By:  Tinderholt, Moody H.B. No. 364

A BILL TO BE ENTITLED

AN ACT

relating to required alcohol monitoring and ignition interlock devices ordered by a court and a central database of those orders; creating a criminal offense.

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

SECTION 1.  The heading to Article 17.44, Code of Criminal Procedure, is amended to read as follows:

Art. 17.44.  HOME CONFINEMENT, ELECTRONIC MONITORING, [~~AND~~] DRUG TESTING, OR ALCOHOL MONITORING AS CONDITION.

SECTION 2.  Articles 17.44(a), (c), and (e), Code of Criminal Procedure, are amended to read as follows:

(a)  A magistrate may require as a condition of release on bond that the defendant submit to:

(1)  home confinement and electronic monitoring under the supervision of an agency designated by the magistrate; [~~or~~]

(2)  testing on a weekly basis for the presence of a controlled substance in the defendant's body; or

(3)  alcohol monitoring through the use of an alcohol monitoring device other than an ignition interlock device, for a person charged with an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code.

(c)  The magistrate may revoke the bond and order the defendant arrested if the defendant:

(1)  violates a condition of home confinement and electronic monitoring;

(2)  refuses to submit to a test for controlled substances or submits to a test for controlled substances and the test indicates the presence of a controlled substance in the defendant's body; [~~or~~]

(3)  violates a condition of alcohol monitoring or refuses to submit to alcohol monitoring; or

(4)  fails to pay the costs of electronic monitoring, [~~or~~] testing for controlled substances, or alcohol monitoring, if payment is ordered under Subsection (e) as a condition of bond and the magistrate determines that the defendant is not indigent and is financially able to make the payments as ordered.

(e)  The cost of electronic monitoring, [~~or~~] testing for controlled substances, or alcohol monitoring under this article may be assessed as court costs or ordered paid directly by the defendant as a condition of bond.

SECTION 3.  Article 17.441, Code of Criminal Procedure, is amended by adding Subsection (e) to read as follows:

(e)  A magistrate that restricts a defendant to the operation of a motor vehicle equipped with an ignition interlock device under Subsection (a) or modifies the order imposing the restriction shall submit to the Department of Public Safety for inclusion in the central database maintained by the department under Section 411.02091, Government Code:

(1)  a copy of the order imposing the restriction or the order for modification, as applicable; and

(2)  the defendant's name and date of birth.

SECTION 4.  Chapter 21, Code of Criminal Procedure, is amended by adding Article 21.32 to read as follows:

Art. 21.32.  SUBMISSION TO CENTRAL DATABASE CONCERNING IGNITION INTERLOCK DEVICE OR ALCOHOL MONITORING CONDITION. A court on receiving an indictment or information alleging an offense for which the person was, as a condition of bond, restricted to the operation of a motor vehicle equipped with an ignition interlock device under Article 17.441 or ordered to submit to alcohol monitoring by any other alcohol monitoring device under Article 17.44 shall submit to the Department of Public Safety for inclusion in the central database maintained by the department under Section 411.02091, Government Code, a statement indicating the defendant's name, the defendant's date of birth, and whether the defendant remains subject to the restriction or condition.

SECTION 5.  Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.0184 to read as follows:

Art. 42.0184.  NOTICE OF CERTAIN INTOXICATION OFFENSES PROVIDED BY CLERK OF COURT. (a) If a defendant is convicted of an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code, the court in which the conviction is entered shall determine whether the defendant was previously restricted to the operation of a motor vehicle equipped with an ignition interlock device or ordered to submit to alcohol monitoring by any other alcohol monitoring device as a condition of bond.

(b)  Not later than the fifth day after the date a person described by Subsection (a) is convicted of the offense, the clerk of the court in which the conviction is entered shall submit to the Department of Public Safety for inclusion in the central database maintained by the department under Section 411.02091, Government Code:

(1)  a copy of the order of conviction; and

(2)  a statement indicating the defendant's name, the defendant's date of birth, and whether the defendant remains subject to the restriction or condition following the conviction.

SECTION 6.  Article 42A.408, Code of Criminal Procedure, is amended by adding Subsection (i) to read as follows:

(i)  A court that restricts a defendant to the operation of a motor vehicle equipped with an ignition interlock device under this article or modifies the order imposing the restriction shall submit to the Department of Public Safety for inclusion in the central database maintained by the department under Section 411.02091, Government Code:

(1)  a copy of the order imposing the restriction or the order for modification, as applicable;

(2)  the defendant's name and date of birth; and

(3)  if applicable, the date the restriction expires.

SECTION 7.  Subchapter I, Chapter 42A, Code of Criminal Procedure, is amended by adding Article 42A.4085 to read as follows:

Art. 42A.4085.  SUBMISSION OF ALCOHOL MONITORING COMMUNITY SUPERVISION CONDITION TO CENTRAL DATABASE. (a) A judge ordering alcohol monitoring as a condition of community supervision or modifying an order for alcohol monitoring shall submit to the Department of Public Safety for inclusion in the central database maintained by the department under Section 411.02091, Government Code:

(1)  a copy of the court's order imposing the condition or the order for modification, as applicable; and

(2)  the defendant's name, the defendant's date of birth, and, if applicable, the date the requirement for alcohol monitoring expires.

(b)  This article does not apply to an order restricting a defendant to operation of a motor vehicle equipped with an ignition interlock device under Article 42A.408.

SECTION 8.  Subchapter A, Chapter 411, Government Code, is amended by adding Section 411.02091 to read as follows:

Sec. 411.02091.  CENTRAL DATABASE OF DEFENDANTS RESTRICTED TO USE OF MOTOR VEHICLE EQUIPPED WITH IGNITION INTERLOCK DEVICE OR REQUIRED TO USE OTHER ALCOHOL MONITORING DEVICE. (a) The department shall maintain a computerized central database containing information regarding defendants who are restricted to the use of a motor vehicle equipped with an ignition interlock device or ordered to use any other alcohol monitoring device.

(b)  The database must include the name of each defendant restricted to the operation of a motor vehicle equipped with an ignition interlock device under Article 17.441 or 42A.408, Code of Criminal Procedure, Section 49.09(h), Penal Code, or Section 521.246, Transportation Code, or required to use an alcohol monitoring device under Article 17.44, Code of Criminal Procedure, or Chapter 42A of that code, the defendant's date of birth, and, if applicable, the date each restriction expires.

(c)  The department shall remove a defendant's name from the central database on the expiration of the ignition interlock restriction or alcohol monitoring requirement for that defendant or on other notification that the restriction or requirement has been terminated.

(d)  The central database must:

(1)  provide the information in a format that allows a law enforcement agency to make the information available to a peace officer through a mobile data terminal; and

(2)  promptly reflect any updated information, including modifications to a court's order, as necessary to ensure a defendant whose ignition interlock restriction or alcohol monitoring requirement has expired or been terminated is not indicated through the mobile data terminal as a person who is restricted to the operation of a motor vehicle equipped with an ignition interlock device or subject to alcohol monitoring.

(e)  In lieu of creating a separate central database under this section, the department may comply with this section by incorporating the information regarding the defendant into an existing database or electronic record system maintained by the department, including by adding the information to the defendant's driver's license record, provided that the existing database or system meets the requirements of Subsection (d).

SECTION 9.  Section 509.004(a), Government Code, is amended to read as follows:

(a)  The division shall require each department to:

(1)  keep financial and statistical records determined necessary by the division;

(2)  submit a strategic plan and all supporting information requested by the division;

(3)  present data requested by the division as necessary to determine the amount of state aid for which the department is eligible; and

(4)  submit periodic financial audits and statistical reports to the division[~~; and~~

[~~(5)  submit to the Department of Public Safety the full name, address, date of birth, social security number, and driver's license number of each person restricted to the operation of a motor vehicle equipped with a device that uses a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol is detected in the breath of the restricted operator~~].

SECTION 10.  Section 49.09(h), Penal Code, is amended to read as follows:

(h)  This subsection applies only to a person convicted of a second or subsequent offense relating to the operating of a motor vehicle while intoxicated committed within five years of the date on which the most recent preceding offense was committed. The court shall enter an order that requires the defendant to have an ignition interlock [~~a~~] device installed, on each motor vehicle owned or operated by the defendant, that uses a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol is detected in the breath of the operator, and that requires that before the first anniversary of the ending date of the period of license suspension under Section 521.344, Transportation Code, the defendant not operate any motor vehicle that is not equipped with an ignition interlock [~~that~~] device. The court shall require the defendant to obtain the ignition interlock device at the defendant's own cost on or before that ending date, require the defendant to provide evidence to the court on or before that ending date that the ignition interlock device has been installed on each appropriate vehicle, and order the ignition interlock device to remain installed on each vehicle until the first anniversary of that ending date. If the court determines the offender is unable to pay for the ignition interlock device, the court may impose a reasonable payment schedule not to extend beyond the first anniversary of the date of installation. The Department of Public Safety shall approve ignition interlock devices for use under this subsection. Section 521.247, Transportation Code, applies to the approval of an ignition interlock [~~a~~] device under this subsection and the consequences of that approval. Failure to comply with an order entered under this subsection is punishable by contempt. For the purpose of enforcing this subsection, the court that enters an order under this subsection retains jurisdiction over the defendant until the date on which the ignition interlock device is no longer required to remain installed. A court that restricts a defendant to the operation of a motor vehicle equipped with an ignition interlock device under this subsection shall submit to the Department of Public Safety for inclusion in the central database maintained by the department under Section 411.02091, Government Code, a copy of the order imposing the restriction, the defendant's name, the defendant's date of birth, and, if applicable, the date the restriction expires. To the extent of a conflict between this subsection and Subchapter I, Chapter 42A, Code of Criminal Procedure, this subsection controls.

SECTION 11.  Chapter 49, Penal Code, is amended by adding Section 49.091 to read as follows:

Sec. 49.091.  VIOLATION OF REQUIREMENT RELATING TO IGNITION INTERLOCK DEVICE OR OTHER ALCOHOL MONITORING DEVICE. (a) A person commits an offense if the person violates:

(1)  a condition of bond imposed under Article 17.441, Code of Criminal Procedure, a condition of community supervision imposed under Article 42A.408, Code of Criminal Procedure, a condition of holding an occupational driver's license under Section 521.246, Transportation Code, or a court order issued under Section 49.09(h) restricting the person to the operation of a motor vehicle equipped with an ignition interlock device; or

(2)  a condition of bond imposed under Article 17.44, Code of Criminal Procedure, or a condition of community supervision imposed under Chapter 42A of that code requiring the use of an alcohol monitoring device other than an ignition interlock device.

(b)  An offense under this section is a Class C misdemeanor.

SECTION 12.  Section 521.246, Transportation Code, is amended by adding Subsection (g) to read as follows:

(g)  A judge that restricts a person to the operation of a motor vehicle equipped with an ignition interlock device under Subsection (a) or modifies the order imposing the restriction shall submit to the Department of Public Safety for inclusion in the central database maintained by the department under Section 411.02091, Government Code:

(1)  a copy of the order imposing the restriction or the order for modification, as applicable;

(2)  the defendant's name and date of birth; and

(3)  if applicable, the date the restriction expires.

SECTION 13.  The Department of Public Safety of the State of Texas shall design and implement the central database required by Section 411.02091, Government Code, as added by this Act, not later than January 1, 2020.

SECTION 14.  Articles 17.44, 17.441, and 42A.408, Code of Criminal Procedure, Section 49.09, Penal Code, and Section 521.246, Transportation Code, as amended by this Act, apply only to a magistrate, court, or judge that orders that a defendant be restricted to the operation of a motor vehicle equipped with an ignition interlock device or requires a defendant to use any other alcohol monitoring device on or after January 1, 2020. A restriction or requirement ordered before January 1, 2020, is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 15.  Article 21.32, Code of Criminal Procedure, as added by this Act, applies only to an indictment or information provided under that article on or after January 1, 2020. An indictment or information provided under that article before January 1, 2020, is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 16.  Articles 42.0184 and 42A.4085, Code of Criminal Procedure, as added by this Act, apply only to a magistrate, court, or judge that orders that a defendant be restricted to the operation of a motor vehicle equipped with an ignition interlock device or requires a defendant to use any other alcohol monitoring device on or after January 1, 2020. A restriction or requirement ordered before January 1, 2020, is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 17.  The change in law made by this Act in adding Section 49.091, Penal Code, applies only to a condition of bond or community supervision imposed, or a court order issued, on or after the effective date of this Act. A condition imposed or court order issued before the effective date of this Act is governed by the law in effect on the date the condition was imposed or the order was issued, and the former law is continued in effect for that purpose.

SECTION 18.  This Act takes effect September 1, 2019.