

SUBJECT: Punishment for aggressive driving that results in the death of a person.

COMMITTEE: Criminal Jurisprudence —favorable, without amendment

VOTE: 6 ayes — Keel, Riddle, Denny, Hodge, Pena, Reyna

0 nays

3 absent — Escobar, P. Moreno, Raymond

WITNESSES: For — Guy Blasingame; Julie Blasingame; Ken Leonard

Against — Samuel England, ACLU of Texas

On — Shannon Edmonds, Texas District and County Attorneys Association

BACKGROUND: Under the Code of Criminal Procedure, art. 42.12, a judge may suspend the imposition of a sentence for certain crimes and place the defendant on community supervision. This does not apply to the offenses outlined in sec. 3g(a) of the article. A defendant convicted of a "3g" offense must serve half the sentence before being eligible for parole.

Criminally negligent homicide is punishable as a state jail felony. A person is criminally negligent with respect to that person's conduct when that person ought to be aware of a substantial and unjustifiable risk that certain circumstances exist or that certain results will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

The Penal Code defines a deadly weapon as a firearm or anything manifestly made for the purpose of inflicting death or serious bodily injury, or anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

A third degree felony is punishable by two to 10 years in prison and a maximum fine of \$10,000. A state jail felony is punishable by 180 days to two years in prison and a fine not to exceed \$10,000.

DIGEST:

HB 1249 would enhance the punishment for criminally negligent homicide to a third-degree felony if the individual was engaged in aggressive driving at the time of the offense. The bill would amend the Code of Criminal Procedure, art. 42, to require the judge in a criminally negligent homicide trial to enter into the judgment an affirmative finding of fact if the judge or jury determined beyond a reasonable doubt that the defendant committed the offense while engaged in aggressive driving.

If the judge made an affirmative finding of aggressive driving, the defendant would have to serve half the sentence before becoming eligible for parole, and the individual would be ineligible for judge-ordered community supervision under the Code of Criminal Procedure, art. 42.12, sec. 3g(a).

HB 1249 would define aggressive driving as:

- driving a vehicle in a manner in violation of law with intent to harass, annoy, or alarm an occupant of another vehicle;
- displaying what reasonably appears to be a deadly weapon to an occupant of another vehicle with the intent to harass, annoy, or alarm the occupant; or
- intentionally causing a vehicle to collide with another vehicle with intent to harass, annoy, or alarm an occupant of another vehicle.

This bill would take effect on September 1, 2005, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

According to the National Highway Transportation Safety Administration, aggressive driving has caused 2.28 million accidents and 27,935 deaths in the past five years. The bill would deter irresponsible and reckless driving by punishing it more severely and imposing stiffer sentences on those who commit this crime. In doing so, the bill would help curb the number of tragic deaths and injuries that result from this behavior and send a message to aggressive drivers that Texas takes this offense seriously.

HB 1249 would ensure that offenders who killed others while driving aggressively were punished appropriately. Under current law, it is common for an offender to receive probation. This bill would require aggressive drivers whose negligence caused the death of another to serve time in prison by eliminating the possibility of probation. It also would

enable prosecutors to charge these offenders with a third-degree felony rather than a mere state jail sentence. While it is possible to prosecute this type of offense as manslaughter, a second-degree felony, this charge is difficult for prosecutors to prove in this circumstance.

The bill is narrowly tailored to avoid constitutional problems. The term "harass, annoy or alarm" is taken from the existing stalking statute. Moreover, the bill would apply to a narrow set of circumstances. To trigger the offense, the driver of the vehicle would have to harass intentionally another driver while breaking a law, and as a result, negligently kill another.

Suggestions that this bill could increase prison costs and aggravate prison overcrowding problems are exaggerated. According to the Legislative Budget Board, this bill would pose no significant costs to the state, nor is it expected to have a significant impact on the demand of adult corrections agencies. Because this type of crime is uncommon, the bill would not have a measurable impact on costs or prison space.

**OPPONENTS
SAY:**

This bill essentially would enhance penalties for road rage to up to 10 years in prison. HB 1249 is unnecessary because this type of crime is appropriately punished under existing law. An aggressive driver who kills another may be charged with negligent homicide, a state jail felony, or manslaughter, which is a second-degree felony, depending on the circumstances. Moreover, current law already provides that a judge may not order community supervision for an offender who commits a felony when it is shown that the offender committed the offense with a deadly weapon. An automobile could qualify as a deadly weapon in this circumstance.

The definition of "aggressive driving" is overly broad and could result in unnecessarily harsh sentences. As written, the bill would apply to those who drive in violation of the law with the intent to "harass, annoy, or alarm" an occupant of another vehicle. This language could cover a variety of conduct and may inadvertently punish relatively innocent acts. Moreover, the vagueness would leave it open to abuse and possibly a constitutional challenge. Texans have the right to know exactly what kind of conduct is criminalized.

This enhancement would have serious consequences on an already overcrowded prison system. Texas correctional facilities are pressed to

their limit. Enhancing this penalty would increase costs to taxpayers and exacerbate an already serious prison overcrowding problem. If Texas continues to enhance penalties, taxpayers will bear the burden. While the fiscal note indicates no immediate anticipated fiscal impact, it is the combined result of all the various enhancement measures that would inevitably affect costs and prison space. Moreover, the Criminal Justice Impact Statement indicates that the eventual impact of this bill is unknown.