

SUBJECT: Enhanced class A misdemeanor penalty for prior class B offense

COMMITTEE: Criminal Jurisprudence —favorable, without amendment

VOTE: 6 ayes — Keel, Riddle, Escobar, Hodge, P. Moreno, Pena

0 nays

3 absent — Denny, Raymond, Reyna

WITNESSES: For — Ken Sparks

Against — None

BACKGROUND: Sections 12.21 and 12.22 of the Penal Code define the punishment for class A and class B misdemeanors. The penalty for most class A misdemeanors is a maximum fine of \$4,000 and/or a maximum of one year in prison. The penalty for most Class B misdemeanors is a fine not to exceed \$2,000 and/or a maximum of 180 days in prison.

Sec. 12.43 provides penalty enhancements for repeat misdemeanor offenders. Someone convicted of a class A misdemeanor, if confined to jail, must serve a minimum of 90 days. If convicted of a class B misdemeanor and confined to jail, the individual must serve a minimum of 30 days. The possible fine for a class A or B misdemeanor remains the same as in sections 12.21 and 12.22.

The punishment for a class A misdemeanor may be enhanced if the offender has prior class A misdemeanor or felony convictions. The punishment for a class B misdemeanor may be enhanced if the offender has prior class A or B misdemeanor or felony convictions.

DIGEST: HB 2297 would amend Penal Code, sec. 12.43(a), to enhance the penalty of a class A misdemeanor offense if the offender previously had been convicted of a class B misdemeanor.

The bill would take effect on September 1, 2005, and would apply only to offenses committed on or after that date. An offense would be committed

before the effective date if any element of the offense were committed at that time.

**SUPPORTERS
SAY:**

HB 2297 would fix a drafting error in the Penal Code. Under the existing law, offenders who commit a class B misdemeanor are subject to an enhancement if they have past convictions of a class B misdemeanor or higher. However, offenders who commit more serious class A misdemeanors would not be subject to the enhancement if they had previous class B misdemeanor convictions. This bill would close this loophole in the law by enhancing the penalty for a person convicted of a class A misdemeanor if that person had one or more prior class B misdemeanor convictions. In doing so, HB 2297 would further the enhancement statute's aim of deterring repeat offenders.

According to the Criminal Justice Impact Statement prepared by the Legislative Budget Board, the bill is not expected to have an impact on the work load or resources of the state corrections agencies.

**OPPONENTS
SAY:**

By increasing jail time, this enhancement could exacerbate current overcrowding problems in our jails. Most individuals charged with misdemeanor offenses are non-violent offenders. Counties cannot afford to waste limited jail space on non-violent offenses.