

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

1 electronic monitoring;

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

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

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

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

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

19 (e) A magistrate that restricts a defendant to the operation
20 of a motor vehicle equipped with an ignition interlock device under
21 Subsection (a) or modifies the order imposing the restriction shall
22 submit to the Department of Public Safety for inclusion in the
23 central database maintained by the department under Section
24 411.02091, Government Code:

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

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

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

3 Art. 21.32. SUBMISSION TO CENTRAL DATABASE CONCERNING
4 IGNITION INTERLOCK DEVICE OR ALCOHOL MONITORING CONDITION. A court
5 on receiving an indictment or information alleging an offense for
6 which the person was, as a condition of bond, restricted to the
7 operation of a motor vehicle equipped with an ignition interlock
8 device under Article 17.441 or ordered to submit to alcohol
9 monitoring by any other alcohol monitoring device under Article
10 17.44 shall submit to the Department of Public Safety for inclusion
11 in the central database maintained by the department under Section
12 411.02091, Government Code, a statement indicating the defendant's
13 name, the defendant's date of birth, and whether the defendant
14 remains subject to the restriction or condition.

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

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

25 (b) Not later than the fifth day after the date a person
26 described by Subsection (a) is convicted of the offense, the clerk
27 of the court in which the conviction is entered shall submit to the

1 Department of Public Safety for inclusion in the central database
2 maintained by the department under Section 411.02091, Government
3 Code:

- 4 (1) a copy of the order of conviction; and
5 (2) a statement indicating the defendant's name, the
6 defendant's date of birth, and whether the defendant remains
7 subject to the restriction or condition following the conviction.

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

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

- 16 (1) a copy of the order imposing the restriction or the
17 order for modification, as applicable;
18 (2) the defendant's name and date of birth; and
19 (3) if applicable, the date the restriction expires.

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

23 Art. 42A.4085. SUBMISSION OF ALCOHOL MONITORING COMMUNITY
24 SUPERVISION CONDITION TO CENTRAL DATABASE. (a) A judge ordering
25 alcohol monitoring as a condition of community supervision or
26 modifying an order for alcohol monitoring shall submit to the
27 Department of Public Safety for inclusion in the central database

1 maintained by the department under Section 411.02091, Government
2 Code:

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

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

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

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

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

20 (b) The database must include the name of each defendant
21 restricted to the operation of a motor vehicle equipped with an
22 ignition interlock device under Article 17.441 or 42A.408, Code of
23 Criminal Procedure, Section 49.09(h), Penal Code, or Section
24 521.246, Transportation Code, or required to use an alcohol
25 monitoring device under Article 17.44, Code of Criminal Procedure,
26 or Chapter 42A of that code, the defendant's date of birth, and, if
27 applicable, the date each restriction expires.

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

6 (d) The central database must:

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

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

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

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

26 (a) The division shall require each department to:

27 (1) keep financial and statistical records determined

1 necessary by the division;

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

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

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

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

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

18 (h) This subsection applies only to a person convicted of a
19 second or subsequent offense relating to the operating of a motor
20 vehicle while intoxicated committed within five years of the date
21 on which the most recent preceding offense was committed. The court
22 shall enter an order that requires the defendant to have an ignition
23 interlock [~~a~~] device installed, on each motor vehicle owned or
24 operated by the defendant, that uses a deep-lung breath analysis
25 mechanism to make impractical the operation of the motor vehicle if
26 ethyl alcohol is detected in the breath of the operator, and that
27 requires that before the first anniversary of the ending date of the

1 period of license suspension under Section 521.344, Transportation
2 Code, the defendant not operate any motor vehicle that is not
3 equipped with an ignition interlock ~~[that]~~ device. The court shall
4 require the defendant to obtain the ignition interlock device at
5 the defendant's own cost on or before that ending date, require the
6 defendant to provide evidence to the court on or before that ending
7 date that the ignition interlock device has been installed on each
8 appropriate vehicle, and order the ignition interlock device to
9 remain installed on each vehicle until the first anniversary of
10 that ending date. If the court determines the offender is unable to
11 pay for the ignition interlock device, the court may impose a
12 reasonable payment schedule not to extend beyond the first
13 anniversary of the date of installation. The Department of Public
14 Safety shall approve ignition interlock devices for use under this
15 subsection. Section 521.247, Transportation Code, applies to the
16 approval of an ignition interlock ~~[a]~~ device under this subsection
17 and the consequences of that approval. Failure to comply with an
18 order entered under this subsection is punishable by contempt. For
19 the purpose of enforcing this subsection, the court that enters an
20 order under this subsection retains jurisdiction over the defendant
21 until the date on which the ignition interlock device is no longer
22 required to remain installed. A court that restricts a defendant to
23 the operation of a motor vehicle equipped with an ignition
24 interlock device under this subsection shall submit to the
25 Department of Public Safety for inclusion in the central database
26 maintained by the department under Section 411.02091, Government
27 Code, a copy of the order imposing the restriction, the defendant's

1 name, the defendant's date of birth, and, if applicable, the date
2 the restriction expires. To the extent of a conflict between this
3 subsection and Subchapter I, Chapter 42A, Code of Criminal
4 Procedure, this subsection controls.

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

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

10 (1) a condition of bond imposed under Article 17.441,
11 Code of Criminal Procedure, a condition of community supervision
12 imposed under Article 42A.408, Code of Criminal Procedure, a
13 condition of holding an occupational driver's license under Section
14 521.246, Transportation Code, or a court order issued under Section
15 49.09(h) restricting the person to the operation of a motor vehicle
16 equipped with an ignition interlock device; or

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

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

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

24 (g) A judge that restricts a person to the operation of a
25 motor vehicle equipped with an ignition interlock device under
26 Subsection (a) or modifies the order imposing the restriction shall
27 submit to the Department of Public Safety for inclusion in the

1 central database maintained by the department under Section
2 411.02091, Government Code:

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

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

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

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

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

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

1 effect for that purpose.

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

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

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