

- SUBJECT:** Increased penalty for drug crimes resulting in death or serious bodily injury
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 7 ayes — Keel, Riddle, Ellis, Denny, Hodge, Pena, Talton
0 nays
2 absent — Dunnam, P. Moreno
- SENATE VOTE:** On final passage, May 1 — 31-0, on Local and Uncontested Calendar
- WITNESSES:** No public hearing
- BACKGROUND:** Under the Texas Controlled Substances Act (Health and Safety Code, ch. 481), punishment for manufacturing or delivering controlled substances ranges from a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) up to imprisonment for life and a fine not to exceed \$250,000. The level of punishment depends on the type of controlled substance involved and the aggregate weight of the controlled substance. Delivering a controlled substance or marihuana to a child is a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000). Deliver means to transfer, actually or constructively, to another a controlled substance and includes offering to sell a controlled substance.
- Code of Criminal Procedure (CCP), art. 42.08 provides that when the same defendant is convicted in two or more cases, at the discretion of the court, the sentences may run either concurrently or consecutively.
- DIGEST:** SB 177 would increase the punishment by one degree if the jury or judge found beyond a reasonable doubt that a person had died or suffered serious bodily injury as a result of injecting, ingesting, inhaling, or introducing into the person's body any amount of a controlled substance manufactured or delivered by the defendant, whether the controlled substance was used by itself or with another substance, including a drug, adulterant, or dilutant. The enhancement would apply to an offense otherwise punishable as a state-jail felony, third-degree felony, or second-degree felony.

Notwithstanding CCP, art. 42.08, if punishment for a defendant was increased for the above reason, the court could not order the sentence for the offense to run concurrently with any other sentence the court imposed on the defendant.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

SB 177 would hold drug dealers accountable when they sold drugs to people who died or suffered serious bodily injury as a result. Current law is too lenient in that a dealer can be charged only with delivery of a controlled substance, even if a person dies from the drugs. The law should not protect dealers from bad consequences of their unlawful actions.

In communities across Texas, young people have died from drug overdoses after obtaining drugs from well-known dealers. Drug dealers push drugs on young people to profit from their addiction to costly substances. SB 177 would give law enforcement an additional tool to prevent further deaths by holding dealers accountable for their actions.

The bill would bring Texas in line with federal law by enhancing punishment if the drugs cause serious harm to the user. While substance abuse treatment is appropriate for people who are addicted to drugs, dealers who victimize minors and others should be punished harshly.

**OPPONENTS
SAY:**

SB 177 would not save lives because it would not change drug dealers' behavior. Drug dealers are not concerned about the consequences of their actions. To the contrary, they accept life in prison, and even death, as a casualty of their profession. It would be a waste of taxpayer money to incarcerate drug dealers for longer periods of time when it would not deter them from making drug sales to minors or anyone else.

The only effective way to save lives is to treat drug addiction at its source through treatment programs. Also, creating arrest-free zones at emergency rooms, so that people would feel free to bring in their friends without risk of prosecution, would address the problem effectively.

A person who breaks the law and uses drugs should bear the responsibility for his or her actions. Under this bill, a drug dealer's penalty could be enhanced if the user later mixed the drug with another substance that actually caused the

death or serious bodily injury. In that circumstance, it would be unfair to punish the drug dealer for the user's poor choice.

NOTES: HB 797 by Farabee, et al., which would have increased penalties for drug offenses committed within 1,000 feet of a youth center, was placed on the House General Calendar for May 13 but died in the House.