

SUBJECT: Enhancing the penalty for failure to stop after an accident involving death

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Herrero, Carter, Burnam, Canales, Hughes, Moody, Schaefer

0 nays

2 absent — Leach, Toth

WITNESSES: For — Jackson Busenbark; Bart Griffin; Bill Lewis, Mothers Against Drunk Driving; Troy Officer, Austin Police Department; Carol Paar Thompson; Sharon White; (*Registered, but did not testify*: Jessica Anderson, Houston Police Department; Donald Baker, Austin Police Department; John Chancellor, Texas Police Chiefs Association; David Courreges; Lon Craft, Texas Municipal Police Association; Daniel Earnest, San Antonio Police Officers Association; Bill Elkin, Houston Police Retired Officers Association; Brian Eppes, Tarrant County District Attorney's Office; James Jones, San Antonio Police Department; Steven Tays, Bexar County Criminal District Attorney's Office; Gary Tittle, Dallas Police Department; Justin Wood, Harris County District Attorney's Office)

Against — None

On — Ron Joy, Texas Department of Public Safety

BACKGROUND: Transportation Code, sec. 550.021 directs drivers involved in an accident resulting in injury or death to immediately stop or return to the scene of the accident and remain at the scene until they have discharged their duties to:

- provide identifying and insurer information to other parties in the accident; and
- provide reasonable assistance, including arranging for transportation to medical treatment if necessary or upon request.

If the accident results in serious bodily injury or death, then failure to remain at the scene, provide information, or render aid 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, as a result of intoxication, kills someone by accident or mistake while:

- operating a motor vehicle in a public place;
- operating an aircraft or watercraft; or
- operating or assembling an amusement ride.

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

DIGEST:

HB 72 would increase the penalty for failure to stop and render aid in an accident resulting in the death of a person to a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000).

The bill would take effect September 1, 2013, and would apply only to an offense committed on or after that date.

**SUPPORTERS
SAY:**

HB 72 would reduce the incentive for drunk drivers to flee the scene of an accident. Currently, drunk driving offenses involving death carry heavier penalties than the law against fleeing the scene of an accident. Making the punishment for failing to stop and render aid in the event of a death equivalent to the penalty for intoxication manslaughter would remove that incentive. Matching the penalties for these two offenses would remove the current situation in which people are rewarded for fleeing the scene of a crime. This bill would encourage people to do the right thing by complying with the law.

The bill would assist in successful prosecution of crimes, such as a recent Austin case in which a woman who hit and killed a pedestrian was convicted only of criminally negligent homicide and sentenced to 180 days in jail. People who flee from these kinds of accidents often do so because they seek to hide their blood alcohol content. Encouraging people to stay at the scene of the crime would help law enforcement gather evidence if the perpetrator was intoxicated.

The bill could save lives and mitigate the harm caused by accidents. By incentivizing people to stop and render aid, the bill would shorten the time in which medical personnel were called to the scene of an accident. In some cases, those hit in a hit-and-run weren't found for several hours. If the perpetrators had stopped and rendered reasonable aid, including calling

medical personnel, lives could have been saved and the severity of injuries could have been mitigated.

Concerns that HB 72 would increase the burden on Texas' criminal justice system are unfounded. According to the Legislative Budget Board, HB 72 would have no significant fiscal implication to the Texas Department of Criminal Justice nor any aspect of the state budget. The bill would not increase the minimum sentence for this offense, only the upper limit, so it would not send more people to prison, merely lengthen sentences of those who would already be convicted.

**OPPONENTS
SAY:**

Penalty enhancement would not deter a person from fleeing an accident scene, particularly someone whose judgment was clouded by alcohol. The choice to flee an accident is usually spurred by panic rather than a cost-benefit analysis of the different penalties that might result. People typically flee accident scenes because they do not have insurance, are worried about other legal entanglements, or because they are intoxicated and fear prosecution as a drunk driver. Further, even offenders who are capable of weighing the consequences might flee in hopes of avoiding detection and thus avoiding costly insurance payouts and potential civil liability.

Increasing the penalty range would not guarantee a favorable verdict in these cases. Juries must decide cases based on the facts before them, and merely providing an opportunity to increase the sentence for some crimes would not change the way cases are tried or affect conclusions the juries may come to in these cases.

Texans cannot afford to enhance the penalty for a crime that already is severely punished. HB 72 would burden the criminal justice system by sending more people who flee accident scenes to prison.