

BILL ANALYSIS

C.S.H.B. 833
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the requirement for certain defendants to physically attend a driving while intoxicated education class as a condition of community supervision creates an undue hardship with regard to arranging transportation to and from the class. C.S.H.B. 833 seeks to mitigate any such hardship by authorizing a court to permit defendants to successfully complete the required educational program through approved online providers.

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. 833 amends the Code of Criminal Procedure to authorize an approved educational program required to be completed as a condition of community supervision by a defendant convicted of certain intoxication offenses to be provided through classroom instruction or through an online format approved by the Texas Department of Licensing and Regulation (TDLR) for administration over the Internet. The bill replaces the Department of State Health Services with TDLR as one of the entities that jointly approves the educational program. The bill conditions the authorization for a judge, in determining good cause for waiving or extending the time for the program completion requirement, to consider certain factors related to the defendant's commute to attend such a classroom program on the program being unavailable to the defendant in an online format administered over the Internet. The bill's provisions apply to a person who is placed on community supervision on or after the bill's effective date regardless of whether the underlying conduct giving rise to the placement on community supervision occurred before, on, or after that date.

C.S.H.B. 833 amends the Transportation Code to make conforming changes.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 833 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.403, Code of Criminal Procedure, is amended by amending Subsections (a) and (d) and adding Subsection (a-1) to read as follows:

(a) A judge who places on community supervision a defendant convicted of an offense under Sections 49.04-49.08, Penal Code, shall require as a condition of community supervision that the defendant ~~[attend and]~~ successfully complete, before the 181st day after the date community supervision is granted, an educational program designed to rehabilitate persons who have driven while intoxicated that is jointly approved by:

(1) the ~~Department of State Health Services~~;

(2) the Department of Public Safety;

(3) the traffic safety section of the traffic operations division of the Texas Department of Transportation; and

(4) the community justice assistance division of the Texas Department of Criminal Justice.

(a-1) The educational program approved under Subsection (a) may be provided through classroom instruction or in an online format administered over the Internet.

(d) In determining good cause, the judge may consider but is not limited to:

(1) the defendant's school and work schedule;

(2) the defendant's health; and

(3) if an educational program is not available to the defendant in an online format administered over the Internet:

(A) the distance that the defendant must travel to attend an educational program provided through classroom instruction; and

(B) [(4)] the fact that the defendant resides out of state, does not have a valid driver's license, or does not have access to transportation.

SECTION 2. Article 42A.404, Code of Criminal Procedure, is amended by amending Subsections (a) and (b) and adding Subsection (a-1) to read as follows:

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Article 42A.403, Code of Criminal Procedure, is amended by amending Subsections (a) and (d) and adding Subsection (a-1) to read as follows:

(a) A judge who places on community supervision a defendant convicted of an offense under Sections 49.04-49.08, Penal Code, shall require as a condition of community supervision that the defendant ~~[attend and]~~ successfully complete, before the 181st day after the date community supervision is granted, an educational program designed to rehabilitate persons who have driven while intoxicated that is jointly approved by:

(1) the Texas Department of Licensing and Regulation ~~[Department of State Health Services]~~;

(2) the Department of Public Safety;

(3) the traffic safety section of the traffic operations division of the Texas Department of Transportation; and

(4) the community justice assistance division of the Texas Department of Criminal Justice.

(a-1) The educational program approved under Subsection (a) may be provided through classroom instruction or through an online format approved by the Texas Department of Licensing and Regulation for administration over the Internet.

(d) In determining good cause, the judge may consider but is not limited to:

(1) the defendant's school and work schedule;

(2) the defendant's health; and

(3) if an educational program is not available to the defendant in an online format administered over the Internet:

(A) the distance that the defendant must travel to attend an educational program provided through classroom instruction; and

(B) [(4)] the fact that the defendant resides out of state, does not have a valid driver's license, or does not have access to transportation.

No equivalent provision.

(a) The judge shall require a defendant who is punished under Section 49.09, Penal Code, to ~~[attend and]~~ successfully complete as a condition of community supervision an educational program for repeat offenders that is approved by the Department of State Health Services.

(a-1) The educational program for repeat offenders approved under Subsection (a) may be provided through classroom instruction or in an online format administered over the Internet.

(b) The judge may waive the educational program requirement only if the defendant by a motion in writing shows good cause. In determining good cause, the judge may consider:

(1) the defendant's school and work schedule;

(2) the defendant's health; and

(3) if an educational program for repeat offenders is not available to the defendant in an online format administered over the Internet:

(A) the distance that the defendant must travel to attend an educational program provided through classroom instruction; and

(B) the fact that ~~[(4) whether]~~ the defendant resides out of state or does not have access to transportation.

SECTION 3. Article 42A.406(a), Code of Criminal Procedure, is amended.

SECTION 2. Same as introduced version.

SECTION 4. Articles 42A.407(b) and (c), Code of Criminal Procedure, are amended to read as follows:

(b) Notwithstanding Sections 521.344(d)-(i), Transportation Code, if under Article 42A.404 the judge requires a defendant punished under Section 49.09, Penal Code, to successfully complete ~~[attend]~~ an educational program as a condition of community supervision, or waives the required completion of ~~[attendance for]~~ the program, and the defendant has previously been required to successfully complete ~~[attend]~~ such an educational program, or the required completion of ~~[attendance at]~~ the program had been waived, the judge shall order the suspension of the defendant's driver's license for a period determined by the judge according to the following schedule:

(1) not less than 90 days or more than one

SECTION 3. Article 42A.407(c), Code of Criminal Procedure, is amended to read as follows:

year, if the defendant is convicted under Sections 49.04-49.08, Penal Code;

(2) not less than 180 days or more than two years, if the defendant is punished under Section 49.09(a) or (b), Penal Code; or

(3) not less than one year or more than two years, if the defendant is convicted of a second or subsequent offense under Sections 49.04-49.08, Penal Code, committed within five years of the date on which the most recent preceding offense was committed.

(c) If the Department of Public Safety receives notice that a defendant has been required to successfully complete ~~[attend]~~ a subsequent educational program under Article 42A.403 or 42A.404, although the previously required educational program ~~[attendance]~~ had been waived, but the judge has not ordered a period of suspension, the department shall:

(1) suspend the defendant's driver's license; or

(2) issue an order prohibiting the defendant from obtaining a license for a period of one year.

SECTION 5. Section 521.342(b), Transportation Code, is amended.

SECTION 6. Section 521.344(h), Transportation Code, is amended.

SECTION 7. The change in law made by this Act applies to a person who is placed on community supervision on or after the effective date of this Act, regardless of whether the underlying conduct giving rise to the placement on community supervision occurred before, on, or after that date.

SECTION 8. This Act takes effect September 1, 2017.

(c) If the Department of Public Safety receives notice that a defendant has been required to successfully complete ~~[attend]~~ a subsequent educational program under Article 42A.403 or attend a subsequent educational program under Article 42A.404, although the previously required educational program ~~[attendance]~~ had been waived, but the judge has not ordered a period of suspension, the department shall:

(1) suspend the defendant's driver's license; or

(2) issue an order prohibiting the defendant from obtaining a license for a period of one year.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.