SUBJECT: Lowering blood alcohol content for definition of intoxicated

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Place, Talton, Dunnam, Galloway, Keel, Nixon, A. Reyna

1 nay — Farrar

1 absent — Hinojosa

WITNESSES: For — Bill Lewis, Mothers Against Drunk Driving; Gary Taylor, National Highway Traffic Safety Administration; Ann M. Streetman, Texas Safety Association, Inc.; John W. Holtermann, Texas Silver Haired Legislature; Keith G. Hopkinson, National Association of Independent Insurers; James C. Fell, National Highway Traffic Administration, U.S. Department of Transportation; Barry Macha; Joyce E. Hunt; Jim Parks

Against — Glen Garey, Texas Restaurant Association

On — Richard Alpert

DIGEST: HB 133 would lower the blood alcohol concentration that defines intoxication in the Penal Code from 0.10 to 0.08.

HB 133 would take effect September 1, 1997.

SUPPORTERS SAY: Lowering the blood alcohol content level that is considered intoxication would making driving illegal for persons who have consumed enough alcohol to have their driving performance impaired. This would help prevent drunk driving by making persons more cautious about driving after drinking alcohol and by raising the perceived risk of being arrested for DWI. It also would make it easier to prosecute drunk drivers with a lower blood alcohol content. This would save lives and money and prevent injuries from alcohol-related accidents. HB 133 is a narrowly-focused bill that should stand alone rather than include other proposed changes to the DWI laws.

This change was recommended in the Criminal Jurisprudence Committee's interim report to the 75th Legislature. The change made by HB 133 could

help Texas qualify for up to $2.8 million in federal grants each year for five years, according to the fiscal note.

As blood alcohol content increases, drivers' abilities are impaired. This can result in problems with attention, reaction time, speed control, braking, steering, lane tracking, judgment and more. Research shows that at .05 blood alcohol content most people show measurable impairment. At a blood alcohol content of .10 drivers are at least six times more likely to be involved in a crash than when sober, and there is considerable evidence that persons are significantly impaired at .08.

Although blood alcohol content is influenced by many factors, after four drinks in one hour a 160-pound man would be at about .07 blood alcohol content and a 120-pound female at about .09. Texas, like other states, has always had a benchmark to define intoxication rather than relying on the more general definition, and setting that benchmark at .08 would be a reasonable, prudent change from current law that would not interfere with Texans' ability to enjoy alcohol responsibly.

Texas should join the approximately 13 states that have .08 blood alcohol content laws. Other states, including California and Maine, have seen significant reductions in alcohol-related fatalities after lowering legal blood alcohol levels to .08.

Prosecutors should be able to handle the approximately 1,630 additional DWI cases or actions that the fiscal note estimates would result from this bill. On this criminal justice issue, as on others, the Legislature should be concerned with setting public policy and let prosecutors deal with any increased workload. In fact, the stronger message sent against DWI would deter violations and ultimately reduce prosecutions.

There is no evidence that lowering the legal blood alcohol content level to .08 has ever been used to single out any group, including minorities, for harassment.

OPPONENTS SAY:

Lowering the legal blood alcohol level from .10 to .08 could result in persons who may have been drinking alcohol but were not necessarily intoxicated being unfairly convicted of intoxication crimes. Current law sets the legal blood alcohol content at a level at which it is reasonably sure that the vast majority of persons would be intoxicated. At the .08 blood alcohol content level proposed by this bill, many persons could retain normal use of their mental or physical faculties and not be intoxicated. However, HB 133 would deem them intoxicated *per se* without considering whether their abilities were impaired. This would come dangerously close to criminalizing drinking alcohol rather than criminalizing committing a specific act while intoxicated.

The broader sweep allowed by HB 133 could be used to unfairly target certain groups such as minorities for harassment or unfair treatment.

HB 133 is unnecessary because current law also defines "intoxicated" as not having the normal use of mental or physical faculties. Persons who are met this definition at .08 blood alcohol content, or another level, could be convicted of an intoxicated offense without a change in the law.

HB 133 could overburden prosecutors with an increase in DWI cases especially since defendants often choose to go to trial rather than plea bargain in these cases because of the stiff penalties. It is sometimes difficult for prosecutors to get convictions for DWI at the current level of .10 blood alcohol, and HB 133 could make convictions even harder because many persons with a 0.08 alcohol level might not appear in videotapes to be impaired and might perform well on standard tests of physical abilities.

OTHER OPPONENTS SAY:

Lowering the legal blood alcohol content should be coupled with other changes such as allowing for deferred adjudications in these cases.

The Legislature should not lower the blood alcohol content while still allowing some law enforcement authorities to continue to rely on the inexact science of breath testing for alcohol. All persons suspected of an intoxication offense should be given blood tests.