

SUBJECT: Penalties for intoxication offenses against peace officers and firefighters

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Keel, Riddle, Denny, Escobar, Hodge, Raymond, Reyna

0 nays

2 absent — Pena, P. Moreno

WITNESSES: For — Richard Alpert, Criminal District Attorney of Tarrant County; Robert Doug Andrews, for Debbi Medlin and Kelli Andrews; Tom Gaylor, Texas Municipal Police Association; Harry D. Jones, Jr., Fort Worth Police Department; Gina M. Medlin; Mike Montgomery, Harris County Fire and Emergency Services; Ken Murray, Marc Shimmick, Grapevine Police Department; Ken Ulrickson, Fort Worth Police Department.

Against — Ann del Llano, ACLU of Texas; Keith Hampton, Texas Criminal Defense Lawyers Association.

On — Shannon Edmonds, Texas District and County Attorneys Association.

BACKGROUND: In most cases, when a defendant is convicted of more than one offense arising out of the same criminal episode, the defendant serves sentences for each offense concurrently. However, Section 3.03(b) of the Penal Code outlines possible exceptions to this rule. A defendant may serve consecutive, instead of concurrent, sentences if each sentence is for a conviction of one of these offenses:

- intoxication manslaughter;
- indecency with a child;
- sexual assault committed against a victim younger than 17 years of age at the time the offense is committed;
- aggravated sexual assault against a victim younger than 17 years of age at the time the offense is committed; or
- prohibited sexual conduct against a victim younger than 17 years of age at the time the offense is committed.

Ch. 49 of the Penal Code provides penalties for intoxication assault and intoxication manslaughter. Under sec. 49.07, a person who causes serious bodily injury to another person while operating a motor vehicle, aircraft, watercraft, or amusement ride, or assembling an amusement ride, while intoxicated, may be charged with a third-degree felony. A person who kills another person under these circumstances may be charged with a second-degree felony under Section 49.08.

A first-degree felony is punishable by imprisonment for 5 to 99 years and a fine not to exceed \$10,000. A second-degree felony is punishable by imprisonment for 2 to 20 years and a fine not to exceed \$10,000. Third-degree felonies are punishable by two to 10 years in prison and a fine not to exceed \$10,000.

DIGEST:

CSHB 27 would amend ch. 49 of the Penal Code to enhance the penalties for injuring or killing a peace officer or firefighter who was in the discharge of an official duty at the time of the offense. The penalty for causing serious bodily injury to an officer or firefighter under the circumstances outlined in sec. 49.07 would be increased from a third-degree felony to a second-degree felony. The bill would be known as the "Darren Medlin and Justin Wollam Act."

If the officer or firefighter were killed due to an intoxication offense while the officer or firefighter was serving in the line of duty, the penalty would be increased from a second-degree felony to a first-degree felony.

The bill also would amend Penal Code, sec. 3.03(b) to authorize consecutive sentences for those convicted of intoxication assault.

CSHB 27 would define "firefighter" as an individual employed by the state or a subdivision of the state who must be certified by the Texas Commission on Fire Protection, or a volunteer firefighter who renders firefighting services and conducts a minimum of two, two-hour drills each month.

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

**SUPPORTERS
SAY:**

Peace officers and firefighters put their lives on the line daily to serve the public. They are first responders to traffic problems and have no choice but to be in harm's way on busy roads. As a result, they are especially

vulnerable to being injured or killed by drunk drivers. Since 1985, 20 officers have been killed by intoxicated drivers. Last year alone, four officers were killed by drunk drivers in Texas.

Driving while intoxicated is a serious problem in Texas, with about 48 percent of traffic deaths being alcohol-related. While this bill would not stop drunk driving, it would minimize it by sending a message to drunk drivers that Texas takes the offense seriously. It also would send a message to peace officers and firefighters that Texas appreciates the risk they take every day to protect people's health and safety. It would be named in honor of two peace officers killed in the line of duty by drunk drivers.

Because police officers and firefighters routinely place themselves at risk for public safety, Texas law places unique value on their lives. Existing law provides enhanced penalties for assault, aggravated assault, or murder of a peace officer or firefighter. Increasing penalties for intoxication assault and intoxication manslaughter would be consistent with enhanced penalties already provided in existing law.

Despite claims that CSHB 27 would increase costs to the state, the fiscal note prepared by the Legislative Budget Board indicates no significant fiscal implications anticipated to the state as a result of the bill. The Criminal Justice Impact Statement indicates the bill would not result in significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies.

Enhanced penalties for certain offenses deter crime, and punishment also serves as a form of retribution. Severely punishing those crimes society finds to be especially egregious gives expression to community outrage. Many of those convicted of intoxication offenses are repeat offenders who have been warned yet still refuse to comply with the law.

This bill would not violate constitutional protections against double jeopardy because CSHB 27 would not require a defendant to serve separate sentences for the same crime against the same person. A defendant could serve consecutive sentences only if more than one person were harmed by the defendant's conduct. Current law already provides for consecutive sentencing for certain crimes, and those provisions have withstood constitutional challenge.

OPPONENTS
SAY:

This bill is unnecessary because intoxication assault and intoxication manslaughter already are severely punished under existing law.

Drunk driving is wrong no matter who the victim is, so the law should provide the same level of punishment regardless of the victim. While society values the work of police officers and firefighters, many other individuals who uniquely contribute to the greater good of society, such as doctors and members of the military, would not be singled out for special protection in this bill. Moreover, individuals like those who build and repair roads regularly place themselves in harm's way to improve public safety, yet they would not be covered by this bill.

Penalty enhancements are intended for crimes that have proven to be especially problematic. While drunk driving is a problem in Texas, the number of officers or firefighters killed while on duty, though tragic, does not warrant enhancing the penalties. If Texas is going to enhance penalties for intoxication assault and manslaughter, it should enhance them for everyone who is hurt or killed due to drunk driving.

No evidence suggests that enhancing penalties would decrease fatalities caused by drunk driving. Research has shown that increasing penalties for crimes resulting from substance abuse does not affect the behavior. However, alternatives to prison, such as treatment facilities, are effective. Without evidence that increasing penalties would deter those with substance abuse problems, Texas simply cannot afford the cost of penalty enhancements. The Legislative Budget Board projections indicate that in five years the number of prisoners will exceed capacity by about 15,000 people.

Finally, the provision for concurrent sentences in the bill risks violating constitutional protections against double jeopardy because it would allow a court potentially to stack sentences for the same offense against the same person. The bill does not make clear that sentences may be stacked only in cases where there are multiple victims of the defendant's crime.

NOTES:

The committee substitute replaced the term "public servant" with "peace officer or firefighter" and defined "firefighter." It also named the bill the "Darren Medlin and Justin Wollam Act."