

By: Bonnen of Brazoria

H.B. No. 3189

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the reporting of and access to information related to  
3 court-ordered prescription drug substance abuse treatment;  
4 providing a criminal penalty.

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

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

9 Art. 42A.3035. REPORTING. A judge who requires as a  
10 condition of community supervision that a defendant serve a term of  
11 confinement and treatment in a substance abuse felony punishment  
12 facility or participate in substance abuse treatment services in a  
13 program or facility approved or licensed by the Department of State  
14 Health Services to receive treatment for prescription drug  
15 substance abuse shall submit to the Texas State Board of Pharmacy:

16 (1) the name and date of birth of the defendant; and  
17 (2) the name of the substance or substances abused by  
18 the defendant.

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

21 Sec. 121.003. REPORTING. A judge who requires a defendant  
22 to receive treatment for prescription drug substance abuse as a  
23 condition of participation in a specialty court under this subtitle  
24 shall submit to the Texas State Board of Pharmacy:

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

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

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

6           Sec. 462.0691. REPORTING. A judge who enters an order for  
7 court-ordered treatment under this chapter for prescription drug  
8 substance abuse shall submit to the Texas State Board of Pharmacy:

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

10           (2) the name of the substance or substances abused by  
11 the patient.

12           SECTION 4. Sections 481.076(a), (a-3), (a-4), (c), (i), and  
13 (j), Health and Safety Code, are amended to read as follows:

14           (a) The board may not permit any person to have access to  
15 information submitted to the board under Article 42A.3035, Code of  
16 Criminal Procedure, Section 121.003, Government Code, or Section  
17 462.0691, 481.074(q), or 481.075 except:

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

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

27           (3) the department on behalf of a law enforcement or

1 prosecutorial official engaged in the administration,  
2 investigation, or enforcement of this chapter or another law  
3 governing illicit drugs in this state or another state;

4 (4) a medical examiner conducting an investigation;

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

17 (6) a pharmacist or practitioner who is inquiring  
18 about the person's own dispensing or prescribing activity; or

19 (7) one or more states or an association of states with  
20 which the board has an interoperability agreement, as provided by  
21 Subsection (j).

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 (c) The board by rule shall design and implement a system  
12 for submission of information to the board by electronic or other  
13 means and for retrieval of information submitted to the board under  
14 this section and Article 42A.3035, Code of Criminal Procedure,  
15 Section 121.003, Government Code, and Sections 462.0691, 481.074,  
16 and 481.075. The board shall use automated information security  
17 techniques and devices to preclude improper access to the  
18 information. The board shall submit the system design to the  
19 director and the Texas Medical Board for review and comment a  
20 reasonable time before implementation of the system and shall  
21 comply with the comments of those agencies unless it is  
22 unreasonable to do so.

23 (i) Information submitted to the board under Article  
24 42A.3035, Code of Criminal Procedure, Section 121.003, Government  
25 Code, or Section 462.0691, 481.074(q), or 481.075 is confidential  
26 and remains confidential regardless of whether the board permits  
27 access to the information under this section.

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

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

18 (a) The board shall by rule establish and revise as  
19 necessary a standardized database format that may be used by a  
20 pharmacy or court to transmit the information required by Article  
21 42A.3035, Code of Criminal Procedure, Section 121.003, Government  
22 Code, and Sections 462.0691, 481.074(q), and 481.075(i) to the  
23 board electronically or to deliver the information on storage  
24 media, including disks, tapes, and cassettes.

25 SECTION 6. Subchapter C, Chapter 481, Health and Safety  
26 Code, is amended by adding Section 481.0762 to read as follows:

27 Sec. 481.0762. DUTIES OF PRESCRIBERS. A person authorized

1 to receive information under Section 481.076(a)(5), before  
2 prescribing a controlled substance to a patient, shall access that  
3 information with respect to the patient.

4 SECTION 7. Section 481.127(a), Health and Safety Code, is  
5 amended to read as follows:

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

11 SECTION 8. (a) Article 42A.3035, Code of Criminal  
12 Procedure, as added by this Act, applies to a defendant placed on  
13 community supervision on or after the effective date of this Act,  
14 regardless of whether the offense for which the defendant was  
15 placed on community supervision was committed before, on, or after  
16 the effective date of this Act.

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

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

1 continued in effect for that purpose.

2 (d) Section 481.0762, Health and Safety Code, as added by  
3 this Act, applies only to a prescription issued on or after the  
4 effective date of this Act. A prescription issued before the  
5 effective date of this Act is governed by the law in effect on the  
6 date the prescription is issued, and the former law is continued in  
7 effect for that purpose.

8 SECTION 9. This Act takes effect September 1, 2017.