SUBJECT: Prosecution and punishment of intoxicated offenses

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 4 ayes — Hinojosa, Dunnam, Garcia, Smith, Talton

0 nays

4 absent — Green, Keel, Nixon, Wise

WITNESSES: No public hearing

DIGEST: CSHB 3489 would eliminate a requirement that makes an offense for driving, flying, or boating while intoxicated a third-degree felony if the person previously has been convicted two times of an offense relating to operating a motor vehicle, aircraft, or watercraft while intoxicated.

During a trial for driving, flying, or boating while intoxicated, evidence that a person previously had been convicted once of one of these offenses would have to be shown at the punishment, and not the trial, phase.

CSHB 3489 would eliminate provisions that make determinations of administrative law judges independent of and not able to be used as an estoppel in criminal cases that arise from the event that was used to suspend or deny the license, as well as provisions that specify that these judges' decisions do not preclude litigation of the same or similar facts in criminal prosecution. It also would remove provisions that specify that criminal charges do not affect license suspensions or denials and are not an estoppel for license suspension and denials.

CSHB 3489 would require persons arrested for driving while intoxicated (DWI), intoxication assault, and intoxication manslaughter to be videotaped if the county in which the person was arrested was required to maintain videotaping equipment. Counties with populations of 25,000 or more would have to purchase and maintain electronic devices capable of videotaping these arrests.

Videotapes would have to be maintained until the final disposition of any proceeding against the defendant and would have to be made available to the defendant's attorney.

If a videotape were not made as required: (1) the results of an analysis of a blood or breath specimen would be inadmissible in a subsequent proceeding if the person consented to the taking of the specimen; or (2) if the person refused to consent to the taking of the specimen, the person's refusal would be inadmissible in a subsequent proceeding.

This bill would take effect September 1, 1999, and would apply only to offenses committed on or after that date.

SUPPORTERS SAY:

CSHB 3489 would eliminate the current restrictions on using DWI information in different judicial proceedings so that Texas would be in compliance with constitutional law.

This bill is necessary because state law conflicts with U.S. Supreme Court precedent on double jeopardy, which says that the collateral estoppel doctrine applies in criminal cases. This doctrine holds that a fact issue resolved in one legal proceeding cannot be relitigated in another. For example, if a defendant proves during an administrative license revocation hearing that there was not probable cause for law enforcement authorities to make the stop, this issue should not be relitigated later in a criminal trial. CSHB 3489 would ensure that Texas follows this doctrine and would promote efficiency in court proceedings and prevent inconsistent judicial decisions.

CSHB 3489 is necessary to ensure that counties use the videotaping equipment that they are now required to have. Videotaping often is the best tool for both prosecutors and defense attorneys to prove whether someone was breaking the law, and it should be used uniformly in all DWI cases. Without a mandate that counties videotape, taping could be used selectively only when it helped law enforcement authorities' cases, or counties could claim that their equipment was not used in one case because it was in use somewhere else. CSHB 3489 would not place a burden on counties because videotaping equipment can be purchased for a few hundred dollars at numerous stores.

CSHB 3489 would restrict information about prior offenses to the punishment phase of a trial because, to ensure a fair trial, courts should hear information only about the current offense when deciding guilt or innocence.

OPPONENTS SAY:

CSHB 3489 would seriously weaken the state's DWI laws and would be a step backward in the state's battle against drunk driving.

Eliminating the ability to punish some repeat DWI offenses as felonies would result in inappropriate punishment for some offenders. Current law allowing the punishment of three-time offenders with a third-degree felony is appropriate for these criminals, who have had several chances to change their ways but continue to break the law and to endanger others by driving while intoxicated. Enacting CSHB 3489 would mean that a 10-time DWI offender might get off with only a misdemeanor.

CSHB 3489 could seriously harm both the administrative license revocations of DWI offenders and criminal prosecutions. Current law rightfully prohibits findings in an administrative license revocation from being used in a criminal case. For example, currently, if it were decided in an administrative hearing that there was not probable cause to stop a defendant, this could not be used in the criminal case, which is independent of license revocations or suspensions. This is appropriate since the license revocation is a civil process designed to get dangerous drivers off the road, not to punish criminal offenders. These two procedures should remain independent and separated.

The state should not impose a mandate on certain counties to use videotaping equipment. Requiring videotaping of DWI arrests would set an unwise precedent of telling law enforcement authorities how to take evidence in a case. Also, it would be inappropriate to tie the admissibility of other evidence — the blood or breath specimen — to the existence of a videotape.

NOTES:

The author plans to offer a floor amendment to leave in the law the current provision that makes driving, flying, or boating while intoxicated a third-degree felony if a person previously has been convicted two or more times of operating a motor vehicle, aircraft, or watercraft while intoxicated.