

BILL ANALYSIS

C.S.H.B. 117
By: White
Corrections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that not enough DWI offenders are required to wear ethyl alcohol monitoring devices as a condition of community supervision. C.S.H.B. 117 seeks to address this issue by providing for the ethyl alcohol monitoring of certain offenders.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 117 amends the Code of Criminal Procedure to authorize a judge to require a defendant placed on community supervision for whom the judge may or is required to order the installation and use of an ignition interlock device or who is subject to such an order due to a second or subsequent conviction of an offense relating to the operation of a motor vehicle while intoxicated committed within five years of the date on which the most recent preceding offense was committed to submit to ethyl alcohol monitoring if the defendant certifies that the defendant does not own or have regular access to a motor vehicle or in addition to the requirement that the defendant install and use an ignition interlock device. The bill requires the court, in determining whether to require a defendant to submit to such ethyl alcohol monitoring in addition to installing and using an ignition interlock device, to consider whether the defendant has previously failed to comply with an order requiring the installation and use of an ignition interlock device. The bill requires the judge to specify the date by which the defendant must begin wearing or using the ethyl alcohol monitoring device and establishes the circumstances under which the judge may revoke community supervision and order the defendant to the term of confinement specified in the defendant's sentence. The bill defines "ethyl alcohol monitoring device" as a device worn by the defendant that detects ethyl alcohol in the defendant's perspiration through transdermal testing or a portable ethyl alcohol detection device carried by the defendant that requires the defendant at specified or random intervals to submit a breath sample, analyzes and records the sample, transmits the results of the analysis, and is capable of verifying that the breath sample was provided by the defendant.

C.S.H.B. 117 authorizes the judge to designate an appropriate entity to verify that the defendant is wearing or using the ethyl alcohol monitoring device appropriately and to monitor the device. The bill authorizes the cost of the ethyl alcohol monitoring device to be ordered paid as a condition of community supervision by the defendant to the court or to the designated entity or waived or reduced based on the defendant's ability to pay. The bill authorizes the court to impose

a reasonable payment schedule for the cost of the device, wholly or partly, as applicable, for a period not to exceed twice the period of the court's order requiring ethyl alcohol monitoring.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 117 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Article 42A.001, Code of Criminal Procedure, is amended.

SECTION 2. Subchapter I, Chapter 42A, Code of Criminal Procedure, is amended by adding Article 42A.4081 to read as follows:
Art. 42A.4081. USE OF ETHYL ALCOHOL MONITORING DEVICE. (a) This article applies to a defendant for whom a judge may order or is required to order the installation and use of an ignition interlock device under Article 42A.408.

(b) Notwithstanding Article 42A.408 and subject to Subsection (g), in lieu of or in addition to requiring a defendant to install and use an ignition interlock device under Article 42A.408, the judge may require the defendant to submit to ethyl alcohol monitoring under this article.

The judge shall consider requiring a defendant to submit to ethyl alcohol monitoring under this article if the defendant has failed to comply with an order requiring the installation and use of an ignition interlock device.

(c) The judge must specify the date by which the defendant must begin wearing or using the ethyl alcohol monitoring device.

(d) The judge may revoke community

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Subchapter I, Chapter 42A, Code of Criminal Procedure, is amended by adding Article 42A.4081 to read as follows:
Art. 42A.4081. USE OF ETHYL ALCOHOL MONITORING DEVICE. (a) This article applies to a defendant placed on community supervision:

(1) for whom the judge may order or is required to order the installation and use of an ignition interlock device under Article 42A.408; or

(2) who is subject to an order under Section 49.09(h), Penal Code, that requires the installation and use of an ignition interlock device.

(b) A judge may require the defendant to submit to ethyl alcohol monitoring under this article:

(1) if the defendant certifies that the defendant does not own or have regular access to a motor vehicle; or

(2) in addition to the requirement that the defendant install and use an ignition interlock device.

(c) In determining under Subsection (b)(2) whether to require a defendant to submit to ethyl alcohol monitoring under this article in addition to installing and using an ignition interlock device, the court shall consider whether the defendant has previously failed to comply with an order requiring the installation and use of an ignition interlock device.

(d) The judge must specify the date by which the defendant must begin wearing or using the ethyl alcohol monitoring device.

(e) The judge may revoke community

supervision and order the defendant to the term of confinement specified in the defendant's sentence if:

(1) the defendant refuses to wear or use the ethyl alcohol monitoring device;

(2) the defendant tampers with or otherwise attempts to disable the device;

(3) the device shows that the defendant has violated a condition of community supervision; or

(4) the defendant fails to pay the costs of ethyl alcohol monitoring, if:

(A) payment is ordered under Subsection (e) as a condition of community supervision; and

(B) the judge determines that the defendant is not indigent and is financially able to make the payments as ordered.

(e) The cost of the ethyl alcohol monitoring device may be ordered paid as a condition of community supervision by the defendant to the court or to the entity designated by the judge under Subsection (f) or waived or reduced based on the defendant's ability to pay. The court may impose a reasonable payment schedule for the cost of the device, wholly or partly, as applicable, for a period not to exceed twice the period of the court's order requiring ethyl alcohol monitoring.

(f) The judge may designate an appropriate entity to verify that the defendant is wearing or using the ethyl alcohol monitoring device appropriately, and to monitor the device.

(g) A judge may not order ethyl alcohol monitoring in lieu of an ignition interlock device under this article for a defendant subject to Section 49.09(h), Penal Code. The judge may order ethyl alcohol monitoring in addition to the ignition interlock device required under that section.

SECTION 3. The change in law made by this Act applies only to a defendant who is placed on community supervision on or after the effective date of this Act, regardless of whether the offense for which the defendant is placed on community supervision is committed before, on, or after that date.

SECTION 4. This Act takes effect September 1, 2017.

supervision and order the defendant to the term of confinement specified in the defendant's sentence if:

(1) the defendant refuses to wear or use the ethyl alcohol monitoring device;

(2) the defendant tampers with or otherwise attempts to disable the device;

(3) the device shows that the defendant has violated a condition of community supervision; or

(4) the defendant fails to pay the costs of ethyl alcohol monitoring, if:

(A) payment is ordered under Subsection (f) as a condition of community supervision; and

(B) the judge determines that the defendant is not indigent and is financially able to make the payments as ordered.

(f) The cost of the ethyl alcohol monitoring device may be ordered paid as a condition of community supervision by the defendant to the court or to the entity designated by the judge under Subsection (g) or waived or reduced based on the defendant's ability to pay. The court may impose a reasonable payment schedule for the cost of the device, wholly or partly, as applicable, for a period not to exceed twice the period of the court's order requiring ethyl alcohol monitoring.

(g) The judge may designate an appropriate entity to verify that the defendant is wearing or using the ethyl alcohol monitoring device appropriately, and to monitor the device.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.