

SUBJECT: Additional cost for conviction of alcohol-related offenses

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Riddle, Ellis, Denny, Pena, Talton

0 nays

4 absent — Keel, Dunnam, Hodge, P. Moreno

WITNESSES: For — Bill Lewis, Mothers Against Drunk Driving

Against — None

BACKGROUND: Code of Criminal Procedure, art. 102.018 imposes certain costs on defendants who are convicted of alcohol-related offenses under Chapter 49 of the Penal Code, which includes:

- public intoxication and possession of an alcoholic beverage in a motor vehicle, which are both class C misdemeanors, punishable by a maximum fine of \$500;
- driving while intoxicated (DWI), flying while intoxicated, and boating while intoxicated, which are class B misdemeanors, punishable by up to 180 days in jail and/or a maximum fine of \$2,000;
- intoxication assault, which is a third-degree felony, punishable by two to 10 years in prison and an optional fine of up to \$10,000; and
- intoxication manslaughter, which is a second-degree felony, punishable by two to 20 years in prison and an optional fine of up to \$10,000.

Under Code of Criminal Procedure, art. 102.018, the court must order a defendant convicted of DWI to pay a \$15 fee if the law enforcement agency visually recorded the defendant with an electronic device subsequent to the defendant's arrest, and a fee to cover the cost of an evaluation by a community supervision officer, or by a person, program, or facility approved by the Texas Commission on Alcohol and Drug Abuse for the purpose of treating the defendant's drug or alcohol dependence. The court may waive the evaluation fee if it determines that the defendant is indigent and unable to pay

the cost. Finally, if a person commits an offense under Chapter 49 of the Penal code and as a direct result causes an incident resulting in a response by a public agency, the person is liable to the agency for the reasonable expense of the accident response.

An auto insurance policy delivered, issued for delivery, or renewed in Texas may not cover payment of the fees imposed by Code of Criminal Procedure, art. 102.018. Furthermore, the fees do not apply to convictions for public intoxication.

Code of Criminal Procedure, art. 102.016 governs the use and record-keeping of funds for breath alcohol testing programs. The custodian of a municipal or county treasury in a county that maintains a certified breath alcohol testing program but does not use the services of a certified technical supervisor employed by the department may retain a percentage of the general court costs collected under Code of Criminal Procedure, art. 102.075 for convictions of offenses under Chapter 49 of the Penal Code, excluding public intoxication and possession of an alcoholic beverage in a motor vehicle.

Code of Criminal Procedure, art. 102.075 imposes court costs of \$80 for felony convictions, \$40 for class A and B misdemeanor convictions and for convictions under a municipal ordinance punishable by a fine of more than \$500, and \$17 for conviction of any other offense punishable by fine only.

DIGEST:

HB 103 would amend Code of Criminal Procedure, art. 102.018 to require a person convicted of any offense under Chapter 49 of the Penal Code to pay an additional court cost of \$100. The clerk of the court would collect the cost and pay it to the custodian of a municipal or county treasury for deposit in a fund that could be used only for the purchase of law enforcement equipment that the municipality or county determined would assist in the enforcement and prevention of alcohol-related offenses.

The bill would take effect January 1, 2004.

**SUPPORTERS
SAY:**

By creating a law enforcement equipment fund for enforcing and preventing alcohol-related offenses, HB 103 would provide local law enforcement with much-needed funds to keep drunk drivers off the roads. The Legislative Budget Board estimates that if the rate of convictions in fiscal year 2002

remains stable in subsequent years, HB 103 could result in \$7.9 million in additional revenue for Texas municipalities and counties dedicated to defraying the cost of law enforcement equipment used for alcohol-related offenses.

It makes sense for offenders, rather than taxpayers, to pay more of the burden of enforcing alcohol-related offenses because drunk drivers impose a tremendous cost on society. For offenders placed on community supervision (probation), the additional \$100 cost would be insignificant compared to probation fees they already would be required to pay. Failure to pay the extra cost would not lead to increased revocations because judges are reluctant to revoke probation for purely technical violations. Finally, an additional \$100 court cost for the class C offenses of public intoxication and possession of an alcoholic beverage in a motor vehicle would not be unfair and the burden on offenders would be outweighed by the benefits of the fund, which would give counties and municipalities the resources to make Texas roads safer.

By imposing an additional \$100 fine on defendants convicted of committing alcohol-related crimes, HB 103 would help deter the commission of those crimes. Fees and penalties already imposed on offenders in alcohol-related offenses obviously are not working because Texas still leads the nation in alcohol-related traffic fatalities.

HB 103 would create incentives for counties and municipalities to vigorously enforce DWI offenses. Arrests for this offense are difficult and time-consuming, which can be an obstacle for law enforcement agencies, especially small ones with limited resources. Forcing offenders to pay an additional fine would give law enforcement an added incentive to enforce DWI laws.

**OPPONENTS
SAY:**

HB 103 is unnecessary. The penalties and court costs already imposed on defendants convicted of alcohol-related crimes provide sufficient deterrence for would-be offenders. This bill would just add to the proliferation of costs and fees that are creating too great a burden.

The fee imposed by HB 103 should not apply to class C misdemeanor offenses. It is unfair to impose the same fee on public intoxication as on

intoxication manslaughter. Furthermore, many public intoxication offenders are indigent and could not afford this additional fee.

Imposing additional fines on offenders convicted of alcohol-related offenses would set up for failure those placed on community supervision (probation). Current probation fees already are too high relative to the income of those on probation. Increases would be counterproductive as failure-to-pay violations would increase, contributing to more revocations of probation and greater inmate populations.

NOTES:

HB 2542 by Bonnen, which has been referred to the House Criminal Jurisprudence Committee, is similar to HB 103 except that it also would apply to offenses under Health and Safety Code, Chapter 481.

A related bill, HB 2746 by Turner, which has been referred to the House Criminal Jurisprudence Committee, would allow a judge to require a defendant placed on community supervision for certain alcohol-related offenses to pay up to \$500 to a trauma facility owned or operated by a political subdivision of the state.

A related bill, SB 663 by Ogden, which passed the Senate by 27-4 (Estes, Lucio, Van de Putte, West) on April 7, would create a \$2.50 fee for defendants convicted of misdemeanors and felonies that would be dedicated to the Center for Transportation Safety and the Department of Public Safety.