

SUBJECT: 10-year suspension of a driver's license on conviction of a fifth DWI

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Herrero, Carter, Burnam, Canales, Leach, Moody, Schaefer,
Toth

0 nays

1 absent — Hughes

WITNESSES: For — (*Registered, but did not testify*: Donald Baker, Austin Police
Department; Lon Craft, Texas Municipal Police Association; Bill Lewis,
Mothers Against Drunk Driving; Annie Mahoney, Texas Conservative
Coalition)

Against — None

On — Michael Terry, Texas Department of Public Safety

BACKGROUND: Penal Code, secs. 49.04, 49.045, 49.07, and 49.08, provide for offenses for
driving while intoxicated, driving while intoxicated with a child
passenger, intoxication assault, and intoxication manslaughter,
respectively. Penal Code, sec. 49.09 provides for enhanced offenses and
penalties for intoxication offenses.

Code of Criminal Procedure, art. 42.12, secs. 13(g), (j) and (k) address
conditions required for community supervision. Under sec. 13(k), the
judge must suspend a defendant's driving license during community
supervision for 90 days to two years depending on the circumstances.
Under 13(j), the judge must require a repeat intoxication defendant on
community supervision to attend and successfully complete an educational
program for repeat offenders. The judge is allowed to waive the
educational program requirement for good cause. Under 13(g), if a jury
recommends community supervision for a person convicted of an
intoxication offense, it also may recommend that the defendant's driving
license not be suspended. The jury may not make that recommendation for
a repeat intoxication offender.

Transportation Code, ch. 521, provides for driver's licenses and certificates. Ch. 521, subch. O provides for automatic suspension of driver's licenses. Sec. 521.202 forbids a person from operating a vehicle during a suspension period, including one for an intoxication offense. Sec. 521.344 provides direction on when a suspension for an intoxication offense begins and how long it must continue.

The Department of Public Safety (DPS) can issue occupational licenses under certain prescribed circumstances to persons with suspended licenses. Sec. 521.248 requires the occupational license to specify the hours and days that the person may operate the vehicle, the route allowed, and the reasons permitted. The person may not operate a motor vehicle for more than four hours in any 24-hour period, except that on a showing of necessity, the court may allow the person to drive for any court-determined period that does not exceed 12 hours in any 24-hour period.

DIGEST:

HB 3815 would require a court to order DPS to suspend for 10 years the driver's license or permit of a person who was convicted for the fifth time of driving while intoxicated, driving while intoxicated with a child passenger, intoxication assault, or intoxication manslaughter. If the person did not have a driver's license or permit, the judge would be required to order DPS to deny the issuance of a license or permit to the person for 10 years from the date of the order. In conflicts between this bill and Code of Criminal Procedure, art. 42.12 or Transportation Code, Ch. 521, Subch. O, the bill would prevail.

The bill would allow a judge determining whether good cause warranted the waiver of the educational program requirement for repeat offenders on community supervision, to consider whether the defendant lacked a valid driver's license. The bill would prohibit a jury from recommending that the driver's license of a defendant convicted under Penal Code, sec. 49.09(i) not be suspended. The bill would ensure that suspension under Code of Criminal procedure, sec. 521.202(k) would not be limited to the times specified in that section for an offense under the bill.

The bill would make changes to the Transportation Code to require the license suspension of anyone convicted under Penal Code, sec. 49.09(i) to last 10 years. HB 3815 also would amend Transportation Code, sec. 521.248 to prohibit an occupational license holder whose license had been suspended under Penal Code, sec. 49.09(i) from driving for more than four hours in a 24-hour period, unless the court found good necessity to extend

this to nine hours in a 24-hour period.

The bill would take effect September 1, 2013 and would apply only to a trial of an offense committed on or after that date.

**SUPPORTERS
SAY:**

HB 3815 would keep habitual, repeat drunk drivers off the streets. A person with four previous convictions has undergone treatment multiple times, has likely been to jail, and has persisted in drinking and driving, so more stringent measures should be taken to penalize them. Although the bill may not stop every repeat offender from driving, the state needs a harsher penalty to disincentivize and appropriately respond to these repeat criminals. While the bill would allow these repeat offenders to receive an occupational license, it would restrict them to a nine-hour period in which they could drive, rather than the 12-hour period they can drive now if the court deems it necessary. This nine-hour window would stop the offender from driving at night, which is the time during which they might be most likely to become intoxicated and re-offend.

The need for a 10-year suspension was highlighted by the recent arrest of a Houston man for drunk driving. When arrested, he had been convicted of DWI at least 10 times since 1983. He was driving with a valid driver's license because it had been suspended for only the maximum two years allowed by law for the previous arrest. In this case, it was clear that the license suspension should have been longer, but the law did not allow for it. HB 3815 would provide a remedy for these types of cases.

**OPPONENTS
SAY:**

HB 3815 would be an ineffective change in the law that would do little or nothing to address the underlying problem. Habitual drunk drivers who lose their licenses do not stop driving — they simply continue to drive with an invalid or suspended license. Addressing the problem of habitual drunk driving requires rehabilitative measures to fix the causes of the problem at its root. HB 3815 would do nothing to accomplish that.

The suspension required under HB 3815 would be too long. Without the possibility of getting a driver's license back before 10 years, there would be little incentive for a person to complete treatment and rehabilitation. The bill should focus on providing more structured treatment for these repeat offenders.