

By: Bonnen of Brazoria

H.B. No. 3189

A BILL TO BE ENTITLED

AN ACT

relating to the reporting of and access to information related to court-ordered prescription drug substance abuse treatment; providing a criminal penalty.

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

SECTION 1. Subchapter G, Chapter 42A, Code of Criminal Procedure, is amended by adding Article 42A.3035 to read as follows:

Art. 42A.3035. REPORTING. (a) A judge who requires as a condition of community supervision that a defendant serve a term of confinement and treatment in a substance abuse felony punishment facility or participate in substance abuse treatment services in a program or facility approved or licensed by the Department of State Health Services to receive treatment for prescription drug substance abuse shall, if the defendant consents to the release of the information, submit to the Texas State Board of Pharmacy:

(1) the name and date of birth of the defendant; and

(2) the name of the substance or substances abused by the defendant.

(b) A defendant may not be:

(1) required as a condition of community supervision to consent to the release of information under Subsection (a); or

(2) excluded from a substance abuse treatment facility or program based on the defendant's failure to consent to the

1 release of the information.

2 SECTION 2. Chapter 121, Government Code, is amended by
3 adding Section 121.003 to read as follows:

4 Sec. 121.003. REPORTING. (a) A judge who requires a
5 defendant to receive treatment for prescription drug substance
6 abuse as a condition of participation in a specialty court under
7 this subtitle shall submit to the Texas State Board of Pharmacy:

8 (1) the name and date of birth of the defendant;

9 (2) the name of the specialty court in which the
10 defendant is participating;

11 (3) the date the defendant began participating in the
12 specialty court; and

13 (4) if the defendant consents to the release of the
14 information, the name of the substance or substances abused by the
15 defendant.

16 (b) A defendant may not be:

17 (1) required as a condition of participation in a
18 specialty court to consent to the release of information under
19 Subsection (a)(4); or

20 (2) excluded from a substance abuse treatment facility
21 or program based on the defendant's failure to consent to the
22 release of the information.

23 SECTION 3. Subchapter D, Chapter 462, Health and Safety
24 Code, is amended by adding Section 462.0691 to read as follows:

25 Sec. 462.0691. REPORTING. (a) A judge who enters an order
26 for court-ordered treatment under this chapter for prescription
27 drug substance abuse shall, if the patient consents to the release

1 of the information, submit to the Texas State Board of Pharmacy:

2 (1) the name and date of birth of the patient; and

3 (2) the name of the substance or substances abused by
4 the patient.

5 (b) A patient may not be excluded from a substance abuse
6 treatment facility or program based on the patient's failure to
7 consent to the release of information under Subsection (a).

8 SECTION 4. Section 481.076, Health and Safety Code, is
9 amended by amending Subsections (a), (a-3), (a-4), (c), (i), and
10 (j) and adding Subsection (a-6) to read as follows:

11 (a) The board may not permit any person to have access to
12 information submitted to the board under Article 42A.3035, Code of
13 Criminal Procedure, Section 121.003, Government Code, or Section
14 462.0691, 481.074(q), or 481.075 except:

15 (1) an investigator for the board, the Texas Medical
16 Board, the Texas State Board of Podiatric Medical Examiners, the
17 State Board of Dental Examiners, the State Board of Veterinary
18 Medical Examiners, the Texas Board of Nursing, or the Texas
19 Optometry Board;

20 (2) an authorized officer or member of the department
21 or authorized employee of the board engaged in the administration,
22 investigation, or enforcement of this chapter or another law
23 governing illicit drugs in this state or another state;

24 (3) the department on behalf of a law enforcement or
25 prosecutorial official engaged in the administration,
26 investigation, or enforcement of this chapter or another law
27 governing illicit drugs in this state or another state;

1 (4) a medical examiner conducting an investigation;

2 (5) a pharmacist or a pharmacy technician, as defined
3 by Section 551.003, Occupations Code, acting at the direction of a
4 pharmacist or a practitioner who is a physician, dentist,
5 veterinarian, podiatrist, optometrist, or advanced practice nurse
6 or is a physician assistant described by Section 481.002(39)(D) or
7 an employee or other agent of a practitioner acting at the direction
8 of a practitioner and is inquiring about a recent Schedule II, III,
9 IV, or V prescription history or any prescription drug substance
10 abuse treatment of a particular patient of the practitioner,
11 provided that the person accessing the information is authorized to
12 do so under the Health Insurance Portability and Accountability Act
13 of 1996 (Pub. L. No. 104-191) and rules adopted under that Act;

14 (6) a pharmacist or practitioner who is inquiring
15 about the person's own dispensing or prescribing activity; ~~[or]~~

16 (7) one or more states or an association of states with
17 which the board has an interoperability agreement, as provided by
18 Subsection (j); or

19 (8) the judge of a specialty court as defined by
20 Section 121.001, Government Code, or the judge's designee, in the
21 manner prescribed by Subsection (a-6).

22 (a-3) The board shall ensure that the department has
23 unrestricted access at all times to information submitted to the
24 board under Article 42A.3035, Code of Criminal Procedure, Section
25 121.003, Government Code, and Sections 462.0691, 481.074(q), and
26 481.075. The department's access to the information shall be
27 provided through a secure electronic portal under the exclusive

1 control of the department. The department shall pay all expenses
2 associated with the electronic portal.

3 (a-4) A law enforcement or prosecutorial official described
4 by Subsection (a)(3) may obtain information submitted to the board
5 under Article 42A.3035, Code of Criminal Procedure, Section
6 121.003, Government Code, or Section 462.0691, 481.074(q), or
7 481.075 only if the official submits a request to the department.
8 If the department finds that the official has shown proper need for
9 the information, the department shall provide access to the
10 relevant information.

11 (a-6) On request by a judge of a specialty court as defined
12 by Section 121.001, Government Code, or the judge's designee, the
13 board shall provide to the judge or the judge's designee
14 information submitted to the board under Article 42A.3035, Code of
15 Criminal Procedure, Section 121.003, Government Code, or Section
16 462.0691, 481.074(q), or 481.075 that relates to a current or
17 prospective specialty court program participant.

18 (c) The board by rule shall design and implement a system
19 for submission of information to the board by electronic or other
20 means and for retrieval of information submitted to the board under
21 this section and Article 42A.3035, Code of Criminal Procedure,
22 Section 121.003, Government Code, and Sections 462.0691, 481.074,
23 and 481.075. The board shall use automated information security
24 techniques and devices to preclude improper access to the
25 information. The board shall submit the system design to the
26 director and the Texas Medical Board for review and comment a
27 reasonable time before implementation of the system and shall

1 comply with the comments of those agencies unless it is
2 unreasonable to do so.

3 (i) Information submitted to the board under Article
4 42A.3035, Code of Criminal Procedure, Section 121.003, Government
5 Code, or Section 462.0691, 481.074(q), or 481.075 is confidential
6 and remains confidential regardless of whether the board permits
7 access to the information under this section.

8 (j) The board may enter into an interoperability agreement
9 with one or more states or an association of states authorizing the
10 board to access prescription monitoring information maintained or
11 collected by the other state or states or the association,
12 including information maintained on a central database such as the
13 National Association of Boards of Pharmacy Prescription Monitoring
14 Program InterConnect. Pursuant to an interoperability agreement,
15 the board may authorize the prescription monitoring program of one
16 or more states or an association of states to access information
17 submitted to the board under Article 42A.3035, Code of Criminal
18 Procedure, Section 121.003, Government Code, and Sections
19 462.0691, 481.074(q), and 481.075, including by submitting or
20 sharing information through a central database such as the National
21 Association of Boards of Pharmacy Prescription Monitoring Program
22 InterConnect.

23 SECTION 5. Section 481.0761(a), Health and Safety Code, is
24 amended to read as follows:

25 (a) The board shall by rule establish and revise as
26 necessary a standardized database format that may be used by a
27 pharmacy or court to transmit the information required by Article

1 42A.3035, Code of Criminal Procedure, Section 121.003, Government
2 Code, and Sections 462.0691, 481.074(q), and 481.075(i) to the
3 board electronically or to deliver the information on storage
4 media, including disks, tapes, and cassettes.

5 SECTION 6. Section 481.127(a), Health and Safety Code, is
6 amended to read as follows:

7 (a) A person commits an offense if the person knowingly
8 gives, permits, or obtains unauthorized access to information
9 submitted to the board under Article 42A.3035, Code of Criminal
10 Procedure, Section 121.003, Government Code, or Section 462.0691,
11 481.074(q), or 481.075.

12 SECTION 7. (a) Article 42A.3035, Code of Criminal
13 Procedure, as added by this Act, applies to a defendant placed on
14 community supervision on or after the effective date of this Act,
15 regardless of whether the offense for which the defendant was
16 placed on community supervision was committed before, on, or after
17 the effective date of this Act.

18 (b) Section 121.003, Government Code, as added by this Act,
19 applies to a person who, on or after the effective date of this Act,
20 enters a specialty court program under Subtitle K, Title 2,
21 Government Code, regardless of whether the person committed the
22 offense for which the person enters the program before, on, or after
23 the effective date of this Act.

24 (c) Section 462.0691, Health and Safety Code, as added by
25 this Act, applies only to an order for court-ordered treatment
26 entered on or after the effective date of this Act. An order
27 entered before the effective date of this Act is governed by the law

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1 in effect on the date the order was entered, and the former law is
2 continued in effect for that purpose.

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