

BILL ANALYSIS

Senate Research Center

H.B. 1594
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Criminal Justice
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Engrossed

DIGEST

Current state law provides that anyone convicted of a second or subsequent offense of driving while intoxicated (DWI) shall be required by a court to have an ignition interlock device installed in the motor vehicle which the person regularly operates. The criminal justice system relies on several codes working jointly to try, convict, and sentence a defendant. This interaction requires that the language in each section correspond. H.B. 1594 would clarify and conform sections of the Penal Code, Code of Criminal Procedure, and Transportation Code as they apply to DWI offenses. This bill also would also create an offense to circumvent the functionality of an interlock device.

PURPOSE

As proposed, H.B. 1594 amends regulations regarding to the penalty for certain intoxication offenses and the conditions for release of a defendant charged with or convicted of those offenses, including the use of an ignition interlock device.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 38, Penal Code, by adding Section 38.17, as follows:

Sec. 38.17. CIRCUMVENTING DEVICE DESIGNED TO PREVENT DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL. Defines "device" to mean a device approved by the Texas Department of Public Safety (DPS) that makes impractical the operation of a motor vehicle if ethyl alcohol is detected in the breath of the operator. Provides that it is a Class B misdemeanor if a person knowingly fails to have a device installed, monitored, or calibrated, under conditions set forth as a term of release on bond, community supervision, or a driver's license restriction, or circumvents the functionality of the device for the purpose it was required, including by operating another vehicle that is not equipped with a device. Provides that it is a Class A misdemeanor if the person induces a person who is younger than 18 years of age to introduce that person's breath into the device. Provides that under certain conditions where the person is operating a vehicle for and in accordance with employment it is an exception to the prohibition against operating another vehicle without a device.

SECTION 2. Amends Section 49.07, Penal Code, by amending Subsections (b) and (c) and adding Subsection (d), to define "miscarriage" and "stillbirth" and redefine "serious bodily injury." Makes a felony of the second degree an offense under this section that caused a pregnant woman to suffer a miscarriage or stillbirth. Makes conforming changes.

SECTION 3. Amends Section 49.09(a), Penal Code, to require a minimum term of 15 days, rather than 30 days, of continuous confinement if on a trial for operating a motor vehicle, aircraft, or watercraft while intoxicated it is shown that the person was previously convicted one time of one of certain offenses.

SECTION 4. Amends Article 17.03(c), Code of Criminal Procedure, to require the court or magistrate releasing a defendant on personal bond to consider the reasonable belief of any magistrate as to the involvement of a controlled substance or alcohol in the commission of the offense. Includes compliance with each condition of release required by Article 17.441 (Conditions Requiring Motor Vehicle Ignition Interlock), Code of Criminal Procedure, in the list of authorized conditions. Authorizes requiring a

defendant to fulfill conditions required by Article 17.441 and submit to testing for alcohol or a controlled substance or participation in a drug abuse treatment or education program. Creates Subdivision (1) from existing text. Makes conforming and nonsubstantive changes.

SECTION 5. Amends Article 17.441, Code of Criminal Procedure, to limit application of this section only to a defendant charged with operating a motor vehicle, aircraft, or watercraft while intoxicated, who was shown to have a blood alcohol concentration (BAC) of at least 0.15 or a previous conviction of one of the these offenses within 10 years before the date of the previous conviction, or charged with a second or subsequent offense of assault or manslaughter while intoxicated, during this period. Provides that under certain conditions where the person is operating a vehicle for and in accordance with employment it is an exception to the prohibition against operating another vehicle without a device. Requires the defendant to install the device before the seventh day after release on bond and to apply for a special restricted license under Section 521.2465 (Restricted Licenses), Transportation Code, before the 30th day after the date of the notice provided under that section. Requires, rather than authorizes, the magistrate to designate an appropriate monitoring agency or entity to verify installation of the device and defendant's compliance with this article and requires notification of the agency or entity. Authorizes a magistrate, in a county without a monitoring agency or entity, to designate a specific vendor or vendors for monitoring purposes. Requires the magistrate to send DPS a copy of the order requiring the installation. Requires the defendant to provide a copy of the order to the designated monitor or vendor approved by DPS, as may be required. Requires the defendant to report to the vendor at least once every 30 days for monitoring and pay any contracted service fee. Requires the vendor take any necessary action to ensure the effective operation of the device, and report the daily activity data collected to the magistrate or monitor on request. Requires the monitor to verify installation of the device and report any violations of this article. Requires the defendant to pay the monitor a \$10 fee, and any additional fee requested by the monitor not to exceed \$25, at the time of visitation, unless the monitor is a vendor, in which case the contract governs. Requires the court in which the defendant's case is pending to order the defendant to appear before the court, within 15 days after the date the court discovers noncompliance, and order a device be installed in accordance with this article if it is discovered that a magistrate did not order installation of a device. Makes conforming and nonsubstantive changes.

SECTION 6. Amends Sections 13(a) and (b), Article 42.12, Code of Criminal Procedure, to clarify that a defendant is subject to 72 hours, rather than three days, of continuous confinement in a county jail or a community corrections facility, if the defendant was punished under Section 49.09(b)(Enhanced Offenses and Penalties), Penal Code, or not less than 30 continuous days if convicted under Section 49.07 (Intoxication Assault), Penal Code, or not less than 120 continuous days if convicted under Section 49.08 (Intoxication Manslaughter), Penal Code. Requires a judge to require the defendant convicted under Sections 49.04-49.08, Penal Code, rather than solely under Section 49.08, Penal Code, to submit to an evaluation for drug or alcohol rehabilitation if the judge is granting community supervision. Redesignates existing Subdivisions (2) and (3) to Subdivisions (3) and (4). Makes conforming and nonsubstantive changes.

SECTION 7. Amends Section 13(i), Article 42.12, Code of Criminal Procedure, to authorize a court to require a defendant convicted under only Sections 49.04-49.06, Penal Code, rather than under Sections 49.04-49.08, Penal Code, and placed on community supervision, as a condition of supervision, to have a device installed. Requires a court to require a defendant convicted under Section 49.04-49.06, Penal Code, rather than Sections 49.04-49.06, Penal Code, who was shown to have a BAC of at least 0.15 or a previous conviction of one of the these offenses within 10 years before the date of the previous conviction, or charged with committing assault or manslaughter while intoxicated and placed on community supervision, as a condition of supervision, to have a device installed at the defendant's own expense and to apply for a restricted license under Section 521.2465 (Restricted Licenses), Transportation Code, before the 7th day, rather than 30th day, after the date of the notice provided under that section. Requires the court to designate and notify the appropriate monitoring person, agency, or entity. Authorizes the defendant to provide evidence required under this section to the monitoring agency before the 30th day after the date of sentencing. Requires the court to order the defendant to maintain installation of the device. Requires the court to order the defendant to maintain installation for at least 18 months for any term of community supervision exceeding 18 months. Requires the court to send DPS a copy of the court's order. Requires the defendant to provide a copy of the court order to monitor and vendor approved by DPS. Requires the defendant to report to the vendor at least once every 30 days for monitoring and pay any contracted service fee. Requires the vendor take any necessary action to ensure the effective operation of the device, and report the daily activity data collected to the court or monitor on request. Requires the monitor to verify installation of the device and report any violations of this article.

Requires the defendant to pay the monitor a \$10 fee, and any additional fee requested by the monitor not to exceed \$25, at the time of visitation, unless the monitor is a vendor, in which case the contract governs. Authorizes a court to set up a payment schedule not to exceed twice the period of the court's order if it is determined that the defendant is unable to pay all the costs of the device. Provides that under certain conditions where the person is operating a vehicle for and in accordance with employment it is an exception to the prohibition against operating another vehicle without a device. Makes conforming and nonsubstantive changes.

SECTION 8. Amends Sections 13(k) and (l), Article 42.12, Code of Criminal Procedure, to set forth Subdivision (2) of this subsection and Section 521.344(d) Transportation Code, rather than Section 24(g), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, V.T.C.S.), as governing any conflicts found in this section. Applies Sections 49.04-49.08, Penal Code, Paragraph (A) of this section. Prohibits application of Subdivision (1) to a defendant placed on community supervision and requires as a condition to not operate a motor vehicle unless the vehicle is equipped with a device. Provides that Subdivision (2) is an exception to Subdivision (1). Prohibits application of Subdivision (1) to a defendant placed on community supervision and required as a condition to not operate a motor vehicle unless the vehicle is equipped with a device. Redesignates Subdivisions (1) and (2) to Paragraphs (A) and (B). Makes conforming and nonsubstantive changes.

SECTION 9. Amends Section 509.004(a), Government Code, to require each community supervision and corrections department (department) to also submit periodic data regarding devices in use and the number of violations detected and reported, the number of attempts to circumvent the devices, and a description of the resulting actions taken by a court.

SECTION 10. Amends Section 521.242, Transportation Code, by amending Subsection (b) and adding Subsection (f), to provide that a petition filed under Subsection (b) (relating to reinstatement of a license suspended under circumstances not including certain offenses) or under Subsection (f) must state that the petitioner was convicted in that court for an offense under the laws of the state, or restricted by that court to the operation of a motor vehicle equipped with an ignition interlock device under Article 17.441 (Conditions requiring motor vehicle ignition interlock), Code of Criminal Procedure. Authorizes a person who has been restricted by court order to the operation of a motor vehicle with an interlock device to apply for an occupational license by filing a verified petition only with the clerk of the court that required the device. Provides that the verified petition must be filed with the clerk of the district court in the jurisdiction where the applicant resides or that the offense occurred if the applicant had been restricted under Article 17.441.

SECTION 11. Amends Section 521.246, Transportation Code, to apply this section to Sections 49.04-49.06, Penal Code, rather than Sections 49.07 and 49.08, Penal Code. Requires the court to verify the analysis of the defendant's BAC and relevant criminal history and requires a court to restrict a defendant convicted under the above sections, who was shown to have a BAC of at least 0.15 or a previous conviction of one of these offenses within 10 years before the date of the previous conviction, to operation of a motor vehicle equipped with an ignition interlock device. Requires a judge who restricts a person to the operation of a motor vehicle equipped with an ignition interlock device, to impose on the person each condition of release that must be imposed on a person as a condition of release on community supervision under Section 13(i), Article 42.12, Code of Criminal Procedure.

SECTION 12. Amends Section 521.2465(b), Transportation Code, to require DPS to issue a person a driver's license without the restriction on expiration of the period during which a person is restricted to operation of motor vehicle equipped with an ignition interlock device, as indicated by a copy of the court order imposing the restriction, as well as on receipt of a court order removing the restriction.

SECTION 13. (a) Effective date: September 1, 1999.

(b) Makes application of this Act prospective as to Sections 2, 5, 6, 7, and 10 of this bill.

SECTION 14. Emergency clause.