

- SUBJECT:** Prohibiting deferred adjudication for certain intoxication offenses
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 8 ayes — Peña, Vaught, Riddle, Escobar, Hodge, Mallory Caraway, Pierson, Talton
- 0 nays
- 1 absent — Moreno
- WITNESSES:** None
- BACKGROUND:** Under Code of Criminal Procedure, art. 42.12, sec. 5, a judge may, after receiving a plea of guilty or no contest, defer further proceedings without entering an adjudication of guilt and place the defendant on community supervision (probation). If the defendant successfully completes probation, the judge must dismiss the charges and discharge the defendant. This process is known as deferred adjudication and is unavailable for certain specified offenses.
- Under Code of Criminal Procedure, Art. 42.12, sec. 5(d)(1)(A), a defendant is not eligible for deferred adjudication if charged with:
- driving, flying, or boating while intoxicated (sec. 49.04-06, Penal Code);
 - intoxication assault (sec. 49.07, Penal Code); or
 - intoxication manslaughter (sec. 49.08, Penal Code).
- Under Penal Code, sec. 49.045, a person commits an offense of driving while intoxicated with a child passenger if:
- the person is intoxicated while operating a motor vehicle in a public place; and
 - the vehicle being operated by the person is occupied by a passenger who is younger than 15 years of age.

An offense is a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000).

DIGEST: HB 2115 would amend Code of Criminal Procedure, Art. 42.12, sec. 5(d)(1)(A) to include driving while intoxicated with a child (Penal Code, sec. 49.045) and assembling or operating an amusement ride while intoxicated (Penal Code, sec. 49.065) to the list of offenses for which a person would not be eligible for deferred adjudication.

The bill would take effect on September 1, 2007, and would apply only to an offense committed on or after that date.

SUPPORTERS SAY: HB 2115 would help make the law more fair and equitable by including driving while intoxicated with a child passenger and the assembly or operation of an amusement ride while intoxicated in the group of intoxication offenses that no longer would be eligible for deferred adjudication. These offenses are considered equally serious crimes in other parts of the Penal and Transportation Codes.

Under current law, a person would not be eligible for deferred adjudication if charged with drunk driving. However, that person would be eligible for deferred adjudication if charged with drunk driving while a child was in the vehicle. The penalty should be the same for similar crimes. Current law could create a perverse incentive for a person intending to drive drunk to bring a child along for the ride in order to be eligible for deferred adjudication if caught. The bill would help to achieve parity by placing driving while intoxicated with a child into the same group as comparable drunk driving offenses with respect to deferred adjudication.

The Legislative Budget Board's fiscal note does not take into account current sentencing practices in Texas. Under the current law, most defendants who commit the offense of driving while intoxicated with a child receive community supervision with treatment, some are sentenced to state jails, and only a small minority receive deferred adjudication. The group receiving deferred adjudication is made up of the people considered least dangerous by the state. If deferred adjudication were removed as an option, then most of the people who would have received it would instead receive community supervision, rather than state jail time, resulting in less fiscal impact on the state.

**OPPONENTS
SAY:**

According to the Legislative Budget Board, HB 2115 would cost the state \$429,874 in fiscal 2008 and \$644,810 each fiscal year thereafter, assuming that around half of the defendants who otherwise would have been on deferred adjudication would instead be sentenced to a state jail as result of the bill. The correctional system already is overburdened and its resources already are strained. The state cannot afford another bill to increase penalties.

Also, the bill would do nothing to address the underlying causes of drunk driving. It would change the available penalties without changing the availability of treatment.