

SUBJECT: Increasing punishment for DWI if blood alcohol is 0.15 or higher

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Keel, Riddle, Ellis, Denny, Pena, Talton
2 nays — Dunnam, Hodge
1 absent — P. Moreno

WITNESSES: For — Lamar Ball and Debra Coffey, Smart Start, Inc.; Steve Blackstone, National Transportation Safety Board; John Stoner, The Century Council; Bill Lewis, Mothers Against Drunk Driving; Julie Wright, Bexar County Criminal District Attorney's Office; Richard Alpert, Tarrant County Criminal District Attorney's Office

Against — None

BACKGROUND: Penal Code, chapter 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 are Class B misdemeanors, punishable by up to 180 days in jail and/or a maximum fine of \$2,000. Sec. 49.01(2) defines intoxication as an alcohol concentration of 0.08 or more.

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.

For these offenses, Code of Criminal Procedure, sec. 17.441 requires that persons convicted of repeat offenses 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.

DIGEST: HB 745 would make driving, flying, or boating while intoxicated Class A misdemeanors (punishable by up to one year in jail and/or a maximum fine of

\$4,000) if analysis of blood, breath, or urine showed that the person had an alcohol concentration of 0.15 or higher.

A person convicted under these provisions and placed on probation for a first offense would have to spend at least five days in a county jail. A person convicted under these provisions and placed on probation would have to spend at least 30 days in a county jail if the person previously had been convicted of any intoxication or alcoholic beverage offense under Penal Code, chapter 49. People convicted under these circumstances would have to install ignition interlock systems on their vehicles when placed on probation.

HB 745 would increase from 30 to 120 the number of days that a person placed on probation for intoxication assault would have to spend in a county jail. It also would change the current requirement that a person convicted of *any* intoxication or alcoholic offense under Penal Code, chapter 49 be evaluated for the purpose of developing a program of alcohol or drug rehabilitation and would make this requirement apply only to a person convicted of driving, flying, or boating while intoxicated.

HB 745 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.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

HB 745 would help deter people from driving while extremely intoxicated. 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 point at which the Penal Code deems someone to be intoxicated. These hard-core drunk drivers deserve to be treated differently from others. HB 745 would help identify, punish, and treat these offenders.

Texas is among the states with high levels of alcohol involvement in traffic deaths, and lawmakers should do everything possible to change that. In 1999, Texas drivers with blood alcohol levels of 0.10 or more were involved in an estimated 161,900 crashes that killed 1,345 and injured 55,600.

The extremely drunk drivers targeted by HB 745 are not social drinkers who have had a sip of alcohol. They are the most dangerous group of drunk drivers. 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.

HB 745 would ensure that these extremely drunk drivers are punished appropriately by allowing courts to sentence them to up to one year in jail. It would ensure that a driver of this type who was placed on probation would spend some time in a county jail. Courts still would retain discretion in sentencing offenders.

It is appropriate to punish these drivers more harshly than others because they are so dangerous. In other situations, Texas criminal law imposes more severe penalties for those that cause more serious harm. About 30 other states have an aggravated penalty for these extremely intoxicated drivers.

Since many drunk drivers have driven while intoxicated many times before they were caught, HB 745 would ensure that these dangerous repeat offenders who were placed on probation would have to spend at least 30 days in jail and that they would have to install ignition interlock systems, just as other repeat offenders must do. Ignition interlock systems would deter these offenders and would subject them to a high level of monitoring to prevent them from driving while drunk.

HB 745 would not deter people from taking breath tests, since these extremely drunk drivers generally are so impaired that they do not make rational decisions.

By removing the current 10-year limit on using a prior offense to enhance punishment, HB 745 would make the enhancement for repeat intoxication offenses similar to that used for all other types of criminal offenses. This can be especially important if an offender is guilty of a serious intoxication offense like intoxication manslaughter. The bill also would clear up confusion about the current statute that has arisen as different courts have interpreted the statute differently.

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:**

Harsher, inflexible punishments for DWI and other intoxication offenses do not deter alcohol offenses effectively or get drunk drivers off the road; they only put people in jail longer. Hard-core drinkers should be subject to individualized therapy and treatment, and judges should have maximum discretion to treat and punish offenders as they deem appropriate. HB 745 would mandate a one-size-fits-all punishment for DWI offenders with alcohol levels of 0.15 and higher, even when it might not be appropriate.

HB 745 actually could deter people from taking blood alcohol breath tests, since they could be subject to harsher punishment if their alcohol level was 0.15 or higher.

It would be unfair to eliminate the current 10-year time limit on intoxication offenses. Under HB 745, 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 clean the slate 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.