

SUBJECT: Higher penalty for intoxication harm to peace officers, firefighters, EMS

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Pena, Vaught, Escobar, Mallory Caraway, Pierson, Talton

0 nays

3 absent — Riddle, Hodge, Moreno

WITNESSES: For — Richard Alpert, Tarrant County District Attorney's Office; Doug Andrews; Leticia Brooks; William Brooks; Karen Freeto; Debbie Medlin; Gina Medlin; Ralph Mendoza; Michael Moses, Arlington Police Department; Darin Yarbrough; (*Registered, but did not testify*: David Crow, Arlington Professional Fire Fighters; Carl Freeto; Tom Gaylor, Texas Municipal Police Association; Brent Halford; Mike Higgins, Texas State Association of Fire Fighters; James Jones, Houston Police Department; James McLaughlin, Texas Police Chief Association; Kevin Petroff, Harris County District Attorney's Office; Charley Wilkison, Combined Law Enforcement Associations of Texas; G. K. Sprinkle, Texas Ambulance Association)

Against — None

On — Shannon Edmonds, Texas District and County Attorneys Association

BACKGROUND: Under Penal Code, sec. 49.07, a person commits the offense of intoxication assault if that person is intoxicated and by accident or mistake causes serious bodily injury while operating an aircraft, a watercraft, an amusement ride, or motor vehicle in a public place. An offense under sec. 49.07 is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).

Under Penal Code, sec. 49.08, a person commits the offense of intoxication manslaughter if that person:

- operates a motor vehicle in a public place, operates an aircraft, a watercraft, or an amusement ride, or assembles an amusement ride;

- is intoxicated; and
- because of that intoxication causes the death of another by accident or mistake.

Intoxication manslaughter is a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000).

DIGEST:

CSHB 1212 would increase the penalty for intoxication assault from a third-degree felony to a second-degree felony if the offense were committed against an on-duty peace officer, firefighter, or EMS worker.

It would increase the penalty for intoxication manslaughter from a second-degree felony to a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) if the offense were committed against an on-duty peace officer, firefighter, or EMS worker.

The bill would apply to all firefighters, including those in organized, volunteer firefighting units.

The bill would take effect on September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 1212 would grant peace officers, firefighters, and EMS personnel the greater protection they deserve against drunk drivers for putting themselves in harm's way to protect public safety.

These groups are at greater risk than the general population of being hurt by a drunk driver. They often are out between 11 p.m. and 4 a.m. enforcing traffic laws, dealing with auto accidents, and providing first aid, among other duties, and much of this work takes place at the side of the road. Further, many of their vehicles are equipped with flashing lights and extreme intoxication can cause drivers to fixate on those lights, increasing the chance of an accident with a peace officer, firefighter or EMS worker.

Texas law regularly provides enhanced penalties for certain crimes committed against certain victims. Some public servants are at greater risk of personal injury due to the kind of work they perform, and CSHB 1212 would recognize this enhanced risk from drunk drivers by granting these workers enhanced protection. Penalties already are enhanced for the assault, aggravated assault, or murder of an on-duty peace officer or firefighter. This bill would make penalties for intoxication assault and

intoxication manslaughter consistent with other laws that grant public servants greater protection.

CSHB 1212 would help to deter people from drinking and driving in the first place by increasing the potential for longer and more severe penalties. In addition, this would grant on-duty peace officers, firefighters, and EMS personnel more protection because such people are immediately recognizable from their uniforms, vehicles, and equipment.

OPPONENTS
SAY:

It is unnecessary to enhance the penalties for intoxication assault and intoxication manslaughter against peace officers, firefighters, or EMS personnel. Current laws on these offenses can be used to prosecute someone who has injured or killed one of these public servants, and current penalties are sufficiently severe.

These public servants should be protected by the same statutes as other people. When the Penal Code was revised in 1993 the Legislature decided there should not be varied treatment of victims subject to similar harms.

CSHB 1212 would not be an effective deterrent because it would not require the offender to know that the victim was an on-duty peace officer, firefighter, or EMS worker for the enhanced penalties to apply. Further, because of their intoxicated status, drunk drivers may not even be able to differentiate among potential victims, so the bill would not increase the deterrent over that in current law.

OTHER
OPPONENTS
SAY:

CSHB 1212 would treat only the symptoms of drunk driving and not the root causes. Legislative efforts would be better spent creating treatment programs to help chronic alcoholics and to prevent drunk driving in the first place.

NOTES:

The committee substitute adds emergency medical service (EMS) personnel to the class of individuals whose injury or death from intoxication assault or intoxication manslaughter would result in enhanced penalties against offenders. The substitute defines EMS personnel according to Health and Safety Code, sec. 773.003, to include:

- emergency medical attendants,
- emergency medical technicians,
- emergency medical technicians - intermediate,

- emergency medical technicians - paramedic, and
- licensed paramedics.