

CHAPTER 809

S.B. No. 652

An Act relating to the offense of public intoxication and alternatives to arrest; providing immunity from liability to peace officers and their employees; amending Section 42.08, Penal Code.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 42.08, Penal Code, is amended to read as follows:

"Section 42.08. **PUBLIC INTOXICATION.** (a) An individual commits an offense if *the individual* [he] appears in a public place under the influence of alcohol or any other substance, to the degree that *the individual* [he] may endanger himself or another.

"(b) *In lieu of arresting an individual who commits an offense under Subsection (a) of this section*, a [A] peace officer [or magistrate] may release [from custody] an individual [arrested under this section] if:

"(1) *the officer* [he] believes *detention in a penal facility* [imprisonment] is unnecessary for the protection of the individual or others; and

"(2) *the individual:*

"(A) *is released to the care of an adult who agrees to assume responsibility for the individual; or*

"(B) *verbally consents to voluntary alcohol or drug treatment in a program approved as a treatment facility by the Texas Commission on Alcoholism, and the program admits the individual for treatment.*

"(c) *A magistrate may release from custody an individual arrested under this section if the magistrate determines the individual meets the conditions required for release in lieu of arrest under Subsection (b) of this section.*

"(d) *The release of an individual under Subsection (b) or (c) of this section to an alcohol or drug treatment program may not be considered by a peace officer or magistrate in determining whether the individual should be released to such a program for a subsequent incident or arrest under this section.*

"(e) *A peace officer and the agency or political subdivision that employs the peace officer may not be held liable for damage to persons or property that results from the actions of an individual released under Subsection (b) or (c) of this section.*

"(f) It is a defense to prosecution under this section that the alcohol or other substance was administered for therapeutic purposes and as a part of the individual's professional medical treatment by a licensed physician.

"(g) *An offense under this section is not a lesser included offense of an offense under Article 67011-1, Revised Statutes.*

"(h) [~~(d)~~] An offense under this section is a Class C misdemeanor."

SECTION 2. This Act takes effect September 1, 1985.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 26, 1985, by a viva-voce; passed the House on May 25, 1985, by a non-record vote.

Approved: June 15, 1985

Effective: September 1, 1985