

By: Callegari, Turner of Collin, Gooden,
Carter, Zerwas

H.B. No. 260

Substitute the following for H.B. No. 260:

By: Herrero

C.S.H.B. No. 260

A BILL TO BE ENTITLED

1 AN ACT

2 relating to requiring the use of an ignition interlock device on
3 conviction of certain intoxication offenses as a condition of
4 community supervision; imposing a fee.

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

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

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

11 (i) If a defendant [~~person~~] convicted of an offense under
12 Sections 49.04-49.08, Penal Code, is placed on community
13 supervision, the court may require as a condition of community
14 supervision that the defendant have a device installed, on each
15 [~~the~~] motor vehicle owned by the defendant or on the vehicle most
16 regularly driven by the defendant, that uses a deep-lung breath
17 analysis mechanism to make impractical the operation of the motor
18 vehicle if ethyl alcohol is detected in the breath of the operator
19 and that the defendant not operate any motor vehicle that is not
20 equipped with that device. If it is shown on the trial of the
21 offense that an analysis of a specimen of the defendant's [~~person's~~]
22 blood, breath, or urine showed an alcohol concentration level of
23 0.15 or more at the time the analysis was performed or that at the
24 time of the offense the defendant refused a request of a peace

1 officer to provide a specimen of the defendant's breath or blood for
2 alcohol testing, or if the defendant [~~person~~] is convicted of [~~an~~
3 ~~offense under Sections 49.04-49.06, Penal Code, and punished under~~
4 ~~Section 49.09(a) or (b), Penal Code, or of]~~ a second or subsequent
5 offense under Sections 49.04-49.08 [~~Section 49.07 or 49.08~~], Penal
6 Code, and [~~the person after conviction of either offense~~] is placed
7 on community supervision after conviction of the offense, the court
8 shall require as a condition of community supervision that the
9 defendant have a [~~the~~] device described by this subsection
10 installed on each motor [~~the appropriate~~] vehicle owned by the
11 defendant or on the vehicle most regularly driven by the defendant
12 and that the defendant not operate any motor vehicle that [~~unless~~
13 ~~the vehicle~~] is not equipped with that device. Before placing on
14 community supervision a person convicted of an offense under
15 Sections 49.04-49.08, Penal Code, the court shall determine from
16 criminal history record information maintained by the Department of
17 Public Safety whether the defendant [~~person~~] has one or more
18 previous convictions that result in restricting the defendant to
19 the operation of a motor vehicle equipped with a device described by
20 this subsection. If the defendant is not otherwise restricted to
21 the operation of a motor vehicle equipped with a device described by
22 this subsection, the court shall order the appropriate supervision
23 officer to use an empirically validated risk assessment screening
24 instrument to determine the risk that the defendant will commit a
25 subsequent offense under Sections 49.04-49.08, Penal Code. If the
26 assessment shows that the defendant is at medium to high risk for
27 committing a subsequent offense under one of those sections, [~~or~~

1 ~~has one previous conviction under Sections 49.04-49.07, Penal Code,~~
2 ~~or one previous conviction under Section 49.08, Penal Code. If it~~
3 ~~is shown on the trial of the offense that an analysis of a specimen~~
4 ~~of the person's blood, breath, or urine showed an alcohol~~
5 ~~concentration level of 0.15 or more at the time the analysis was~~
6 ~~performed, or if the court determines that the person has one or~~
7 ~~more such previous convictions,]~~ the court shall require as a
8 condition of community supervision that the defendant have a ~~[that]~~
9 device described by this subsection installed on each ~~[the]~~ motor
10 vehicle owned by the defendant or on the vehicle most regularly
11 driven by the defendant and that the defendant not operate any motor
12 vehicle that ~~[unless the vehicle]~~ is not equipped with that ~~[the]~~
13 device ~~[described in this subsection]~~. If the court requires the
14 defendant to have the device installed, the ~~[The]~~ court shall
15 require the defendant to obtain the device at the defendant's own
16 cost before the 30th day after the date of conviction unless the
17 court finds that to do so would not be in the best interest of
18 justice and enters its findings on record. The court shall require
19 the defendant to provide evidence to the court within the 30-day
20 period that the device has been installed on the appropriate
21 vehicle and order the device to remain installed on that vehicle for
22 a period not less than 50 percent of the supervision period. If the
23 court determines the defendant ~~[offender]~~ is unable to pay for the
24 device, the court may impose a reasonable payment schedule not to
25 exceed twice the period of the court's order. The Department of
26 Public Safety shall approve devices for use under this
27 subsection. Section 521.247, Transportation Code, applies to the

1 approval of a device under this subsection and the consequences of
2 that approval. Notwithstanding ~~[the provisions of]~~ this
3 subsection ~~[section]~~, if a defendant ~~[person]~~ is required to
4 operate a motor vehicle in the course and scope of the defendant's
5 ~~[person's]~~ employment and if the vehicle is owned by the employer,
6 the defendant ~~[person]~~ may operate that vehicle without
7 installation of an approved ignition interlock device if the
8 employer has been notified of that driving privilege restriction
9 and if proof of that notification is with the vehicle. This
10 employment exemption does not apply, however, if the business
11 entity that owns the vehicle is owned or controlled by the defendant
12 ~~[person]~~ whose driving privilege has been restricted. A previous
13 conviction may not be used for purposes of restricting a defendant
14 ~~[person]~~ to the operation of a motor vehicle equipped with a ~~[an~~
15 ~~interlock ignition]~~ device described by ~~[under]~~ this subsection if:

16 (1) the previous conviction was a final conviction
17 under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08,
18 Penal Code, and was for an offense committed more than 10 years
19 before the instant offense for which the defendant ~~[person]~~ was
20 convicted and placed on community supervision; and

21 (2) the defendant ~~[person]~~ has not been convicted of
22 an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065,
23 49.07, or 49.08 of that code, committed within 10 years before the
24 date on which the instant offense for which the defendant ~~[person]~~
25 was convicted and placed on community supervision.

26 (i-1) The vendor of ignition interlock devices who installs
27 a device under Subsection (i) shall pay to the local community

1 supervision and corrections department a fee of \$2 for each day the
2 device remains installed to help defray the cost of monitoring
3 compliance with a court order issued under Subsection (i).

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

8 (b) The Legislative Budget Board shall submit to the
9 legislature two reports on the study conducted under this section
10 along with any recommendations based on the results of the study.
11 The first report must be submitted not later than December 1, 2014,
12 and the second report must be submitted not later than December 1,
13 2016.

14 (c) This section expires January 1, 2017.

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

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