991, is performing duties substantially similar to those imposed on a council under this section. Requires the council to provide continuing policy guidance and direction for the development of community justice plans containing components required by Article 42.12, Code of Criminal Procedure, and other law and for the development of community corrections facilities and programs.

SECTION 1.04. Amends Section 411.081(d), Government Code, to require the court that placed the defendant on deferred adjudication to enter an order of nondisclosure prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication, notwithstanding any other provision of this subchapter. Deletes existing text requiring the court to issue a specific order and authorizing a person to petition the court for an order of nondisclosure on a specific payment to the clerk of the court.

SECTION 1.05. Amends Section 509.001(1) and (4), Government Code, to redefine "community corrections facility" and "state aid."

SECTION 1.06. Amends Section 509.007, Government Code, as follows:

Sec. 509.007. COMMUNITY JUSTICE PLAN. (a) Requires the community justice assistance division (division) to require as a condition to payment of state aid to a department or county under Section 509.001 that community justice plan be submitted for the department. Requires a council to submit the plan required by this subsection. Prohibits a community justice from submitting a plan under this section unless the plan is first approved under Section 76.002, rather than the district judges who manage the department served by the council.

(b) Sets forth requirements for the community justice plan under this section.

SECTION 1.07. Amends Section 509.011(a), Government Code, to require the division to prepare and submit to the comptroller vouchers for payment to the community service and corrections department, upon determining that a department complies with division standards and if the department or judges described by Section 76.002 who established the department have submitted a community justice plan under Section 76.003.

SECTION 1.08. Amends Section 12.42(g), Penal Code, to delete existing text regarding a defendant entering a plea of guilty or nolo contendere in return for a grant of deferred adjudication.

SECTION 1.09. Repealer: Section 411.081(e) (relating to instances in which a person is entitled to petition a court), Government Code.

SECTION 1.10. Provides that the change in law made by this article applies to a person who is on community supervision on or after the effective date of this article, regardless of when the person was initially placed on community supervision.

ARTICLE 2. DRIVER'S LICENSES

SECTION 2.01. Amends Section 521.242, Transportation Code, by amending Subsection (d) and adding Subsections (b-1), (d-1), and (g), as follows:

(b-1) Requires the person's petition under Subsection (b) to be filed in a court having jurisdiction of the intoxication offense that resulted in the suspension, if the person's driver's license was suspended under Chapter 524 or 724. Requires the petition to state that the person's driver's license was suspended under Chapter 524 or 724.

(d) Requires a petition filed under Subsection (b) to state specific information regarding the petitioner successfully completing an educational program jointly approved by specific entities.

(d-1) Requires a petition filed under Subsection (b-1) to state that subsequent to the suspension of the person's driver's license the petitioner has successfully completed an educational program described by Subsection (d)(2).

(g) Requires DSHS to publish the jointly approved rules and to monitor, coordinate, and provide training to persons providing the educational programs described by Subsection (d)(2). Provides that DSHS is responsible for the administration of the certification and approved educational programs and is authorized to charge a nonrefundable application fee for the initial certification of approval and for renewal of a certificate.

SECTION 2.02. Amends Section 521.246, Transportation Code, by amending Subsections (b) and (d), and adding Subsections (d-1) through (d-4), as follows:

(b) Requires, rather than authorizes, the judge, as part of the order, to restrict the person to the operation of a motor vehicle equipped with an ignition interlock device if the judge determines that the person's license has been suspended under Chapter 524 or 724. Deletes existing text requiring the judge to restrict the person from operating a vehicle equipped with an ignition interlock device upon making specific determinations.

(d) Requires the court to order the ignition interlock device to remain installed for at least the applicable, rather than half, period of suspension, rather than supervision.

(d-1) Provides that notwithstanding Section 521.248(a), a court that enters an order under Subsection (b) retains jurisdiction over the person until the third anniversary of the date on which the applicable period of suspension expires. Authorizes the court, at any time during those three years, but not more than once a year, on written notice to the person and to the attorney representing the state, to conduct a hearing to determine whether the person has continued to operate a motor vehicle while intoxicated or under the influence of alcohol.

(d-2) Authorizes the court to enter an order restricting the person to the operation of a motor vehicle equipped with an ignition interlock device for the period set by the court, but not longer than the third anniversary of the date on which the applicable period of suspension expires, if the court determines that the person has continued to operate a motor vehicle while intoxicated or under the influence of alcohol and enters the determination in the record of the proceedings.

(d-3) Prohibits a hearing under Subsection (d-1) from being held before the 11th day after the court notifies the parties. Entitles a party to only one continuance of the hearing. Authorizes the court to conduct the hearing and enter an order under Subsection (d-2) in

the person's absence and notify the person of the order by sending a certified copy of the order by first class mail to the person's address as shown in the driver's license records of DPS.

(d-4) Authorizes a person who is restricted to the operation of a motor vehicle equipped with an ignition interlock device under Subsection (d-2) to request that the court review the order at any time the court considers appropriate, or on an annual basis.

SECTION 2.03. Amends Subchapter L, Chapter 521, Transportation Code, by adding Sections 521.2451 through 521.2454 and 521.2511, as follows:

Sec. 521.2451. **REQUIRED ALCOHOL AND DRUG TESTING.** Authorizes an order under Section 521.244 to include a requirement that the person submit to testing for alcohol or controlled substances as directed by the court or as specified in the order.

Sec. 521.2452. **ELECTRONIC MONITORING.** Authorizes an order under Section 521.244 to include a requirement that the person submit to electronic monitoring as directed by the court or as specified in the order for as long as the occupational license remains valid. Defines "electronic monitoring."

Sec. 521.2453. **SUPERVISION BY COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENT.** Requires the court to require that the defendant be supervised by the community supervision and corrections department that serves the court for the period during which the occupational license remains valid or the period specified in an order entered under Section 521.246.

Sec. 521.2452. **COSTS.** Authorizes the court to require the defendant to pay all costs associated with the conditions or restrictions imposed by the court under this subchapter.

Sec. 521.2511. **CONDITIONS AND RESTRICTIONS EXCLUSIVE.** Prohibits a court from including in an order entered under this subchapter, a condition or restriction that is not expressly required or authorized by this subchapter. Provides that to the extent of a conflict with another law of this state, this section prevails.

SECTION 2.04. Amends Section 521.341, Transportation Code, to include that a license is automatically suspended on final conviction of the license holder of an offense under Section 38.04, Penal Code, if the holder used a motor vehicle in the commission of the offense. Makes a conforming change.

SECTION 2.05. Amends Section 521.342(b) and (c), Transportation Code, as follows:

(b) Requires DPS to suspend for one year the license of a person under the age of 21 who is convicted of an offense under specific sections for one year, except that if the person's driving record shows one or more alcohol-related or drug-related enforcement contacts, as defined by Section 524.001, during the 10 years preceding the date of the person's arrest, requires DPS to suspend the person's license for two years. Deletes existing text requiring the person to attend education programs or be under community supervision.

(c) Provides that a person whose license is suspended under Subsection (a) remains eligible to receive an occupation license under Subchapter L, except that the person is not eligible for an occupational license for the first 45 days of a one-year suspension, or for the first 90 days of a two-year suspension.

SECTION 2.06. Amends Section 521.344, Transportation Code, as follows:

Sec. 521.344. New heading: **SUSPENSION FOR CERTAIN OFFENSES INVOLVING INTOXICATION.** (a) Provides that except as provided by Section 521.345, rather than 521.342(b) and Subsections (d)-(i), if a person is convicted of an offense under Section 49.04 or 49.07, Penal Code, the license suspension continues for a period of one year, if the person is punished under said sections, except that if the person's driving record

shows one or more alcohol-related or drug-related enforcement contacts, as defined by Section 524.001, during the 10 years preceding the date of the person's arrest, the suspension continues for a period of two years, rather than one year. Deletes existing text limiting the punishment.

(b) Deletes existing text limiting the punishment.

(c) Prohibits, rather than requires, the court from crediting toward the period of suspension imposed on the person for refusal to give a specimen under Chapter 724, if the refusal followed an arrest for the same offense for which the court is suspending the person's license under this chapter. Requires the suspensions to run consecutively with the subsequent suspension beginning on the date the first suspension expires. Deletes existing text prohibiting the court from extending the credit to specific people.

(d) Provides that a person whose license is suspended under this section remains eligible to receive an occupation license under Subchapter L, except that the person is not eligible for an occupation license for the first 45 days of a one-year suspension or for the first 90 days of a two-year suspension. Deletes existing text of Subsections (d)-(i).

SECTION 2.07. Amends Section 524.002, Transportation Code, to provide that a period of suspension under this chapter is 180, rather than 90, days if the person's driving record shows no alcohol-related or drug-related enforcement contacts during the 10 years preceding the date of the person's arrest.

(b) Redesignates existing text of Subsection (d). Sets forth instances in which a person whose driver's license is suspended under this chapter is not eligible for an occupation license under Subchapter L, Chapter 521. Deletes existing text from Subsections (b) and (c). Deletes existing text for previous suspension periods for a minor.

SECTION 2.08. Amends Section 524.023(b), Transportation Code, as follows:

(b) Prohibits, rather than requires, the court imposing a driver's license suspension under Section 106.041, Alcoholic Beverage Code, or Chapter 521 or 522 as required by Subsection (a) from crediting a period of suspension imposed under this chapter or a period of ineligibility for an occupation drivers license, and requires the suspensions to run consecutively and the applicable periods of ineligibility for an occupational license under Subchapter O, Chapter 521, to run concurrently. Deletes existing text instances in which a credit is prohibited from being given.

SECTION 2.09. Amends Section 724.015, Transportation Code, to require the officer to inform the person orally and in writing of the specific consequences and terms of suspension, before requesting a person to submit to the taking of a specimen.

SECTION 2.10. Amends Section 724.035, Transportation Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Requires DPS, if a person refuses the request of a peace officer to submit to the taking of a specimen, to suspend the person's license to operate a motor vehicle on a public highway for one year, rather than 180 days, or if the person is a resident without a license, issue an order denying the issuance of a license to the person for one year, rather than 180 days.

(d) Sets forth the suspensions for a person whose driver's license is suspended under this chapter is not eligible for an occupational license under Subchapter L, Chapter 521.

SECTION 2.11. Repealer: Section 524.051 (Reinstatement and Reissuance), Transportation Code.

SECTION 2.12. (a) Makes application of Chapter 521, Transportation Code, as amended by this article, relating to the automatic suspension of a driver's license on conviction of certain offenses, prospective.

(b) Makes application of Chapters 521 and 724, Transportation Code, as amended by this article, relating to the suspension of a driver's license, prospective.

(c) Provides that for purposes of Subsection (b) of this section, an offense was committed before September 1, 2005, if any element of the offense was committed before that date.

(d) Makes application of Chapter 521, Transportation Code, as amended by this article, relating to an occupational driver's license, prospective.

ARTICLE 3. EFFECTIVE DATE

SECTION 3.01. Effective date: September 1, 2005.