

By: Smith of Harris

H.B. No. 3029

A BILL TO BE ENTITLED

AN ACT

relating to the conditions for release on bond of a defendant charged with certain intoxication offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 17.441, Code of Criminal Procedure, is amended to read as follows:

Art. 17.441. CONDITIONS REQUIRING MOTOR VEHICLE IGNITION INTERLOCK DEVICE. (a) Except as provided by Subsection (b), a magistrate shall require on release that a defendant charged with a subsequent offense under Section 49.04, 49.045, 49.05, or 49.06 [~~Sections 49.04-49.06~~], Penal Code, or with an offense under Section 49.07 or 49.08 of that code:

(1) have installed on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant, an ignition interlock [a] device that uses a deep-lung breath analysis mechanism to make impractical the operation of a motor vehicle if ethyl alcohol is detected in the breath of the operator; and

(2) not operate any motor vehicle unless the vehicle is equipped with that device.

(b) The magistrate may not require the installation of the ignition interlock device if the magistrate finds that to require the device would not be in the best interest of justice.

(c) If the defendant is required to have the ignition

1 interlock device installed, the magistrate shall require that the
2 defendant have the device installed on the appropriate motor
3 vehicle, at the defendant's expense, before the 30th day after the
4 date the defendant is released on bond.

5 (d) The magistrate may designate an appropriate agency to
6 verify the installation of the ignition interlock device and to
7 monitor the device. If the magistrate designates an agency under
8 this subsection, in each month during which the agency verifies the
9 installation of the device or provides a monitoring service, the
10 defendant shall pay a fee to the designated agency in the amount set
11 by the magistrate. The defendant shall pay the initial fee at the
12 time the agency verifies the installation of the device. In each
13 subsequent month during which the defendant is required to pay a
14 fee, the defendant shall pay the fee on the first occasion in that
15 month that the agency provides a monitoring service. The
16 magistrate shall set the fee in an amount not to exceed \$10 as
17 determined by the county auditor, or by the commissioners court of
18 the county if the county does not have a county auditor, to be
19 sufficient to cover the cost incurred by the designated agency in
20 conducting the verification, ~~or~~ providing the monitoring
21 service, or both, as applicable in that county.

22 SECTION 2. Chapter 17, Code of Criminal Procedure, is
23 amended by adding Article 17.442 to read as follows:

24 Art. 17.442. CONDITIONS REQUIRING ALCOHOL TESTING. (a)
25 This article applies only to a defendant who:

26 (1) is charged with a subsequent offense under Section
27 49.04, 49.045, 49.05, or 49.06, Penal Code, or with an offense under

1 Section 49.07 or 49.08 of that code; and

2 (2) does not own or regularly operate a motor vehicle.

3 (b) A magistrate may require a defendant described by
4 Subsection (a) as a condition of release to submit to alcohol
5 testing at the defendant's expense, including by:

6 (1) wearing an alcohol monitoring device that provides
7 continuous remote alcohol monitoring and is not intended to be
8 removed by the defendant; or

9 (2) obtaining a deep-lung breath analysis mechanism
10 that detects ethyl alcohol on the defendant's breath and using the
11 mechanism at intervals prescribed by the court.

12 (c) If the magistrate requires the defendant to wear an
13 alcohol monitoring device under this article, the magistrate must
14 specify the date by which the defendant must have the device secured
15 to the defendant. If the magistrate requires the defendant to
16 obtain and use a breath analysis mechanism under this article, the
17 magistrate must specify the date by which the defendant must obtain
18 and begin using the mechanism.

19 (d) The magistrate may revoke the bond and order the
20 defendant arrested if the court finds, after notice and an
21 opportunity for a hearing, that:

22 (1) the defendant refused to wear an alcohol
23 monitoring device, if required by the court;

24 (2) the defendant failed to obtain and use a breath
25 analysis mechanism, if required by the court;

26 (3) the defendant tampered with or otherwise attempted
27 to disable an alcohol monitoring device or breath analysis

1 mechanism;

2 (4) an alcohol monitoring device, breath analysis
3 mechanism, or other testing method showed that the defendant
4 violated a condition of bond;

5 (5) the defendant otherwise did not submit to alcohol
6 testing; or

7 (6) the defendant failed to pay the costs of alcohol
8 testing, including the costs of an alcohol monitoring device, a
9 breath analysis mechanism, or a monitoring service for the device
10 or mechanism, if:

11 (A) payment was ordered under Subsection (e) as a
12 condition of bond; and

13 (B) the magistrate determines that the defendant
14 is not indigent and is financially able to make the payments as
15 ordered.

16 (e) The costs of alcohol testing, including, as applicable,
17 the costs of the alcohol monitoring device or breath analysis
18 mechanism and monitoring services for the device or mechanism may
19 be:

20 (1) assessed as a cost of court;

21 (2) ordered paid as a condition of bond by the
22 defendant to:

23 (A) the court;

24 (B) the agency designated by the magistrate under
25 Subsection (f); or

26 (C) the service provider or providers; or

27 (3) waived or reduced.

1 (f) The magistrate may designate an appropriate agency or
2 service provider to:

3 (1) secure an alcohol monitoring device to a defendant
4 or verify that a defendant is wearing the device, or verify that a
5 defendant has obtained a breath analysis mechanism, as applicable;
6 and

7 (2) monitor the defendant's use of alcohol as
8 specified by the court, including by providing a monitoring service
9 for:

10 (A) an alcohol monitoring device worn by a
11 defendant; or

12 (B) a breath analysis mechanism used by a
13 defendant.

14 (g) If the magistrate designates an agency or service
15 provider under Subsection (f), in each month during which the
16 agency or service provider secures an alcohol monitoring device to
17 a defendant or verifies that a defendant is wearing the device,
18 verifies that a defendant has obtained a breath analysis mechanism,
19 or otherwise monitors the defendant's use of alcohol, as
20 applicable, and in each month during which the agency or service
21 provider provides a monitoring service, the defendant shall pay a
22 fee to the agency or service provider in an amount set by the
23 magistrate, unless the magistrate has waived or reduced the fee. In
24 each month during which the defendant is required to pay a fee, the
25 defendant shall pay the fee on the first occasion in that month that
26 the agency or service provider secures an alcohol monitoring
27 device, verifies a device or mechanism, or provides a monitoring

1 service. The magistrate shall set the fee in an amount not to
2 exceed \$10 as determined by the county auditor, or by the
3 commissioners court of the county if the county does not have a
4 county auditor, to be sufficient to cover the costs incurred by the
5 agency or service provider in securing the device, conducting the
6 verification, or providing the monitoring service, as applicable in
7 that county.

8 SECTION 3. Subchapter B, Chapter 103, Government Code, is
9 amended by adding Section 103.0217 to read as follows:

10 Sec. 103.0217. ADDITIONAL FEES IN CERTAIN CRIMINAL CASES:
11 CODE OF CRIMINAL PROCEDURE. A defendant who is ordered by the court
12 to wear an alcohol monitoring device, obtain and use a breath
13 analysis mechanism, or otherwise submit to alcohol testing under
14 Article 17.442, Code of Criminal Procedure, shall pay a fee in an
15 amount set by a magistrate not to exceed \$10 in each month that the
16 designated agency or service provider secures an alcohol monitoring
17 device, verifies a device or mechanism, or provides a monitoring
18 service.

19 SECTION 4. The change in law made by this Act applies only
20 to an offense committed on or after the effective date of this Act.
21 An offense committed before the effective date of this Act is
22 covered by the law in effect when the offense was committed, and the
23 former law is continued in effect for that purpose. For purposes of
24 this section, an offense was committed before the effective date of
25 this Act if any element of the offense occurred before that date.

26 SECTION 5. This Act takes effect September 1, 2011.