

**SUBJECT:** Creating the offense of aggravated driving while intoxicated

**COMMITTEE:** Criminal Jurisprudence — favorable, without amendment

**VOTE:** 9 ayes — Gallego, Fletcher, Kent, Miklos, Moody, Pierson, Riddle, Vaught, Vo

0 nays

2 absent — Christian, Hodge

**WITNESSES:** For — Edward Jimenez; Bill Lewis, Mothers Against Drunk Driving; Mona Patel; Joe Saldana, San Antonio Police Officers Association, Combined Law Enforcement Associations of Texas; (*Registered, but did not testify*: Laura Andersen, San Antonio Police Department; James Jones, Texas Police Chiefs Association; Steve Lyons, Houston Police Department; Amy Mills, Tarrant County District Attorney's Office; Gary Tittle, Dallas Police Department)

Against — (*Registered, but did not testify*: Terri Burke, American Civil Liberties Union of Texas)

On — Shannon Edmonds, Texas District and County Attorneys Association; (*Registered, but did not testify*: Randall Beaty, Texas Department of Public Safety Forensic Breath Alcohol Lab; Sherrie Zgabay, Texas Department of Public Safety)

**BACKGROUND:** Penal Code, ch. 49 concerns intoxication offenses. Sec. 49.04 creates the offense of driving while intoxicated (DWI), which generally is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000), with a minimum jail term of 72 hours or six days if an open container of alcohol is in the offender's immediate possession.

Intoxication assault (sec. 49.07) is defined as DWI causing serious bodily injury and is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000). Intoxication manslaughter (sec. 49.08) is defined as DWI causing death and is a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000). Sec. 49.09 enhances the penalty for DWI for repeat offenses or special circumstances, such as

causing the injury or death of a police officer, fire fighter, or EMS personnel.

“Intoxicated” means not having the normal use of physical or mental faculties due to ingestion of alcohol, a controlled substance, drug, other substance, or combination of substances. For DWI purposes, intoxication is defined as having a blood alcohol concentration of 0.08 or more.

**DIGEST:**

HB 1983 would create the offense of aggravated DWI defined as a person who committed the offense of DWI and had an alcohol concentration of 0.16 or more, or 0.02 or more and was operating a commercial vehicle. Aggravated DWI would be a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000), with a minimum confinement of 30 days.

An aggravated DWI would be a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if, at trial, it was shown that the person:

- had one prior conviction of aggravated DWI or a substantially similar offense in another state;
- had one prior conviction of intoxication manslaughter or a substantially similar offense in another state; or
- had one prior conviction of an offense relating to operating a motor vehicle, aircraft, watercraft, or operating or assembling an amusement ride while intoxicated.

The bill would apply only to offenses committed on or after its effective date of September 1, 2009.

**SUPPORTERS  
SAY:**

HB 1983 would distinguish between offenders with a blood alcohol content of 0.08 versus 0.16, and punish offenders accordingly. There is evidence that the higher the blood alcohol content, the more likely it is that the driver will be involved in an accident causing serious injury or death. The higher penalties and minimum sentences for driving at over twice the current impairment limit would demonstrate to offenders the seriousness of the offense and ultimately would save lives.

An estimated 58 percent of all alcohol-related fatalities are committed by drivers with a blood alcohol concentration of over 0.15. By raising the penalties for those whose alcohol level is well beyond the level of social

drinking, HB 1983 would help identify those with a serious problem and send a message that driving at a higher level of impairment would have even more serious consequences.

The increased sanction would help deter offenders and thereby increase safety on the roads. Minnesota and New Hampshire, where similar statutes have been enacted, have seen reductions in recidivism.

OPPONENTS  
SAY:

Enhancing penalties for those accused of driving while intoxicated with higher alcohol concentrations would not be an effective deterrent. The cost of incarcerating offenders under mandatory minimum sentences would divert resources from other, more effective, efforts using the probation and parole systems.

Offenders with alcohol levels of 0.16 or higher need alcohol abuse treatment. Treatment is the more effective deterrent than sending a person to jail or prison. Higher penalties already are available and appropriate if a person is driving while intoxicated and causes serious injury or death or is a repeat offender.