

**SUBJECT:** Requiring third-degree felony for first DWI after intoxication manslaughter

**COMMITTEE:** Criminal Jurisprudence — favorable, without amendment

**VOTE:** 8 ayes — Hinojosa, Keel, Talton, Garcia, Green, Kitchen, Martinez Fischer, Shields  
0 nays  
1 absent — Dunnam

**WITNESSES:** For — Richard Alpert, Tarrant County District Attorney’s Office; *Registered but did not testify:* Ruth-Ellen Gura and Mindy Montford McCracken, Travis County District Attorney’s Office; Bill Lewis, Mothers Against Drunk Driving  
Against — None

**BACKGROUND:** Penal Code, sec. 49.09 provides enhancements for intoxication offenses. Subsection (a) mandates a Class A misdemeanor with a minimum term of confinement of 30 days for a person shown at trial for driving, flying, boating, or operating or assembling an amusement ride while intoxicated to have been convicted once before of any of those offenses. Subsection (b) mandates a third-degree felony (punishable by two to 10 years in prison and an optional fine of up to \$10,000) for a person shown at trial for driving, flying, boating, or operating or assembling an amusement ride while intoxicated to have been convicted twice before of any of those offenses.

**DIGEST:** HB 2250 would mandate a third-degree felony for any person shown at trial for driving, flying, boating, or operating or assembling an amusement ride while intoxicated to have been convicted once previously of intoxication manslaughter in Texas or of a similar offense in another state.  
  
HB 2250 would take effect September 1, 2001 and would apply only to an offense committed on or after that date.

**SUPPORTERS SAY:** HB 2250 would close a gaping loophole in Texas law. Currently, a person who kills others while driving drunk and who has no prior intoxication convictions can be charged only with a misdemeanor on a subsequent

offense for driving, boating, flying, or operating or assembling an amusement ride while intoxicated. For example, in 1992, a drunken Dallas man crashed his car into a van carrying six people coming home from a college graduation celebration, killing three and injuring the other three. One month after being released on parole in 1999, the man again drove drunk and crashed into a parked vehicle. The district attorney could charge him only with misdemeanor driving while intoxicated.

HB 2250 would deter those hard-core drunk drivers who otherwise might think about driving drunk after an intoxication manslaughter offense. These offenders would know that a subsequent drunk-driving offense would not be a slap on the wrist but could mean hard time in prison.

This bill would provide appropriate punishment for offenders who drove while intoxicated after conviction of intoxication manslaughter. Current law provides a third-degree felony for those convicted of a third DWI offense, regardless of whether they killed anyone in their prior offenses. HB 2250 would require this same punishment for people who chose to drink and drive after killing someone in a drunk-driving accident.

OPPONENTS  
SAY:

HB 2250 would provide an inappropriate punishment for intoxication offenders — one that would be costly to the state and do little to help rehabilitate offenders with drinking problems. Texas incarcerates more people than any other state, and creating another third-degree felony would only add to overcrowding in Texas prisons. A more appropriate remedy would be to sentence these offenders to a state jail.

According to a January 2000 report by the Criminal Justice Policy Council, the per-diem cost to Texas for a state jail inmate is \$8.57 lower than that for an average Texas Department of Criminal Justice prison inmate. The state jail system was created to handle offenders with drug addiction problems, and that system would be more appropriate than prison for handling inmates addicted to alcohol.