

SUBJECT: Enhancements of repeat intoxication offenses over ten years old

COMMITTEE: Criminal Jurisprudence —favorable, without amendment

VOTE: 6 ayes — Keel, Riddle, Pena, Denny, Escobar, Hodge
0 nays
3 absent — P. Moreno, Raymond, Reyna

WITNESSES: For — Warren Diepraam, Harris County District Attorney's Office.
Against — None

BACKGROUND: Under the Penal Code, sec. 49.09, multiple convictions of certain intoxication offenses, excluding driving while intoxicated (DWI) with a child passenger, are subject to enhancement. A conviction may not be used for enhancement purposes unless it is a final conviction. A conviction for driving, flying, or boating while intoxicated, intoxication assault or manslaughter, and operating an amusement ride while intoxicated that occurs on or after September 1, 1994, is considered a final conviction.

Secs. 49.09(e) and (f) generally limit what can be considered a previous intoxication offense to an offense that occurred within 10 years of the current offense, for the purpose of enhancing penalties.

DIGEST: CSHB 51 would repeal Penal Code, secs. 49.09(e) and (f). The bill would also amend sec. 49.09 to include within the definition of final conviction intoxication offenses more than 10 years old and driving while intoxicated with a child in the vehicle, allowing such prior offenses to be used for enhancement purposes.

The bill would take effect September 1, 2005.

SUPPORTERS SAY: By removing the current 10-year limit on using a prior offense to enhance punishment, CSHB 51 would make the enhancement for repeat intoxication offenses similar to that used for all other types of criminal

offenses. There is no logical reason for this rule because there is no such limitation for any other offense. Eliminating this rule is especially important when a repeat offender commits a serious intoxication offense like intoxication manslaughter.

Current law limiting prior convictions to those that occur within 10 years allows a person to start with a clean slate every so often. This is inappropriate for alcohol offenses because it limits courts in their analysis of a person's crimes and future potential to cause danger.

This bill also would address an omission in the current law that does not allow DWI with a child in the car to be used for enhancement purposes for habitual offenders.

**OPPONENTS
SAY:**

It would be unfair to eliminate the current 10-year time limit on intoxication offenses. Under CSHB 51, a punishment could be enhanced even if a previous offense had occurred 25 years before, when the driver was a teenager. Current law was set up to enable people to clean the slate by abiding by the law for a decade. This is especially important when dealing with intoxication offenses because without these provisions, a small lapse in judgment, especially during a period when society viewed alcohol use more leniently, could lead to an enhanced penalty later.

NOTES:

A related bill, HB 51 by T. Smith, Pena, et al., which, among other provisions, also would allow convictions more than 10 years old and driving while intoxicated with a child to be used for penalty enhancement, also is on today's General State Calendar.