

**SUBJECT:** Zero tolerance standard for minors driving under the influence

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 6 ayes — Place, Talton, Dunnam, Galloway, Hinojosa, Nixon  
0 nays  
3 absent — Farrar, Keel, A. Reyna

**SENATE VOTE:** On final passage, February 10 — 31-0

**WITNESSES:** For — Steve Blackstone, National Transportation Safety Board; Jesus Carrasco, Maria Carrasco, Joyce E. Hunt, Bill Lewis, Mothers Against Drunk Driving; James C. Fell, National Highway Transportation Safety Administration; Judy Miller, Century Council; Nickie Murchison, Greater Dallas Crime Commission; Ralph Hingson, Boston University  
  
Against — None

**BACKGROUND :** The Alcoholic Beverage Code establishes certain misdemeanor offenses involving minors. These include:

- purchasing or attempting to purchase an alcoholic beverage or consuming such a beverage unless in the visible presence of a parent, guardian or spouse, punishable by a fine of \$25 to \$200. If the minor has twice been convicted of these offenses, the fine increases to \$250 to \$1,000.
- possessing alcohol unless required by employment or in the presence of a parent, guardian, spouse, or other responsible adult, punishable by a \$25 to \$200 fine, increasing to \$500 to \$1,000 for a subsequent conviction.
- misrepresenting age to a person selling or serving alcoholic beverages, punishable by a fine of \$25 to \$200, increasing to \$100 to \$500 for subsequent convictions.

Minors convicted of purchasing, consuming, or possessing alcohol may be required to attend a court-approved alcohol awareness course. Minors in rural areas with no ready access to alcohol awareness courses may instead be required to perform eight to 12 hours of community service. Minors have 90 days to submit evidence that they have satisfactorily completed the course or community service. Upon presentation of this evidence, the court may reduced the assessed fine by up to one-half.

Minors may be detained in custody for delinquent conduct or conduct indicating a need for supervision under the Family Code. The definition of delinquent conduct includes a third or subsequent violation of laws prohibiting driving while intoxicated or under the influence. The definition of conduct indicating a need for supervision includes a first or second offense of driving while intoxicated or under the influence.

Under the Transportation Code, police officers may request blood or breath specimens from arrested individuals they believe were intoxicated while operating a motor vehicle or watercraft. Refusal to comply results in an automatic license suspension for at least 90 days for adults and one year for minors.

**DIGEST:**

CSSB 35 would establish a new offense of driving under the influence for minors with any amount of alcohol in their systems, increase penalties for other alcohol offenses involving minors, require alcohol education courses and license suspensions for minors convicted of these offenses, and require the Department of Public Safety (DPS) to maintain records of these minors.

The bill also would increase the penalty for the offense of selling alcohol to minors to a Class A misdemeanor, with a maximum one year jail term and a \$4,000 fine. Purchasing alcohol for or furnishing alcohol to minors would be a Class B misdemeanor, with a maximum penalty of 180 days in jail and a \$2,000 fine, up from a \$100 to \$500 fine.

CSSB 35 would take effect September 1, 1997.

**Driving under the influence.** CSSB 35 would create a new offense within the Alcoholic Beverage Code, making it illegal for minors to operate motor vehicles in a public place while having any detectable amount of

alcohol in their system. The offense would be a Class C misdemeanor, punishable by a maximum fine of \$500. A minor convicted twice previously of the same offense would be subject to a fine of \$500 to \$2,000 and/or up to 180 days in jail.

A minor convicted of this offense would be ordered by the court to perform 20 to 40 hours of community service related to education about or prevention of alcohol misuse. The required community service would increase to 40 to 60 hours if the minor had a prior conviction for driving under the influence. A third conviction for this offense would render the minor ineligible for deferred adjudication. An adjudication under the Family Code or a deferred adjudication order for driving under the influence would be considered as prior convictions.

Police officers could issue citations to minors charged with driving under the influence, requiring them to appear before a magistrate at a specified time and place.

A law enforcement or probation officer who took a minor into custody with reasonable grounds to believe the child had operated a vehicle under the influence could take the child to obtain a blood or breath sample for analysis and to perform intoxilyzer processing and videotaping of the minor before complying with Family Code provisions requiring that minors first be brought to certain adults, officials, or secure facilities. In such situations, minors could not be required to submit or provide any blood or breath specimen or to refuse such a request unless they were given the opportunity to consult an attorney or be videotaped.

CSSB 35 would amend the automatic license suspension to cover minors reasonably believed to be violating driving under the influence prohibitions. Minors who refused to comply with a blood or breath test would have their licenses suspended for at least 90 days. Minors with any detectable amount of alcohol in their systems would have their license automatically suspended for at least 60 days. However, minors who submitted to taking a specimen that later showed an alcohol concentration less than the level specified as intoxicated under the Penal Code (currently 0.10) could be subject to less severe criminal penalties.

**Penalties for alcohol offenses.** CSSB 35 also would change the penalties imposed for other offenses involving minors under the Alcoholic Beverage Code. Purchasing, attempting to purchase, consuming, possessing, or misrepresenting age in order to purchase alcoholic beverages would be Class C misdemeanors, with a maximum \$500 fine. Minors over the age of 17 who had two previous convictions for these offenses would be subject to a fine of \$250 to \$2,000 and/or up to 180 days in jail. The court also would have to order the minor to perform eight to 12 hours of community service related to education about or prevention of alcohol misuse. If the minor had a previous conviction, the community service requirement would increase to 20 to 40 hours. A third conviction for consuming would make the minor ineligible for deferred adjudication. Definition of conviction would include any adjudication, including deferred.

The court also would have to order the Department of Public Safety (DPS) to suspend the minor's driver's license or permit or deny issuance of a license or permit. The suspension would last 30 days, if the minor had no prior convictions, 60 days if there was one previous conviction, or 180 days for two or more convictions. Previous deferred or juvenile adjudications would count as prior convictions.

CSSB 35 would add the offenses of attempting to purchase alcohol, driving under the influence, and misrepresenting age to the list of offenses for which minors would be required to attend alcohol awareness courses upon initial conviction. Courts could require attendance for minors who had previously been convicted of one or more of the offenses. The bill would delete the provisions allowing minors in rural areas to perform community service, and allow courts to extend the period of time required to complete a course by 90 days.

Courts finding that a minor had engaged in delinquent conduct or conduct indicating the need for supervision because of these offenses also would have to require that the child's driver's license or permit be suspended or that the child be denied issuance of a driver's license or permit.

DPS would suspend licenses of minors arrested for driving under the influence, driving while intoxicated, or for intoxication assault or manslaughter with a vehicle if there was any detectable amount of alcohol in

the minor's system. The suspension would last for 90 days if the minor had not previously been convicted of these offenses, 120 days if convicted once previously, or 180 days if convicted twice previously. Adjudications under the Family Code, including deferred adjudications, would be considered convictions. A second-time offender would not be eligible for an occupational license for the first 90 days of the suspension; an offender with additional convictions would not be eligible for the entire period of suspension.

If the minor was acquitted of the underlying criminal charges, the license suspension would not be imposed or would be rescinded.

**Information on convictions.** The bill also would require courts to report any convictions of juvenile adjudications for alcohol offenses involving minors.

The courts would have to provide similar notice to DPS and include the driver's license number of the minor. DPS would be required to maintain appropriate records of the notices and provide the information to law enforcement agencies and courts as necessary to enable them to carry out their official duties. The information would be confidential but would be admissible in any action in which it was relevant. Other laws, including Family Code provisions on records within the juvenile justice information system, that limit collection and reporting of information on minors or requiring destruction of that information would not apply.

**SUPPORTERS  
SAY:**

CSSB 35 would provide the state with the tools necessary to combat one of our most serious public safety problems. Currently, Texas leads the nation in the number of alcohol-related traffic deaths among youths. Approximately 10 percent of the nation's alcohol-related traffic fatalities occur in Texas. During the last five years, there have been some 1,330 alcohol-related traffic fatalities in this state involving persons between the ages of 15 and 20. Although the legal drinking age in Texas is 21, drivers under 21 in Texas are legally allowed to drive a vehicle with a blood alcohol content of up to 0.07 percent.

Highway traffic statistics and the findings of insurance companies and actuaries have consistently shown that younger, less experienced drivers

have more than twice the number of fatal crashes during their first year of driving and four times as many crashes per mile as do experienced adult drivers. The use and abuse of alcohol by young people, combined with their inexperience in driving, requires some tough solutions.

CSSB 35 would impose a “zero tolerance” law in Texas for minors driving a motor vehicles on public roadways. The bill would reduce the allowable blood alcohol level for drivers under 21 from the current .07 to .00 percent. Since minors in Texas are not authorized to purchase alcohol, there is absolutely no reason for other Texas drivers to tolerate youthful drivers operating vehicles on the highway while under any influence of alcohol, no matter how slight or seemingly insignificant. Alcohol's effects cannot be gauged by youngsters or compensated for; any amount is too much for a child operating a potentially dangerous piece of machinery.

This bill would directly lower fatalities and accidents on Texas roads and highways. Studies have shown that each 0.02 increase in blood alcohol level causes a greater deterioration in motor skills and almost doubles the risk of a fatality occurring. Other states that have enacted zero tolerance legislation have seen fatalities among young drivers decline by as much as 20 percent, proof positive that this policy has its intended effects. With the continued increase in the number of drivers under age 21, this bill will have even more positive effect in coming years.

CSSB 35 would also help Texas retain \$38.5 million in federal highway funds that otherwise would be lost. In the National Highway System Designation Act of 1995, the federal government mandated that all states pass zero tolerance legislation by October 1, 1998, or risk losing monies that are essential to continued maintenance and development of the state highway system.

This bill will also give law enforcement the option of giving written citations to youth DWI violators, allowing authorities the needed flexibility to use their judgment and experience to enforce the law upon those drivers who show no real impairment of their driving abilities. Minors who received such citations would still be penalized, but would not have to be taken in for the time-consuming breath sampling test process. In this way, the criminal justice system would not be overwhelmed

CSSB 35 would not undermine confidentiality for juveniles. Notice of these Class C misdemeanors would only appear upon the driving records of minors, and would not be placed in any general criminal history file maintained by DPS. These notices would enable DPS to assist in monitoring patterns of behavior; currently, local authorities do not have systems in place to share information about juveniles convicted of repeat alcohol offenses.

Furthermore, juveniles would have to be convicted three times in order to be categorized as demonstrating “delinquent conduct” and generate a higher level of scrutiny. Even then, the juvenile would not be subject to any extra disclosure of information, since the bill would not alter or roll back the numerous safeguards in place concerning juvenile records. The notices maintained under CSSB 35 would deal solely with alcohol-related offenses. No harm would be done to the current strong level of protection of confidentiality offered to juveniles under state law.

**OPPONENTS  
SAY:**

CSSB 35 would undermine the constitutional rights of Texas children under the guise of protecting them. The bill is too heavy-handed in its approach. The federal government itself suggests a “zero” tolerance standard of 0.02 percent, recognizing that no test is perfect and that alcohol-based over-the-counter medications can skew a reading. There is no reason to bring that standard down to a level of absolute zero, particularly when Texas laws condone minors drinking under the supervision of their parents or guardians.

CSSB 35 would trigger some catch-22 scenarios. The new high school graduate enjoying a glass of wine at the family celebration would be protected by state law; that same graduate stepping into a vehicle to drive grandma home would instantly violate the law, even though there has been no change in the youngster's action.

Furthermore, if zero tolerance is good public policy for minors it also should be good public policy for adults. Alcohol-related accidents are no more prevalent in the under 21 group than in the over 21 group. What zero tolerance does is treat the youngster who has had a sip exactly as the youngster who is stinking drunk. An established principle of law is that the

penalty should have some relation to the offense; that principle would be undermined by CSSB 35.

The potential for false-positive test results suggests that enforcement could result in many mistaken arrests and possible litigation. Use of the breath testing method has always been a source of controversy, even when solely applied to adults. This bill would simply broaden that problem.

There is also a strong possibility that selective police enforcement could result from the wide discretion allowed under this law. The bill would allow police officers to circumvent provisions of the juvenile justice code requiring that juvenile offenders be released or properly charged. Police already have the right to videotape someone they have good cause to believe is driving while intoxicated. There is no reason to allow them to ignore child protection statutes to videotape someone they suspect of driving under the influence. The bill also would subvert juvenile justice procedures by assuming that a minor would understand the implications of implied consent laws.

The child protection laws Texas has built up over the years also would be compromised by provisions requiring DPS to maintain records on all juveniles convicted or adjudicated of alcohol-related offenses. State laws stipulate retention periods and destruction requirements for records on juveniles for good reason. CSSB 35 would allow records to be kept indefinitely for no reason. Nothing in the bill specifies how they would be maintained or when or if they would be destroyed. DPS also would have broad discretion over releasing information; the bill fails to define what would constitute “relevant” action or what would be “necessary” information for courts and law enforcement agencies. These would be subjective standards and ripe for abuse.

**NOTES:**

The committee substitute added the provision that a child could not be required to submit to or refuse to submit to a blood or breath specimen unless given the opportunity to consult an attorney or be videotaped. The



substitute also shortened the duration of driver's license suspensions, deleted a provision on ineligibility for an occupational license during the initial 30 days of a suspension, and made 90 days the term for all automatic license suspensions for refusal to take a blood or breath test.