

SUBJECT: State-jail felony for driving while intoxicated with a child passenger

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Keel, Riddle, Ellis, Denny, Dunnam, Hodge, Pena, Talton

0 nays

1 absent — P. Moreno

SENATE VOTE: On final passage, April 30 — voice vote

WITNESSES: No public hearing

BACKGROUND: Penal Code, sec. 49.04 makes it a Class B misdemeanor (punishable by up to 180 days in jail and/or a maximum fine of \$2,000) to operate a motor vehicle in a public place while intoxicated. The penalty is enhanced if a person previously was convicted of one or more offenses relating to driving while intoxicated (DWI). With one such prior conviction, DWI is a Class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000), and with two such prior convictions, it is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000). It is no defense to DWI that the defendant was entitled to use the alcohol, controlled substance, drug, dangerous drug, or other substance.

Penal Code, sec. 22.041 makes it a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) to engage in conduct intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, that places a child younger than 15 years of age in imminent danger of death, bodily injury, or physical or mental impairment.

DIGEST: CSSB 45 would make it a state-jail felony to operate a motor vehicle while intoxicated in a public place with a passenger younger than 15 years of age. The bill would include a conviction for this offense in the definition of an offense related to DWI that may be used for purposes of enhancing penalties. It would be no defense to DWI with a child passenger that the defendant was entitled to use the alcohol, controlled substance, or other drug.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSSB 45 would help protect children by imposing a state-jail felony for DWI with a child passenger. According to the National Highway Traffic Safety Administration, more than 12,000 children younger than 14 died in alcohol-related traffic accidents between 1994 and 2000, and nearly two-thirds of those children were passengers in vehicles driven by intoxicated drivers.

Children need greater protection under the law because they generally cannot choose the people with whom they ride in vehicles. Adults may protect themselves from the danger posed by drunk driving by refusing to ride with intoxicated drivers, but children generally do not have freedom of choice in this regard.

CSSB 45 would send a strong message that it is a serious crime to drive while intoxicated with a child in the car, and the stiff penalty would help to deter would-be offenders. Texas would join more than 25 other states that have imposed stiffer penalties for drunk driving with children present.

While a person can be prosecuted for child endangerment for DWI with a child passenger, when that offense is prosecuted the DWI charge often is dropped because it involves a lesser penalty. As a result, the defendant's record shows no conviction that can be used for enhancement purposes if the offender commits a subsequent DWI offense. Also, child endangerment prosecutions are not always successful because the crime may not match the exact elements of that offense.

CSSB 45 also would help to deter underage drinking and ensure that minors take responsibility for their actions. The bill would affect all drunk drivers, including high school students who drive drunk with passengers under the age of 14.

**OPPONENTS
SAY:**

CSSB 45 is unnecessary. A person who drives while intoxicated with a child passenger already can be prosecuted for child endangerment, a state-jail felony, as well as for DWI.

By creating a new crime, CSSB 45 would increase the state's incarceration costs. At a time when Texas prisons are at maximum capacity and the prison

budget likely faces serious cuts, it would be inappropriate to increase the pressure on the system by creating a new felony crime. The state cannot afford to build new prisons or to contract for additional private beds.

Sentencing laws should be uniform. The Legislature should not keep creating crimes or enhancing penalties in reaction to every conceivable bad behavior that it would like to stop.

CSSB 45 would be overly broad. Teenage drivers who were out with their 14-year-old friends could face jail time for DWI.

NOTES:

The committee substitute changed the Senate engrossed version of SB 45 by specifying that convictions for this new offense could be used to enhance penalties for subsequent offenses and that it would be no defense to prosecution that the defendant was entitled to use the substance.

A related bill, HB 745 by T. Smith, which would increase the penalty for intoxicated drivers with a blood alcohol content above 0.15, passed the House on April 24 and has been referred to the Senate Criminal Justice Committee.