

**SUBJECT:** Use of vehicle interlock devices in cases of intoxication offenses

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 6 ayes — Hinojosa, Dunnam, Green, Smith, Talton, Wise  
0 nays  
3 absent — Garcia, Keel, Nixon

**WITNESSES:** For — Joe J. Delgado, Bexar County Pretrial Services Office; Charlie Cole; Thomas M. Goff  
Against — Stuart Kinard

**BACKGROUND:** Ignition interlock devices use deep-lung breath analysis mechanisms to make impractical the operation of a motor vehicle if the device detects ethyl alcohol in the breath of the vehicle operator.

**DIGEST:** **New offense.** CSHB 1594 would create a new offense under the Penal Code for circumventing an ignition interlock device. It would be an offense to take certain actions knowingly for the purpose of allowing a person to operate a car when the person was required to have a device installed on the vehicle as a term of release on bond, a condition of community supervision (probation), or a driver's license restriction. The offense would include:

- failing to have a device installed, monitored, or calibrated as required by law;
- bypassing the device or tampering with it;
- introducing or allowing to be introduced any substance other than the person's breath into the device; and
- operating another motor vehicle that was not equipped with a device.

Offenses would be Class B misdemeanors, punishable by up to 180 days in jail and/or a maximum fine of \$2,000, unless the offense was authorizing or inducing a person younger than 18 to introduce their breath into the device, in which case it would be a Class A misdemeanor, punishable by up to one year in jail and/or a maximum fine of \$4,000.

It would be an exception to the application of the bill if a person required to have the device as a term of release on bond, a condition of probation, or a driver's license restriction was operating another motor vehicle not equipped with the device and:

- the person was required to operate the vehicle as part of their employment and was doing so;
- the vehicle was owned by the person's employer;
- the employer was not owned or controlled by the person;
- the person had given the employer written notice that the installation of the device was required on the vehicle the person owned or drove; and
- the person was carrying a copy of that notice in the vehicle.

**Jail time.** CSHB 1594 would reduce from 30 to 15 the minimum number of days of confinement in a jail that persons convicted of driving, flying, or boating while intoxicated and who had one previous offense relating to operating a motor vehicle, aircraft, or watercraft while intoxicated would have to serve. The bill would institute a new requirement that the confinement be continuous.

**Imposition of bail in intoxication offenses.** CSHB 1594 would add a new standard for when magistrates could require as a condition of personal bond that certain persons involved with alcohol or drugs submit to testing for alcohol or a controlled substance or participate in treatment or education programs. Magistrates could order these conditions if they would protect public safety. The bill would give magistrates new authority to order these persons to comply with Code of Criminal Procedure conditions for having a motor vehicle ignition interlock device installed.

The bill would expand current requirements that magistrates require certain repeat intoxication offenders being released on bail to have a motor vehicle ignition interlock device installed to apply to defendants charged with first-time driving, flying, or boating while intoxicated if an analysis of breath, blood, or other body substance showed an alcohol concentration of 0.15 or more. The bill would amend current requirements about repeat offenders so that a previous offense would have to have occurred within 10 years of the current offense.

The bill would give magistrates authority not to prohibit persons from operating a vehicle with an interlock device if the person was required to operate the vehicle as part of their job. The devices would have to be installed within seven days of the defendant's being released on bond, instead of within 30 days as in current law.

The magistrate would be required, instead of allowed, to designate an appropriate agency to verify the installation of the device and to monitor the defendant's compliance with it. The agency would have to be a county agency or entity.

The magistrate would have to notify DPS of the order to install the device. The defendant would have report to the vendor that installed the device once every 30 days to have the device inspected and calibrated. The vendor would have to make data collected by the device available to the magistrate and monitoring agency and would have to report violations of the requirements to the magistrate.

**Probation for intoxication offenses.** The current requirements that certain offenders convicted of intoxication offenses and placed on probation serve a minimum term in a county jail would be changed to require that the time in the jail be continuous and that the time could be served in a community corrections facility.

Evaluations of offenders to determine a course of conduct for the rehabilitation of their drug or alcohol dependence, currently required for intoxication manslaughter offenders, would be expanded to include offenders convicted of driving, flying, and boating while intoxicated and intoxication assault.

The bill would give courts authority to order persons placed on probation for driving, flying, or boating while intoxicated to install ignition interlock devices. Courts would have to order the devices installed if an analysis of breath, blood, or other body substance of one of these offenders showed an alcohol concentration of 0.15 or more, if a person was convicted of a second or subsequent offense occurring within 10 years of a previous offense, or if a person was convicted of intoxication assault or intoxication manslaughter.

The ignition interlock devices would have to be installed within seven days, instead of within 30 days, after the date of conviction. The court would have to designate the local probation department or another county monitoring agency to verify the installation of the device and to monitor the defendant's compliance.

Although courts now must order defendants to keep the device installed for at least half of the probation period, CSHB 1594 would require the devices to remain installed for at least 18 months for any probation term exceeding 18 months.

The court would have to notify DPS of the order to install the device. The defendant would have report to the vendor that installed the device once every 30 days to have the device inspected and calibrated. The vendor would have to make data collected by the device available to the magistrate and monitoring agency and would have to report violations of the requirements to the magistrate.

Probationers required to operate vehicles without the device as part of their employment could operate a vehicle without a device if they met the bill's conditions relating to informing the person's employer.

A requirement that judges order the suspension of driver's licenses for some repeat intoxication offenders would not apply to persons placed on probation and required as a condition of probation to install an interlock device.

**License suspensions and interlock devices.** A judge suspending someone's license after a conviction for driving, flying, or boating while intoxicated would have to determine whether the analysis of the person's breath, blood, or other bodily substance showed an alcohol concentration of 0.15 or more and whether the person had previous offenses within 10 years of the current offense. If either of conditions were met, the judge would have to order the installation of an interlock device. If a license were suspended for intoxication assault or intoxication manslaughter, a judge would have to order the installation of an interlock device.

Judges ordering the installation of an interlock device also would have to order that all conditions listed in the Code of Criminal Procedure for persons placed on probation for DWI be imposed.

Persons ordered to install an interlock device could operate a vehicle without a device if they met the bill's conditions relating to informing the person's employer.

This bill would take effect September 1, 1999.

**SUPPORTERS  
SAY:**

CSHB 1594 would revise the current laws relating to vehicle interlock devices to ensure that they were used in appropriate cases, to punish those who circumvent the devices, to provide for monitoring of the use of the devices, and to ensure that persons sentenced to jail as a term of probation were punished appropriately.

This bill would help make the streets safer by ensuring that the devices were used in serious intoxication cases by requiring their use for certain offenses and when a person's blood alcohol level was high. A new offense to punish those who circumvent the devices is needed to help ensure compliance and to impose a sanction on those who tamper with them. The bill would set up procedures for monitoring use of the devices to help ensure that persons did not circumvent the intention of the law.

CSHB 1594 would ensure that persons spending time in jail while on probation for intoxication offenses were punished adequately by requiring the time served to be continuous. This would prevent persons from serving their time only on weekends and never really feeling a penalty for their actions.

**OPPONENTS  
SAY:**

CSHB 1594 could go too far in expanding the use of interlock devices. It could be inappropriate to create a new criminal penalty for tampering with an interlock device, since the imposition of interlock ignition devices is designed to enhance public safety, not as a criminal punishment. Requiring persons to serve continuous time in jail as a probation condition could be counterproductive, because persons could lose their jobs and the ability to support their families.