

SUBJECT: Penalties and community supervision conditions for intoxication offenses

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

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

0 nays

3 absent — P. Moreno, Raymond, Reyna

WITNESSES: For — Richard Alpert, for Tarrant County Criminal District Attorney Tim Curry; Annette Beard, Smart Start, Inc.; Ralph Blackman, The Century Council; Robert Kepple; Bill Lewis, Mothers Against Drunk Driving; Kevin Quinlan, National Transportation Safety Board

Against — Mimi Coffey; Keith S. Hampton, Texas Criminal Defense Lawyers Association; Charles G. Kingston

BACKGROUND: Penal Code, ch. 49 lists intoxication and alcoholic beverage offenses. Under secs. 49.04, 49.05, and 49.06, first offenses for driving, flying, or boating while intoxicated (DWI) are class B misdemeanors (up to 180 days in jail and/or a maximum fine of \$2,000). Sec. 49.01(2) defines “intoxicated” as having a blood-alcohol concentration of 0.08 or more. Secs. 49.07 and 49.08 address intoxication manslaughter and intoxication assault.

Secs. 49.09(e) and (f) generally limit what can be considered a previous intoxication offense to an offense that occurred within 10 years of the current offense, for the purpose of enhancing penalties. A conviction may not be used for enhancement purposes unless it is a final conviction.

For violation of certain intoxication offenses, Code of Criminal Procedure, art. 42.12 requires offenders to install an ignition interlock device on the vehicle they own or regularly drive, unless they can show it is not in the interest of justice. An ignition interlock device employs a deep-lung breath analysis mechanism to prevent the operation of a motor vehicle if ethyl alcohol is detected in the breath of the operator of the vehicle.

If an individual is convicted of a violation of Penal Code, secs. 49.04-49.08 and placed on community supervision, the judge may require the offender to install an ignition interlock device on their vehicle. If the person is a repeat offender and placed on community supervision, the court is required to order the defendant to place the device on the defendant's vehicle.

DIGEST:

CSHB 51 would require persons granted community supervision for intoxication while driving, boating, flying, or operating an amusement ride to be evaluated by the Department of State Health Services for alcohol or drug treatment. People convicted under these circumstances would have to install ignition interlock systems on their vehicles when placed on probation if they had a blood-alcohol concentration of 0.15 or greater.

The bill would eliminate the requirement that offenders sentenced to community supervision for intoxication manslaughter serve at least 120 days in jail.

CSHB 51 would repeal Penal Code, secs. 49.09(e) and (f), which limit consideration of previous intoxication offenses to 10 years for purposes of enhancing penalties. It also would amend sec. 49.09 to include within the definition of final conviction intoxication offenses more than 10 years old and driving while intoxicated with a child.

The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

CSHB 51 would require careful monitoring of the most serious DWI offenders, which could save lives. A person with an alcohol level of 0.15 or higher is much more intoxicated than a person with an alcohol level of 0.08, the minimum point at which the Penal Code deems someone to be intoxicated. Texas is among the states with the highest rates of alcohol-related traffic deaths, and lawmakers should do everything possible to change that. In 1999, Texas drivers with blood alcohol levels of 0.15 or more were involved in an estimated 161,900 crashes that killed 1,345 people and injured 55,600. Statistics show that although these drivers represent only 1 percent of all drivers on a weekend night, they are involved in about 50 percent of fatal crashes in that period. These drivers are 385 times more likely than a driver with no alcohol in the blood to be involved in a crash.

CSHB 51 also would require the installation of ignition interlock systems by offenders placed on probation. Ignition interlock systems would deter these offenders and would subject them to a high level of monitoring to prevent them from driving while drunk.

By removing the current 10-year limit on using a prior offense to enhance punishment, CSHB 51 would make the enhancement for repeat intoxication offenses similar to that used for all other types of criminal offenses. There is no logical reason for this rule since there is no such limitation for any other offense. Eliminating this rule is especially important when a repeat offender commits a serious intoxication offense such as intoxication manslaughter.

Current law limiting prior convictions to those that occur within 10 years allows a person to start with a clean slate every so often. This is inappropriate for alcohol offenses, because it limits courts in their analysis of a person's crimes and future potential to cause danger.

**OPPONENTS
SAY:**

It would be unfair to eliminate the current 10-year time limit on intoxication offenses. Under CSHB 51, a punishment could be enhanced even if a previous offense had occurred 25 years before, when the driver was a teenager. Current law was set up to enable people to earn a fresh start by abiding by the law for a decade. This is especially important when dealing with intoxication offenses, because without these provisions, a small lapse in judgment, especially during a period when society viewed alcohol use more leniently, could lead to an enhanced penalty later.

NOTES:

The committee substitute eliminated sections in the original bill that would have enhanced penalties for offenders with blood-alcohol concentrations of 0.15 or greater. The substitute also would require offenders to be evaluated by the Department of State Health Services rather than the Texas Commission on Alcohol and Drug Abuse.

A related bill, HB 49 by T. Smith, which also would allow convictions more than 10 years old and driving while intoxicated with a child to be used for penalty enhancement, also is on today's General State Calendar.

The companion bill, SB 26 by Zaffirini, has been referred to the Senate Criminal Justice Committee.