

## **BILL ANALYSIS**

C.S.H.B. 3632  
By: Canales  
Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Minors convicted of one or more offenses for the purchase, possession, or consumption of alcoholic beverages currently may be required to attend an alcohol awareness program. Program courses are designed to help increase minors' awareness of the potential dangers and detriments of alcohol use. Unfortunately, this requirement does not extend to minors who are convicted of, or placed on deferred disposition or community supervision for, drug-related offenses. Educational awareness can combat the prevalence of drug use and drug-associated criminal activity. In an effort to alleviate youth delinquency by expanding awareness of the detriments of drug use, C.S.H.B. 3632 authorizes a court to require a minor defendant convicted of certain possession-related drug offenses to attend a drug education program on the dangers of drug abuse and approved by the Department of State Health Services (DSHS) and to require a minor convicted of certain alcohol-related offenses to attend a DSHS-approved alcohol awareness program.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Department of State Health Services in SECTION 4 of this bill.

### **ANALYSIS**

Section 531.0055, Government Code, as amended by Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, expressly grants to the executive commissioner of the Health and Human Services Commission all rulemaking authority for the operation of and provision of services by the health and human services agencies. Similarly, Sections 1.16-1.29, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, provide for the transfer of a power, duty, function, program, or activity from a health and human services agency abolished by that act to the corresponding legacy agency. To the extent practical, this bill analysis is written to reflect any transfer of rulemaking authority and to update references as necessary to an agency's authority with respect to a particular health and human services program.

C.S.H.B. 3632 amends the Family Code to authorize a court, if the court or jury finds at an adjudication hearing for a child that the child engaged in delinquent conduct or conduct indicating a need for supervision that constitutes the possession of certain controlled substances under the Texas Controlled Substances Act, to order that the child attend a drug education program that is designed to educate persons on the dangers of drug abuse and is approved by the Department of State Health Services (DSHS). The bill authorizes the court, if the court or jury finds at an adjudication hearing for a child that the child engaged in delinquent conduct or conduct indicating a need for supervision that constitutes certain alcohol-related offenses, to order that the child attend an alcohol awareness program approved by DSHS. The bill establishes that the orders for a child to attend such drug and alcohol programs are subject to a court finding that the child needs rehabilitation or that the protection of the public or the child requires that disposition be made and authorizes the issuance of such orders in addition to any other order authorized under the juvenile justice code. The bill requires a court that orders a child to attend

such a drug or alcohol program to require the child's parent or guardian to pay the cost of attending the program, unless the court determines that the parent or guardian is indigent and unable to pay the cost. The bill requires the court to allow the child's parent or guardian to pay the cost of attending the program in installments.

C.S.H.B. 3632 makes DSHS responsible for the administration of the certification of drug education programs and authorizes DSHS to charge a nonrefundable application fee for initial certification of approval or renewal of the certification. The bill requires DSHS to adopt rules regarding drug education programs and to monitor and provide training to a person who provides such a program.

C.S.H.B. 3632 authorizes the deferred prosecution for a child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision that constitutes the possession of certain controlled substances under the Texas Controlled Substances Act to include a condition that the child attend a drug education program that is designed to educate persons on the dangers of drug abuse and is approved by DSHS. The bill authorizes the deferred prosecution for a child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision that constitutes certain alcohol-related offenses to include a condition that the child attend an alcohol awareness program approved by DSHS.

C.S.H.B. 3632 amends the Code of Criminal Procedure to authorize a judge who grants community supervision to a defendant younger than 18 years of age convicted of certain alcohol-related offenses or certain offenses involving the possession of a controlled substance or marihuana under the Texas Controlled Substances Act to require the defendant as a condition of community supervision to attend, as appropriate, an alcohol awareness program approved by DSHS or a drug education program that is designed to educate persons on the dangers of drug abuse and is approved by DSHS. The bill includes those programs among the alcohol or drug abuse treatment or education programs in which a judge is authorized to require a defendant to participate during a period of deferral of final disposition. The bill requires a judge who requires a defendant as a condition of community supervision, or during a period of deferral of final disposition, to attend such an alcohol awareness program or drug education program to require the defendant to pay the cost of attending the program, unless the judge determines that the defendant is indigent and unable to pay the cost. The bill authorizes the judge to allow the defendant to pay the cost of attending the program in installments during the term of community supervision or deferral period, as applicable.

C.S.H.B. 3632 amends the Transportation Code to make nonsubstantive changes.

### **EFFECTIVE DATE**

September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3632 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**

SECTION 1. Section 106.115, Alcoholic Beverage Code, is amended by adding Subsections (a-1) and (a-2) to read as follows:

(a-1) The Texas Commission on Alcohol

#### **HOUSE COMMITTEE SUBSTITUTE**

No equivalent provision.

and Drug Abuse may approve as an alcohol awareness program under this section a drug, alcohol, and substance abuse education program approved by the commission under Section 54.047, Family Code.

(a-2) A court may satisfy the requirement of this section by ordering a defendant described by Subsection (a) to attend:

(1) the alcohol awareness program approved under Subsection (a); or

(2) the drug, alcohol, and substance abuse education program approved under Subsection (a-1).

SECTION 2. Section 11, Article 42.12, Code of Criminal Procedure, is amended by adding Subsection (n) to read as follows:

(n) If a judge grants community supervision to a defendant younger than 18 years of age convicted of an alcohol-related offense under Section 106.02, 106.025, 106.04, 106.05, or 106.07, Alcoholic Beverage Code, or Section 49.02, Penal Code, or an offense involving possession of a controlled substance under Section 481.115, 481.1151, 481.116, 481.1161, 481.117, 481.118, or 481.121, Health and Safety Code, the judge shall require the defendant as a condition of community supervision to attend, as appropriate, an alcohol awareness program approved under Section 106.115, Alcoholic Beverage Code, or a drug, alcohol, and substance abuse education program approved under Section 54.047, Family Code.

SECTION 1. Section 11, Article 42.12, Code of Criminal Procedure, is amended by adding Subsection (n) to read as follows:

(n)(1) If a judge grants community supervision to a defendant younger than 18 years of age convicted of an alcohol-related offense under Section 106.02, 106.025, 106.04, 106.05, or 106.07, Alcoholic Beverage Code, or Section 49.02, Penal Code, or an offense involving possession of a controlled substance or marihuana under Section 481.115, 481.1151, 481.116, 481.1161, 481.117, 481.118, or 481.121, Health and Safety Code, the judge may require the defendant as a condition of community supervision to attend, as appropriate, an alcohol awareness program approved under Section 106.115, Alcoholic Beverage Code, or a drug education program that is designed to educate persons on the dangers of drug abuse and is approved by the Department of State Health Services in accordance with Section 521.374, Transportation Code.

(2) If a judge requires a defendant as a condition of community supervision to attend an alcohol awareness program or drug education program described by Subdivision (1), unless the judge determines that the defendant is indigent and unable to pay the cost, the judge shall require the defendant to pay the cost of attending the program. The judge may allow the defendant to pay the cost of attending the program in installments during the term of community supervision.

SECTION 3. Article 45.051(b), Code of

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Criminal Procedure, is amended to read as follows:

(b) During the deferral period, the judge may require the defendant to:

- (1) post a bond in the amount of the fine assessed to secure payment of the fine;
- (2) pay restitution to the victim of the offense in an amount not to exceed the fine assessed;

(3) submit to professional counseling;

(4) submit to diagnostic testing for alcohol or a controlled substance or drug;

(5) submit to a psychosocial assessment;

(6) participate in an alcohol or drug abuse treatment or education program, such as:

(A) the drug, alcohol, and substance abuse education program approved by the Texas Commission on Alcohol and Drug Abuse under Section 54.047, Family Code; or

(B) the alcohol awareness program described by Section 106.115, Alcoholic Beverage Code;

(7) pay the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court as court costs;

(8) complete a driving safety course approved under Chapter 1001, Education Code, or another course as directed by the judge;

(9) present to the court satisfactory evidence that the defendant has complied with each requirement imposed by the judge under this article; and

(10) comply with any other reasonable condition.

SECTION 4. Section 53.03, Family Code, is amended by adding Subsections (h-1) and

Criminal Procedure, is amended by amending Subsection (b) and adding Subsection (g) to read as follows:

(b) During the deferral period, the judge may require the defendant to:

- (1) post a bond in the amount of the fine assessed to secure payment of the fine;
- (2) pay restitution to the victim of the offense in an amount not to exceed the fine assessed;

(3) submit to professional counseling;

(4) submit to diagnostic testing for alcohol or a controlled substance or drug;

(5) submit to a psychosocial assessment;

(6) participate in an alcohol or drug abuse treatment or education program, such as:

(A) a drug education program that is designed to educate persons on the dangers of drug abuse and is approved by the Department of State Health Services in accordance with Section 521.374, Transportation Code; or

(B) an alcohol awareness program described by Section 106.115, Alcoholic Beverage Code;

(7) pay the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court as court costs;

(8) complete a driving safety course approved under Chapter 1001, Education Code, or another course as directed by the judge;

(9) present to the court satisfactory evidence that the defendant has complied with each requirement imposed by the judge under this article; and

(10) comply with any other reasonable condition.

(g) If a judge requires a defendant under Subsection (b) to attend an alcohol awareness program or drug education program as described by Subdivision (6) of that subsection, unless the judge determines that the defendant is indigent and unable to pay the cost, the judge shall require the defendant to pay the cost of attending the program. The judge may allow the defendant to pay the cost of attending the program in installments during the deferral period.

SECTION 3. Section 53.03, Family Code, is amended by adding Subsections (h-1) and

(h-2) to read as follows:

(h-1) If the child is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision that violates Section 481.115, 481.1151, 481.116, 481.1161, 481.117, 481.118, or 481.121, Health and Safety Code, deferred prosecution under this section **must** include a condition that the child attend a drug, alcohol, and substance abuse education program approved by the Texas Commission on Alcohol and Drug Abuse under Section 54.047.

(h-2) If the child is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision that violates Section 106.02, 106.025, 106.04, 106.05, or 106.07, Alcoholic Beverage Code, or Section 49.02, Penal Code, deferred prosecution under this section **must** include a condition that the child attend:

(1) a drug, alcohol, and substance abuse education program approved by the Texas Commission on Alcohol and Drug Abuse under Section 54.047; or

(2) an alcohol awareness program described by Section 106.115, Alcoholic Beverage Code.

SECTION 5. Section 54.047, Family Code, is amended to read as follows:

Sec. 54.047. ALCOHOL OR DRUG RELATED OFFENSE. (a) If the court or jury finds at an adjudication hearing for a child that the child engaged in delinquent conduct or conduct indicating a need for supervision [~~or delinquent conduct~~] that constitutes a violation of Section 481.115, 481.1151, 481.116, 481.1161, 481.117, 481.118, or 481.121, Health and Safety Code, the court **shall** order that the child attend a drug, alcohol, and substance abuse education program approved by the Texas Commission on Alcohol and Drug Abuse.

(b) If the court or jury finds at an adjudication hearing for a child that the child engaged in delinquent conduct or conduct indicating a need for supervision that violates the alcohol-related offenses in Section 106.02, 106.025, 106.04, 106.05, or 106.07, Alcoholic Beverage Code, or

(h-2) to read as follows:

(h-1) If the child is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision that violates Section 481.115, 481.1151, 481.116, 481.1161, 481.117, 481.118, or 481.121, Health and Safety Code, deferred prosecution under this section **may** include a condition that the child attend a drug education program that is designed to educate persons on the dangers of drug abuse and is approved by the Department of State Health Services in accordance with Section 521.374, Transportation Code.

(h-2) If the child is alleged to have engaged in delinquent conduct or conduct indicating a need for supervision that violates Section 106.02, 106.025, 106.04, 106.05, or 106.07, Alcoholic Beverage Code, or Section 49.02, Penal Code, deferred prosecution under this section **may** include a condition that the child attend

an alcohol awareness program described by Section 106.115, Alcoholic Beverage Code.

SECTION 4. Section 54.047, Family Code, is amended to read as follows:

Sec. 54.047. ALCOHOL OR DRUG RELATED OFFENSE. (a) If the court or jury finds at an adjudication hearing for a child that the child engaged in delinquent conduct or conduct indicating a need for supervision [~~or delinquent conduct~~] that constitutes a violation of Section 481.115, 481.1151, 481.116, 481.1161, 481.117, 481.118, or 481.121, Health and Safety Code, the court **may** order that the child attend a drug education program that is designed to educate persons on the dangers of drug abuse and is approved by the Department of State Health Services in accordance with Section 521.374, Transportation Code.

(b) If the court or jury finds at an adjudication hearing for a child that the child engaged in delinquent conduct or conduct indicating a need for supervision that violates the alcohol-related offenses in Section 106.02, 106.025, 106.04, 106.05, or 106.07, Alcoholic Beverage Code, or

Section 49.02, Penal Code, the court shall order that a child attend:

(1) the approved drug, alcohol, and substance abuse education program described by this section; or

(2) an alcohol awareness program described by Section 106.115, Alcoholic Beverage Code.

(c) The court shall, in addition to the order described by Subsection (a) or (b), [subject to a finding under Section 54.04(c),] order[, in addition to any other order authorized by this title,] that, in the manner provided by Section 106.071(d), Alcoholic Beverage Code:

(1) the child perform community service; and

(2) the child's driver's license or permit be suspended or that the child be denied issuance of a driver's license or permit.

(d) An order under this section:

(1) is subject to a finding under Section 54.04(c); and

(2) may be issued in addition to any other order authorized by this title.

(e) The Texas Commission on Alcohol and Drug Abuse:

(1) is responsible for the administration of the certification of drug, alcohol, and substance abuse education programs;

(2) may charge a nonrefundable application fee for:

(A) initial certification of approval; or

(B) renewal of the certification;

(3) shall adopt rules regarding drug, alcohol, and substance abuse education programs approved under this section; and

(4) shall monitor and provide training to a person who provides a drug, alcohol, and substance abuse education program.

No equivalent provision.

Section 49.02, Penal Code, the court may order that the child attend

an alcohol awareness program described by Section 106.115, Alcoholic Beverage Code.

(c) The court shall, in addition to any order described by Subsection (a) or (b), [subject to a finding under Section 54.04(c),] order[, in addition to any other order authorized by this title,] that, in the manner provided by Section 106.071(d), Alcoholic Beverage Code:

(1) the child perform community service; and

(2) the child's driver's license or permit be suspended or that the child be denied issuance of a driver's license or permit.

(d) An order under this section:

(1) is subject to a finding under Section 54.04(c); and

(2) may be issued in addition to any other order authorized by this title.

(e) The Department of State Health Services:

(1) is responsible for the administration of the certification of drug education programs;

(2) may charge a nonrefundable application fee for:

(A) initial certification of approval; or

(B) renewal of the certification;

(3) shall adopt rules regarding drug education programs approved under this section; and

(4) shall monitor and provide training to a person who provides a drug education program.

(f) If the court orders a child under Subsection (a) or (b) to attend a drug education program or alcohol awareness program, unless the court determines that the parent or guardian of the child is indigent and unable to pay the cost, the court shall require the child's parent or a guardian of the child to pay the cost of attending the program. The court shall allow the child's parent or guardian to pay the cost of attending the program in installments.

SECTION 5. Section 521.374(a), Transportation Code, is amended to read as

follows:

(a) A person whose license is suspended under Section 521.372 may attend an educational program, approved by the Department of State Health Services [~~Texas Commission on Alcohol and Drug Abuse~~] under rules adopted by the Department of State Health Services [~~commission~~] and the department, that is designed to educate persons on the dangers of drug abuse.

SECTION 6. This Act takes effect September 1, 2013.

SECTION 6. Same as introduced version.