

BILL ANALYSIS

C.S.H.B. 260
By: Callegari
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that repeat drunk driving offenders are a serious danger to Texas roads, pointing to reports that nearly 150,000 drivers have three or more driving while intoxicated offenses in Texas and that repeat offenders account for nearly one-third of the drunk driving population. Studies show that the use of ignition interlock devices that check a driver's breath alcohol concentration level before allowing the driver's motor vehicle to start has been successful in efforts to reduce repeat drunk driving offenses. Current Texas law provides a judge discretion in ordering the installation of an ignition interlock device in the vehicle driven by a defendant placed on community supervision for a conviction of certain driving while intoxicated offenses. A judge is required to order that installation only in certain circumstances, including if the defendant has a specified high blood alcohol concentration level or has previously been convicted of certain driving while intoxicated offenses.

Interested parties assert that requiring ignition interlock devices for additional driving while intoxicated offenders will reduce drunk driving and thus reduce accidents and deaths on Texas roads. C.S.H.B. 260 seeks to remedy this situation by establishing the Todd Levin Memorial Act to require the installation of an ignition interlock device in a motor vehicle owned or regularly operated by a defendant placed on community supervision for refusing a peace officer's request to provide a specimen for alcohol testing or for a second or subsequent conviction of certain intoxication offenses.

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. 260 amends the Code of Criminal Procedure to require a court placing a defendant on community supervision for a second or subsequent conviction of an offense of driving while intoxicated, driving while intoxicated with a child passenger, flying or boating while intoxicated, or assembling or operating an amusement ride while intoxicated, rather than for a first conviction of driving while intoxicated, driving while intoxicated with a child passenger, or flying or boating while intoxicated and that is enhanced for certain previous convictions, to require as a condition of community supervision that the defendant have an ignition interlock device installed on each motor vehicle owned or most regularly driven by the defendant and that the defendant not operate any motor vehicle not equipped with that device. The bill includes among the circumstances under which a court must require as a condition of community supervision installation of that device in that manner a defendant's refusal of a peace officer's request to provide a specimen of the defendant's breath or blood for alcohol testing.

C.S.H.B. 260 requires a court, before placing on community supervision a person convicted of certain intoxication offenses, to determine from criminal history record information whether the defendant has one or more previous convictions that result in restricting the defendant to the

operation of a motor vehicle equipped with an ignition interlock device, rather than one or more previous convictions of certain intoxication offenses. The bill requires the court, if the defendant is not otherwise restricted to the operation of a motor vehicle equipped with such a device, to order the appropriate supervision officer to use an empirically validated risk assessment screening instrument to determine the risk that the defendant will commit a subsequent intoxication offense, and, if the assessment shows that the defendant is at medium to high risk for committing a subsequent intoxication offense, to require as a condition of community supervision that the defendant have that device installed on each motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant and that the defendant not operate any motor vehicle that is not equipped with that device.

C.S.H.B. 260 includes the offense of assembling or operating an amusement ride while intoxicated among the offenses for which a previous conviction may not be used for purposes of restricting a defendant to the operation of a motor vehicle equipped with an ignition interlock device if the previous conviction was a final conviction for an offense committed more than 10 years before the instant offense for which the defendant was convicted and placed on community supervision and if the defendant has not been convicted of such an offense or other specified intoxication offenses committed within 10 years before the date the defendant is convicted and placed on community supervision for the instant offense.

C.S.H.B. 260 requires the vendor of ignition interlock devices who installs such a device on a defendant's vehicle to pay to the local community supervision and corrections department a fee of \$2 for each day the device remains installed to help defray the cost of monitoring compliance with a court order issued for the installation of the device.

C.S.H.B. 260 adds temporary provisions, set to expire January 1, 2017, to require the Legislative Budget Board to perform or contract for the performance of a study to analyze the efficacy of the bill's provisions in reducing recidivism and promoting public safety during the three-year period following the bill's passage, to submit to the legislature two reports on the study along with any recommendations based on the study's results, and to require the first report to be submitted not later than December 1, 2014, and the second report to be submitted not later than December 1, 2016.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 260 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. This Act shall be known as the Todd Levin Memorial Act.

SECTION 1. Same as introduced version.

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

SECTION 2. Section 13, Article 42.12, Code of Criminal Procedure, is amended by amending Subsection (i) and adding Subsection (i-1) to read as follows:

(i) If a court places on community supervision a defendant convicted of an

offense under Section 49.04 or 49.045, Penal Code, or an offense under Section 49.07 or 49.08, Penal Code, that involves the operation of a motor vehicle, the court shall require as a condition of community supervision that the defendant have a device installed, on the motor vehicle owned by the defendant or on the vehicle most regularly driven 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 the defendant not operate any motor vehicle that is not equipped with that device.

If a court places on community supervision a defendant [person] convicted of an offense under Section 49.05, 49.06, or 49.065 [Sections 49.04-49.08], Penal Code, or an offense under Section 49.07 or 49.08, Penal Code, that does not involve the operation of a motor vehicle [is placed on community supervision], the court may require as a condition of community supervision that the defendant have the [a] device installed[;] on the appropriate [motor] vehicle [owned by the defendant or on the vehicle most regularly driven 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 the defendant not operate any motor vehicle that is not equipped with that device.

If it is shown on the trial of an [the] offense under Section 49.05, 49.06, or 49.065, Penal Code, that an analysis of a specimen of the defendant's [person's] blood, breath, or urine showed an alcohol concentration level of 0.15 or more at the time the analysis was performed, or if the defendant [person] is convicted of an offense under one of those sections [Sections 49.04-49.06, Penal Code,] and punished under Section 49.09(a) or (b), Penal Code, or is convicted of a second or subsequent offense under Section 49.07 or 49.08, Penal Code, that did not involve the operation of a motor vehicle, and the defendant [person] after conviction of the [either] offense is placed on community supervision, the court shall require as a condition of community supervision that the defendant have the device installed on the appropriate vehicle and that the defendant not operate any motor vehicle that [unless

(i) If a defendant [person] convicted of an offense under Sections 49.04-49.08, Penal Code, is placed on community supervision, the court may require as a condition of community supervision that the defendant have a device installed, on each [the] motor vehicle owned by the defendant or on the vehicle most regularly driven 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 the defendant not operate any motor vehicle that is not equipped with that device.

If it is shown on the trial of the offense that an analysis of a specimen of the defendant's [person's] blood, breath, or urine showed an alcohol concentration level of 0.15 or more at the time the analysis was performed or that at the time of the offense the defendant refused a request of a peace officer to provide a specimen of the defendant's breath or blood for alcohol testing, or if the defendant [person] is convicted of [an offense under Sections 49.04-49.06, Penal Code, and punished under Section 49.09(a) or (b), Penal Code, or of] a second or subsequent offense under Sections 49.04-49.08 [Section 49.07 or 49.08], Penal Code, and [the person after conviction of either offense] is placed on community supervision after conviction of the offense, the court shall require as a condition of community supervision that the defendant have a [the] device described by this

~~the vehicle~~] is not equipped with that device.

Before placing on community supervision a defendant ~~[person]~~ convicted of an offense under Section 49.05, 49.06, or 49.065 ~~[Sections 49.04-49.08]~~, Penal Code, or an offense under Section 49.07 or 49.08, Penal Code, that did not involve the operation of a motor vehicle, the court shall determine from criminal history record information maintained by the Department of Public Safety whether the defendant ~~[person]~~ has one or more previous convictions that result in restricting the defendant to the operation of a motor vehicle equipped with a device under this subsection.

~~If the court requires the defendant to have the device installed, the [under Sections 49.04-49.08, Penal Code, or has one previous conviction under Sections 49.04-49.07, Penal Code, or one previous conviction under Section 49.08, Penal Code. If it is shown on the trial of the offense 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, or if the court determines that the person has one or more such previous convictions, the court shall require as a condition of community supervision that the defendant have that device installed on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant and that the defendant not operate any motor vehicle unless the vehicle is equipped with the device described in this subsection.~~

~~The]~~ court shall require the defendant to

subsection installed on each motor [the appropriate] vehicle owned by the defendant or on the vehicle most regularly driven by the defendant and that the defendant not operate any motor vehicle that [unless the vehicle] is not equipped with that device.

Before placing on community supervision a person convicted of an offense under Sections 49.04-49.08, Penal Code, the court shall determine from criminal history record information maintained by the Department of Public Safety whether the defendant [person] has one or more previous convictions that result in restricting the defendant to the operation of a motor vehicle equipped with a device described by this subsection.

If the defendant is not otherwise restricted to the operation of a motor vehicle equipped with a device described by this subsection, the court shall order the appropriate supervision officer to use an empirically validated risk assessment screening instrument to determine the risk that the defendant will commit a subsequent offense under Sections 49.04-49.08, Penal Code. If the assessment shows that the defendant is at medium to high risk for committing a subsequent offense under one of those sections, [or has one previous conviction under Sections 49.04-49.07, Penal Code, or one previous conviction under Section 49.08, Penal Code. If it is shown on the trial of the offense 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, or if the court determines that the person has one or more such previous convictions,] the court shall require as a condition of community supervision that the defendant have a [that] device described by this subsection installed on each [the] motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant and that the defendant not operate any motor vehicle that [unless the vehicle] is not equipped with that [the] device [described in this subsection].

If the court requires the defendant to have the device installed, the [The] court shall

obtain the device at the defendant's own cost before the 30th day after the date of conviction unless the court finds that to do so would not be in the best interest of justice and enters its findings on record. The court shall require the defendant to provide evidence to the court within the 30-day period that the device has been installed on the appropriate vehicle and order the device to remain installed on that vehicle for a period not less than 50 percent of the supervision period. If the court determines the defendant [~~offender~~] is unable to pay for the device, the court may impose a reasonable payment schedule not to exceed twice the period of the court's order. 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. Notwithstanding the provisions of this subsection [~~section~~], if a person is required to operate a motor vehicle in the course and scope of the person's employment and if the vehicle is owned by the employer, the person may operate that vehicle without installation of an approved ignition interlock device if the employer has been notified of that driving privilege restriction and if proof of that notification is with the vehicle. This employment exemption does not apply, however, if the business entity that owns the vehicle is owned or controlled by the person whose driving privilege has been restricted. A previous conviction may not be used for purposes of restricting a defendant [~~person~~] to the operation of a motor vehicle equipped with an ignition interlock [~~ignition~~] device under this subsection if:

- (1) the previous conviction was a final conviction under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code, and was for an offense committed more than 10 years before the instant offense for which the defendant [~~person~~] was convicted and placed on community supervision; and
- (2) the defendant [~~person~~] has not been convicted of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08 of that code, committed within 10

require the defendant to obtain the device at the defendant's own cost before the 30th day after the date of conviction unless the court finds that to do so would not be in the best interest of justice and enters its findings on record. The court shall require the defendant to provide evidence to the court within the 30-day period that the device has been installed on the appropriate vehicle and order the device to remain installed on that vehicle for a period not less than 50 percent of the supervision period. If the court determines the defendant [~~offender~~] is unable to pay for the device, the court may impose a reasonable payment schedule not to exceed twice the period of the court's order. 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. Notwithstanding [~~the provisions of~~] this subsection [~~section~~], if a defendant [~~person~~] is required to operate a motor vehicle in the course and scope of the defendant's [~~person's~~] employment and if the vehicle is owned by the employer, the defendant [~~person~~] may operate that vehicle without installation of an approved ignition interlock device if the employer has been notified of that driving privilege restriction and if proof of that notification is with the vehicle. This employment exemption does not apply, however, if the business entity that owns the vehicle is owned or controlled by the defendant [~~person~~] whose driving privilege has been restricted. A previous conviction may not be used for purposes of restricting a defendant [~~person~~] to the operation of a motor vehicle equipped with a [~~an interlock ignition~~] device described by [~~under~~] this subsection if:

- (1) the previous conviction was a final conviction under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code, and was for an offense committed more than 10 years before the instant offense for which the defendant [~~person~~] was convicted and placed on community supervision; and
- (2) the defendant [~~person~~] has not been convicted of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08 of that code, committed within 10

years before the date on which the instant offense for which the defendant [~~person~~] was convicted and placed on community supervision.

years before the date on which the instant offense for which the defendant [~~person~~] was convicted and placed on community supervision.

~~(i-1) The vendor of ignition interlock devices who installs a device under Subsection (i) shall pay to the local community supervision and corrections department a fee of \$2 for each day the device remains installed to help defray the cost of monitoring compliance with a court order issued under Subsection (i).~~

SECTION 3. Section 521.246, Transportation Code, is amended to read as follows:

~~No equivalent provision.~~

Sec. 521.246. IGNITION INTERLOCK DEVICE REQUIREMENT. (a) If the person's license has been suspended after a conviction under Section 49.04 or 49.045, Penal Code, or under Section 49.07 or 49.08 [~~Section 49.04, 49.07, or 49.08~~], Penal Code, if the person used a motor vehicle in the commission of the offense, as [~~the judge, before signing an order, shall determine from the criminal history record information maintained by the department whether the person has any previous conviction under those laws.~~

~~[(b) As part of the order the judge may 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 following a conviction under Section 49.04, 49.07, or 49.08, Penal Code. As] part of the order, the judge shall restrict the person to the operation of a motor vehicle equipped with an ignition interlock device [if the judge determines that:~~

~~[(1) the person has two or more convictions under any combination of Section 49.04, 49.07, or 49.08, Penal Code; or~~

~~[(2) the person's license has been suspended after a conviction under Section 49.04, Penal Code, for which the person has been punished under Section 49.09, Penal Code].~~

(b) [(e)] The person shall obtain the ignition interlock device at the person's own expense unless the court finds that to do so is not in the best interest of justice and enters that finding in the record. If the court determines that the person is unable to pay for the device, the court may impose a

reasonable payment schedule for a term not to exceed twice the period of the court's order.

(c) ~~[(d)]~~ The court shall order the ignition interlock device to remain installed for at least half of the period of supervision.

(d) ~~[(e)]~~ A person to whom this section applies may operate a motor vehicle without the installation of an approved ignition interlock device if:

(1) the person is required to operate a motor vehicle in the course and scope of the person's employment;

(2) the vehicle is owned by the person's employer;

(3) the employer is not owned or controlled by the person whose driving privilege is restricted;

(4) the employer is notified of the driving privilege restriction; and

(5) proof of that notification is with the vehicle.

~~[(f) A previous conviction may not be used for purposes of restricting a person to the operation of a motor vehicle equipped with an interlock ignition device under this section if:~~

~~[(1) the previous conviction was a final conviction under Section 49.04, 49.07, or 49.08, Penal Code, and was for an offense committed more than 10 years before the instant offense for which the person was convicted; and~~

~~[(2) the person has not been convicted of an offense under Section 49.04, 49.07, or 49.08 of that code committed within 10 years before the date on which the instant offense for which the person was convicted.]~~

No equivalent provision.

SECTION 3. (a) The Legislative Budget Board shall perform or contract for the performance of a study to analyze the efficacy of this Act in reducing recidivism and promoting public safety during the three-year period following the passage of this Act.

(b) The Legislative Budget Board shall submit to the legislature two reports on the study conducted under this section along with any recommendations based on the results of the study. The first report must be submitted not later than December 1, 2014, and the second report must be submitted not later than December 1, 2016.

(c) This section expires January 1, 2017.

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

SECTION 4. Same as introduced version.

SECTION 5. This Act takes effect September 1, 2013.

SECTION 5. Same as introduced version.