

## **BILL ANALYSIS**

H.B. 1163  
By: Smith  
Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

In Texas, boating while intoxicated is a Class B misdemeanor offense. However, concerns have been raised that the offense currently does not address conduct regarding passengers and thus does not account for risks to younger passengers, similar to the offense of driving while intoxicated with a child passenger. H.B. 1163 seeks to address this issue by creating a separate offense for boating while intoxicated with a child passenger.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

### **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**

H.B. 1163 amends the Penal Code to create the state jail felony offense of boating while intoxicated with a child passenger for a person who is intoxicated while operating a watercraft that is occupied by a passenger who is younger than 15 years of age. The bill subjects a person who has been convicted of the offense to the third degree felony enhancement for certain intoxication offenses if it is shown on trial of the offense that the person has previously been convicted:

- one time of intoxication manslaughter or an offense under the laws of another state if the offense contains elements that are substantially similar to the elements of intoxication manslaughter; or
- two times of 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.

The bill establishes the following, for purposes of the third degree felony enhancement for certain intoxication offenses including for the offense of boating while intoxicated with a child passenger:

- an offense of operating a watercraft while intoxicated includes boating while intoxicated with a child passenger; and
- a conviction for boating while intoxicated with a child passenger that occurs on or after September 1, 1994, is a final conviction, whether the sentence for the conviction is imposed or probated.

The bill establishes the fact that a defendant is or has been entitled to use the alcohol, controlled substance, drug, dangerous drug, or other substance is not a defense in a prosecution for boating while intoxicated with a child passenger.

H.B. 1163 amends the Alcoholic Beverage Code to establish that the offense of operating a motor vehicle or watercraft under the influence of alcohol by a minor is not a lesser included offense under the offense of boating while intoxicated with a child passenger.

H.B. 1163 amends the Code of Criminal Procedure to include boating while intoxicated with a child passenger among the offenses for which a law enforcement agency is excepted from the requirement to make a good faith effort to divert a person suffering a mental health crisis or suffering from the effects of substance abuse to a proper treatment center in the agency's jurisdiction.

H.B. 1163 requires a magistrate to require a defendant charged with a subsequent offense of boating while intoxicated with a child passenger, on release, to have installed on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant, a device that uses a deep-lung breath analysis mechanism to make impractical the operation of a vehicle if alcohol is detected in the operator's breath and to not operate any motor vehicle unless equipped with that device. The bill authorizes any magistrate who is a licensed attorney to issue a search warrant as permitted by state law to collect a blood specimen from a person who is arrested for boating while intoxicated with a child passenger and refuses to submit to a breath or blood alcohol test. The bill authorizes the execution of a warrant issued as permitted by state law to collect a blood specimen from a person suspected of boating while intoxicated with a child passenger to be executed in any county adjacent to the county in which the warrant was issued or by any law enforcement officer authorized to make an arrest in the county of execution.

H.B. 1163 makes a defendant charged with boating while intoxicated with a child passenger ineligible for deferred adjudication community supervision. The bill requires a court to require as a condition of community supervision that a defendant placed on community supervision after conviction of boating while intoxicated with a child passenger have an ignition interlock device installed on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant and that the defendant not operate any motor vehicle unless the vehicle is equipped with that device. The bill includes boating while intoxicated with a child passenger among the offenses for which a court must determine whether a defendant placed on community supervision after conviction of certain intoxication offenses has one or more previous convictions and must have an ignition interlock device installed and be subject to the related restriction.

H.B. 1163 amends the Parks and Wildlife Code to include the offense of boating while intoxicated with a child passenger among the offenses for which a person may apply to the operation game thief committee for a reward to be paid from the operation game thief fund if the person furnishes information leading to the arrest and conviction of a person for the offense or a regulation adopted related to the offense.

H.B. 1163 amends the Transportation Code to require a peace officer to require the taking of a specimen of a person's breath or blood if the officer:

- arrests the person for the offense of boating while intoxicated with a child passenger and the person refuses the officer's request to submit the specimen voluntarily; or
- arrests the person for any offense involving the operation of a motor vehicle or watercraft while intoxicated, the person refuses the officer's request to submit the specimen voluntarily, and at the time of arrest the officer possesses or receives reliable information from a credible source that the person has previously been convicted of or placed on community supervision for boating while intoxicated with a child passenger or an offense under the laws of another state containing elements substantially similar to elements of certain intoxication offenses under state law.

The bill requires a peace officer to do the following with respect to a person who is arrested for boating while intoxicated with a child passenger, submits to the taking of a breath or blood

specimen, and an analysis shows the person had an alcohol concentration of 0.08 or more or to a minor who is arrested for boating while intoxicated with a child passenger:

- serve or attempt to serve notice of driver's license suspension;
- take possession of any driver's license issued by the state and held by the person arrested;
- issue a temporary driving permit to the person, if applicable; and
- send to the Texas Department of Public Safety (DPS) a copy of the driver's license suspension notice, any driver's license taken by the officer, a copy of any temporary driving permit issued by the officer, and a sworn report of information relevant to the arrest.

The bill requires a person convicted of an offense of boating while intoxicated with a child passenger, if any conduct on which that conviction is based is a ground for a driver's license suspension under Transportation Code provisions relating to administrative suspension for failure to pass a test for intoxication and certain other Alcoholic Beverage Code or Transportation Code provisions, to serve under each of the suspensions. A court imposing a driver's license suspension for the offense is required to credit a period of suspension imposed toward a period of suspension required by such provisions.

H.B. 1163, for purposes of a stay of an administrative suspension of a driver's license on appeal by a person, includes the condition that a person has not been convicted during the 10 years preceding the date of the person's arrest of boating while intoxicated with a child. The bill includes the offense of boating while intoxicated with a child passenger among the intoxication offenses for which the suspension of a driver's license may not be imposed on a person who is acquitted of the applicable charge and for which DPS must rescind any suspension that was imposed before the acquittal and remove any reference to the suspension for the person's computerized driving record. The bill includes the offense of boating while intoxicated with a child passenger among the intoxication offenses for which a minor is subject to a driver's license suspension period longer than 60 days if the minor has been previously convicted.

**EFFECTIVE DATE**

September 1, 2023.