BILL ANALYSIS

BACKGROUND AND PURPOSE

Under most circumstances, a defendant who receives multiple convictions and sentences in a single trial serves those sentences concurrently. See §3.03(a), Penal Code. That policy encourages defendants to consolidate multiple crimes into a single criminal action, saving the court system time and resources. However, in 1997, the Legislature determined judges should have the discretion, following a single trial over multiple crimes, to consider ordering defendants to serve consecutive sentences for those crimes. The listed crimes were intoxication manslaughter and sex offenses (indecency with a child, sexual assault, aggravated sexual assault, prohibited sexual conduct and sexual performance by a child).

C.S.H.B. 904 would add the offense of intoxication assault to the list of crimes for which judges would have the discretion to order a defendant to serve consecutive sentences following a single trial. In a drunk driving accident, there are frequently multiple victims. The stacking laws should apply equally to punish those defendants who seriously injured (intoxication assault) as well as killed (intoxication manslaughter) the multiple victims. This change will consolidate such cases and avoid the need for multiple trials.

Since 1997, Texas has seen an explosion in the prosecution of criminal defendants for two other sex-related crimes: possession or promotion of child pornography (§ 43.26, Penal Code) and the relatively new offense of improper photography or visual recording (§ 21.15, Penal Code, created in 2001). The development of the internet and availability of inexpensive computers, digital cameras and equipment has made it easier for criminals to access and spread child pornography and secretly photograph or videotape sexual conduct without consent. In addition, these defendants frequently collect multiple images or recordings, each of which can be prosecuted separately.

C.S.H.B. 904 would add the above two sex-related offenses to the list of crimes for which judges would have the discretion to order a defendant to serve consecutive sentences following a single trial. Under current law, a prosecutor must try a defendant separately for each image of child pornography or recording made of sexual conduct to obtain such stacked sentences. By expanding the judge's discretion, Texas will do more to discourage the possession of child pornography and the creation and promotion of secret recordings of sexual conduct. This change will also make the trials of such cases more efficient, reducing the necessity for multiple trials.

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

C.S.H.B. 904 amends Section 3.03(b), Penal Code, by allowing multiple offenses of intoxication assault, improper photography or visual recording, or possession or promotion of child pornography to be prosecuted in a single trial and also allows judges the discretion to order a defendant, upon conviction, to serve concurrent or consecutive sentences. CS.H.B. 904 also amends Section 3.04, Penal Code, which provides that the right to severance does not apply to a prosecution for offenses described by Section 3.03(b) unless the court determines that the defendant or the state would be unfairly prejudiced by a joinder of offenses, in which event the judge may order the offenses to be tried separately or may order relief as justice requires.

EFFECTIVE DATE

September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 904 adds SECTION 2 amending Section 3.04, Penal Code, which provides that the right to severance does not apply to a prosecution for offenses described by Section 3.03(b) unless the court determines that the defendant or the state would be unfairly prejudiced by a joinder of offenses, in which event the judge may order the offenses to be tried separately or may order relief as justice requires.