

SUBJECT: Deferred adjudication for first-time intoxication offense, required interlock

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Gallego, Aliseda, Burkett, Y. Davis, Rodriguez, Zedler

1 nay — Carter

2 absent — Hartnett, Christian

WITNESSES: For — Richard Alpert, Tarrant County District Attorney's Office; Mark Atkinson, Judicial Resource Liaison, Texas Center for the Judiciary; Debra Coffey, Smart Start Ignition Interlock; Mel Koehler, Jennifer Tharp, Comal County Criminal District Attorney; Bill Lewis, Mothers Against Drunk Driving; (*Registered, but did not testify:* Troy Alexander, Texas Medical Association; Jim Allison, County Judges and Commissioners Association of Texas; John Chancellor, Texas Police Chiefs Association; Abe Factor; Roger Harmon, Johnson County; Cliff Herberg, for Bexar County District Attorney Susan D. Reed; Jim Jones, San Antonio Police Department; Mark Mendez, Tarrant County Commissioners Court; Elizalde Pete, Jimmy Rodriguez, San Antonio Police Officers Association; Vikrant Reddy, Texas Public Policy Foundation; Jessica Sloman, Houston Police Department; Barbara Waldon, City of Waco; Deborah Wigington)

Against — Teresa Williams, Dallas County Community Supervision and Corrections Department (*Registered, but did not testify:* Deborah Stevens; Rodney Thompson, Angelina County CSCD, Texas Probation Association; Celeste Villarreal, Mexican-American Bar Association of Texas)

On — Allen Place, Texas Criminal Defense Lawyers Association; Melissa Walden, Texas Transportation Institute

BACKGROUND: Penal Code, secs. 49.04 through 49.08 criminalize driving, flying, or boating while intoxicated, driving while intoxicated with a child passenger, assembling or operating an amusement ride while intoxicated, intoxication assault, and intoxication manslaughter. A judge may not grant deferred adjudication for any of these offenses, for which penalties range from a class B misdemeanor (up to 180 days in jail and/or a maximum fine

of \$2,000) for driving while intoxicated to a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) for intoxication manslaughter. On a repeat offense for driving, flying, boating, or assembling or operating an amusement ride while intoxicated the penalty is increased to a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000), with a minimum confinement of 30 days.

Under Code of Criminal Procedure, art. 42.12 sec. 13(a), if a judge grants community supervision to a defendant convicted of an intoxication offense under Penal Code, secs. 49.04-49.08, and if before receiving community supervision the defendant has not submitted to an evaluation already, the judge shall require the defendant to submit to the evaluation as a condition of community supervision. If the evaluation indicates that the defendant is in need of treatment for drug or alcohol dependency, the judge must require the defendant to submit to treatment as a condition of supervision.

Code of Criminal Procedure, art. 42.12, sec. 13(i) allows a court to require as a condition of community supervision for a person convicted of one of the above offenses that any vehicle the person drives be equipped with an ignition interlock device that will make the vehicle inoperable if ethyl alcohol is detected on the breath of the driver. The court must require installation of an ignition interlock device as a condition of community supervision when the defendant had an alcohol concentration level of 0.15 or higher when arrested or was convicted of intoxication assault or intoxication manslaughter, or had a previous conviction for driving, flying, or boating while intoxicated and was convicted again of one of those offenses.

The Department of Public Safety (DPS) governs the approval of ignition interlock devices and establishes general standards for calibration and maintenance of the devices. If DPS approves a device, the manufacturer reimburses DPS for the cost incurred in approving it. The vendor also reimburses DPS for the reasonable cost of inspecting the vendor's facilities to ensure compliance with the department's standards. DPS also is responsible for a yearly evaluation of approved interlock devices.

Under the Driver Responsibility Program, DPS assesses a surcharge on the driver's license of each person who has been finally convicted of an offense relating to the operating of a motor vehicle while intoxicated.

DIGEST: CSHB 189 would allow a judge to grant deferred adjudication for driving, flying, boating or assembling or operating an amusement ride while intoxicated unless the defendant was a repeat intoxication offender, held a commercial driver's license or permit, or caused injury to a person or damaged property while committing the offense.

If the judge granted deferred adjudication for an intoxication offense, the judge would be required to order the defendant to have an ignition interlock device installed, regardless of whether the installation would have been required if the defendant had been convicted.

A person on deferred adjudication for an intoxication offense would not be allowed to petition the court for nondisclosure status for the intoxication offense record. For purposes of the intoxication enhancement statute, a deferred adjudication would be considered a conviction.

CSHB 189 also would add driving while intoxicated with a child passenger to the enhancement statute as a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) for a repeat offense.

CSHB 189 would require interlock device vendors to pay at least \$500 to DPS to cover the costs incurred in approving a device, a reasonable amount of at least \$500 to cover the cost of the yearly evaluation of the device, and a reasonable amount of at least \$450 to cover the costs of inspecting the vendor's facilities.

CSHB 189 would provide that for the purpose of paying the Driver Responsibility Program surcharge, a person would be considered convicted if:

- a judgment, a sentence, or both a judgment and a sentence were imposed;
- the person received community supervision, deferred adjudication, or deferred disposition; or
- the court deferred final disposition of the case or imposition of the judgment and sentence.

The bill would take effect September 1, 2011, and would apply only to offenses committed on or after that date.

SUPPORTERS
SAY:

CSHB 189 would allow a judge to grant deferred adjudication for first-time driving while intoxicated (DWI) and other intoxication offenses, which would have numerous benefits. First, allowing deferred adjudication would unclog the court system and get these people into treatment. As of July 2010, there were 122,000 pending DWI cases. Instead of taking a plea and accepting probation with condition of treatment, most offenders now decide on a trial because of the chance to be acquitted, and do jail time if so ordered. The result is that some prosecutors have reported that while the defendant waits for trial, he or she often is arrested again for DWI. The current system does not help them get the treatment they need to make the streets safer.

This form of deferred adjudication would be different from the deferred adjudication that was allowed for intoxication offenses before 1983. Under CSHB 189, deferred adjudication would be limited to first DWI offenses, could be used for enhancement of penalties, would come with the added security of required ignition interlock installation. Also, a court would not be able to grant a nondisclosure order for the offense record.

Mandatory ignition interlock would be a big benefit for this program. Defendants ordered to have ignition interlock have been shown to have fewer accidents than if only their licenses were suspended. The ignition interlock has also been shown to reduce recidivism 20 to 74 percent, depending on the study and the state where the study was conducted.

For the defendant, another benefit of deferred adjudication would be that it would include mandated treatment, if found after evaluation to be necessary, and would not be considered a conviction for the purpose of applying for college, a job, a credit card, or enlisting in the army.

Some county programs are granting deferred adjudication under other pretenses for driving while intoxicated, usually for a reckless driving charge. Prosecutors are doing this because they want to get people into treatment who need it, rather than have them serve jail time. The problem is that if a person gets deferred adjudication for reckless driving in one county, a record of the offense will not be recorded in another county, so that person will not get the enhanced penalty they deserve for the second offense. CSHB 189 would make sure that person got treatment, and if it did not work, the person would be held responsible for repeat offenses with harsher consequences.

OPPONENTS
SAY:

Judges should have the discretion on whether a defendant should have the ignition interlock installed, but it should not be mandatory.

CSHB 189 would raise community supervision costs for local probation departments, who would be required to review the ignition interlock reports for each defendant, analyze the tests done on the ignition interlocks for their probationers, and perform field tests.

NOTES:

The companion bill, SB 903 by Patrick, was considered in a public hearing by the Senate Criminal Justice Committee on April 12 and left pending.

The fiscal note shows no net change to the General Revenue Fund, but does show a probable revenue gain in fiscal years 2012-2016 of \$1,290,492 from interlock ignition fees from vendors, \$120,360 probable gain to the Texas Mobility Fund from the \$10 fee required for the ignition interlock driver's license, and costs to DPS to operate the program of over \$1,000,000 each year.