

BILL ANALYSIS

H.B. 745
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Current law provides for enhanced penalties for persons convicted of driving under the influence if it is shown on the trial of the offense that the person had previously been convicted one time of an offense relating to the operating of a motor vehicle, an aircraft, or watercraft while intoxicated or of assembling an amusement ride while intoxicated, or if a person has previously been convicted of an offense of intoxication manslaughter or of any similar offense in another state or two times of any other offense that relates to the operating of a motor vehicle, aircraft, or watercraft while intoxicated or of assembling an amusement ride while intoxicated. There is currently no enhanced penalty for first time offenders who commit these offenses with a blood alcohol content (BAC) of .15 or higher. This bill would include offenders with a BAC of .15 or higher in the enhanced penalties section of the Penal Code. It would require these offenders to install an ignition interlock system on their vehicles. Ignition interlock systems require a breath sample from the driver of a vehicle before the car is started and then at unpredictable intervals as the person is driving. If alcohol is detected on the breath then the vehicle stops moving.

Presently, the driving while intoxicated (DWI) enhancement language found in Section 49.09 has spawned significant confusion; the problematic language involves the ten-year rule in subsections (e) & (f). The present and prior statutory language has always allowed using a prior DWI conviction for enhancement purposes as long as the prior offense occurred within ten years of the new offense. This ten-year limitation is an archaic vestige from pre-1994 DWI statutes; this constraint's rationale has never been clear, and its existence is an aberration when compared to the state's ability to use non-DWI priors to enhance other types of offenses.

Until the last session, the ten-year rule only applied to the most recent prior offense. Last session's amendment sought to alter the ten-year-calculation rule, changing the benchmark from the date of the offense to the date of release from probation, confinement, or parole. In instituting this revision, however, unintended ambiguities have arisen in spite of the fact that the prior amendment (and its legislative history) indicate that no substantive change occurred. These ambiguities impede law enforcement's ability to rely on the enhancement scheme and thereby render repeat DWI offenders subject to lesser-than-deserved punishment ranges.

House Bill 745 clarifies the enhancement language by completely removing the ten-year limitation. This amendment enables law enforcement to treat DWI offenders in a manner consistent with all other perpetrators, regardless of the crime committed, that the prior commission of an offense increases the punishment range when the perpetrator re-offends.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

House Bill 745 amends the enhanced penalties section of the Penal Code by providing that the offenses of DWI, flying while intoxicated (FWI) and boating while intoxicated (BWI) are class A misdemeanors if it is shown on the trial of the offense that an analysis of a specimen of the person's blood, breath, or urine showed an alcohol concentration (BAC) level of .15 or more at the time the analysis was performed. Convictions for offenses under Article 67011-1, Revised Statutes, as that law existed before September 1, 1994, Article 67011-2, Revised Statutes, as that law existed before January 1, 1984, Section 19.05 (a) (2), as that law existed before September 1, 1994, or DWI, FWI, BWI, assembling or operating an amusement ride while intoxicated, intoxication assault, or intoxication manslaughter is a final conviction, whether the sentence for the conviction is imposed or probated.

House Bill 745 also amends the Code of Criminal Procedure by providing that judges granting community supervision to a defendant convicted of an offense under the enhanced penalties section of the Penal Code, shall require as a condition of community supervision that the defendant serve not less than 72 hours of confinement in a county jail if it was a second offense or not less than five days of confinement in a county jail if the defendant was previously convicted of an offense and was subject to enhanced penalties.

A defendant is required to serve not less than 30 days of confinement in a county jail if the defendant was punished for DWI, FWI, or BWI with a BAC of .15 or higher if it is shown on the trial of the offense that the defendant has previously been convicted of an offense of intoxication and alcoholic beverage offenses or not less than 120 days of continuous confinement in county jail if the defendant was convicted of intoxication assault or intoxication manslaughter.

Requires that judges granting community supervision to a defendant convicted of DWI, FWI, BWI, assembling or operating an amusement ride while intoxicated, intoxication assault, or intoxication manslaughter shall require as a condition of community supervision that the defendant submit to an evaluation by a supervision officer or by a person, program, or facility approved by the Texas Commission on Alcohol and Drug Abuse for the purpose of having the facility prescribe and carry out a course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition. If the director of a facility to which a defendant is referred as a condition of community supervision determines that the defendant is not making a good faith effort to participate in a program of rehabilitation, the director shall notify the judge that referred the defendant of that fact.

If a person is convicted for a second or subsequent offense of DWI, FWI, BWI assembling or operating an amusement ride while intoxicated, or of one of these while having a BAC of .15 or higher and is then placed on community supervision the court shall require as a condition of community supervision that the defendant have a device installed, on each motor vehicle owned or operated by the defendant, that uses a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol is detected in the breath of the operator.

Repeals the provisions in the Penal Code for the ten year limitations on the intoxication offenses of DWI, FWI, BWI, assembling or operating an amusement ride while intoxicated, intoxication assault, or intoxication manslaughter enhancement language.

EFFECTIVE DATE

September 1, 2003.

