

BILL ANALYSIS

C.S.H.B. 1234
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In Texas, many first time Driving While Intoxicated (DWI) offenders do not commit another intoxicated offense. The number of cases of DWI has caused the court dockets throughout the state to swell. As of August 31, 2005, there were 119,338 pending DWI cases in Texas county courts. The cost of a plea of guilty to a charge of DWI has become so great that more cases are going to trial; therefore, clogging the dockets. This bill addresses this growing problem by allowing first time offenders to be eligible for deferred adjudication. C.S.H.B. 1234 would allow prosecutors to focus their limited trial resources on repeat offenders. An additional deterrent is that a subsequent offense entails the loss of all of the benefits of having a deferred adjudication as the bill allows for the prior deferred adjudication to be used for enhancement purposes.

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. 1234 amends the Code of Criminal Procedure to provide that a judge is authorized to grant deferred adjudication for driving while intoxicated (DWI), flying while intoxicated, or boating while intoxicated, but is not authorized to grant deferred adjudication for DWI with a child passenger described under Section 49.045, Penal Code, or for which punishment may be increased under Section 49.09, Penal Code. The bill also provides that if a judge places on community supervision under Section 5, Article 42.12, Code of Criminal Procedure, a defendant charged with an offense under Chapter 49, Penal Code, other than an offense described by Subsection (d), the judge must require the defendant to comply with any condition of community supervision that Section 13 requires for a defendant placed on community supervision under that section. Makes conforming changes.

The bill amends the Government Code to provide that a person is not entitled to petition the court under Section 411.081(d), Government Code, if the person has been previously convicted or placed on deferred adjudication for an offense under Chapter 49, Penal Code, other than an offense that is punishable as a Class C misdemeanor.

The bill also amends the Penal Code to state that except as provided by Section 49.09(b), Penal Code, an offense under Section 49.04, 49.05, 49.06, or 49.065, Penal Code, is a Class A misdemeanor, with a minimum term of confinement of 30 days, if it is shown on the trial of the offense that the person has been one time previously convicted of or placed on deferred adjudication for an offense relating to the operating of a motor vehicle while intoxicated, an offense of operating an aircraft while intoxicated, an offense of operating a watercraft while intoxicated, or an offense of operating or assembling an amusement ride while intoxicated. The bill provides that an offense of driving while intoxicated with a child passenger is a felony of the third degree if it is shown on the trial of the offense that the person has been one time previously convicted of or placed on deferred adjudication for an intoxication manslaughter offense, or an offense under the laws of another state if the offense is substantially similar, or two times previously convicted of or placed on deferred adjudication for any other offense relating to the operating of a motor vehicle while intoxicated, operating an aircraft while intoxicated, operating a watercraft while intoxicated, or operating or assembling an amusement ride while intoxicated. For purposes of Section 49.09, Penal Code, a conviction for an offense listed in Subsection (c) that occurs on or after September 1, 1994, is a final conviction, whether the sentence for the

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conviction is imposed or probated. The bill provides that a deferred adjudication may be used for the purposes of enhancement under Section 49.09, Penal Code, or under Subchapter D, Chapter 12, but not under both this section and Subchapter D.

The bill also amends that Transportation Code, and adds that for purposes of Section 521.341(a)(3) and (4), Transportation Code, and for purposes of Section 521.342, Transportation Code, a person is considered to be convicted of an offense if a sentence is imposed, the defendant receives community supervision or deferred adjudication, or the court defers final disposition of the case. For purposes of Section 521.344, Transportation Code, "date of conviction" includes, as applicable, the date that the court places the person on community supervision or on deferred adjudication. Makes conforming changes.

Makes application of this Act prospective.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute adds that if a judge places on community supervision under Section 5, Article 42.12, Code of Criminal Procedure, a defendant charged with an offense under Chapter 49, Penal Code, other than an offense described by Subsection (d), the judge must require the defendant to comply with any condition of community supervision that Section 13 requires for a defendant placed on community supervision under that section. The bill also adds that a judge is not authorized to grant deferred adjudication for an offense of driving while intoxicated with a child passenger described under Section 49.045, Penal Code.

The substitute also amends the Transportation Code, and adds that for purposes of Section 521.341(a)(3) and (4), Transportation Code, and for purposes of Section 521.342, Transportation Code, a person is considered to be convicted of an offense if a sentence is imposed, the defendant receives community supervision or deferred adjudication, or the court defers final disposition of the case. For purposes of Section 521.344, Transportation Code, "date of conviction" includes, as applicable, the date that the court places the person on community supervision or on deferred adjudication. Makes conforming changes. The original bill did not contain these changes.