

BILL ANALYSIS

Senate Research Center
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S.B. 261
By: Deuell, Huffman
Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current Texas law requires a peace officer to obtain a breath or blood specimen from a driving while intoxicated (DWI) suspect involved in a crash where another has died or suffered serious bodily injury. In all other DWI arrests, peace officers rely on the suspect to provide a voluntary breath or blood specimen upon request. Even if a driver has a long history of drinking and driving, Texas law allows the driver to refuse to provide a breath or blood specimen, effectively hiding scientific evidence of intoxication.

Presently, half of all Texas drivers refuse a breathalyzer test when arrested for DWI. Among repeat offenders, the percentage of refusals increases to almost 60 percent. According to statute, refusal to take a breathalyzer test results in an automatic license suspension, but offenders often avoid the "automatic" suspension through an administrative license revocation (ALR) hearing or by obtaining an occupational driver's license. The Texas Department of Public Safety reports that of the approximately 109,000 ALR cases filed in 2008, 52 percent were filed as a result of a breath test refusal.

Frustration with the high breath test refusal rate in Texas has prompted jurisdictions across the state to employ "no refusal" policies, seeking scientific evidence of intoxication by obtaining a search warrant that authorizes the collection of a blood specimen from a DWI suspect. The Texas Court of Criminal Appeals has approved use of the search warrant as a lawful method for obtaining blood samples. *Beeman v. State*, 86 S.W.3d 613 (Tex. Crim. App. 2002). Evidence of intoxication is often crucial to the conviction of a DWI offender, for judges and juries prefer to be certain of the defendant's guilt, especially in felony DWI cases. (Under Texas law, an offender's third DWI is charged as a felony offense.)

Finally, it is important to note several findings from the National Highway Traffic Safety Administration (NHTSA): Texas ranks second, behind only California, in alcohol-related traffic fatalities, and drivers with prior DWI convictions have a greater risk of being involved in a fatal crash than drivers with no prior convictions. The United States Supreme Court has long held that law enforcement may obtain a blood specimen without a warrant, so long as there is probable cause to believe the person was driving while intoxicated. *Schmerber v. California*, 384 U.S. 757 (1966).

As proposed, S.B. 261 requires the warrantless collection of a breath or blood specimen from suspected DWI offenders if they are arrested for alcohol-related offenses involving a motor vehicle or a watercraft under certain circumstances.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 724.012(b) and (d), Transportation Code, as follows:

- (b) Requires a peace officer to require the taking of a specimen of the person's breath or blood under certain circumstances if the officer arrests the person for an offense under Chapter 49 (Intoxication and Alcoholic Beverage Offenses), Penal Code, involving the operation of a motor vehicle or a watercraft, including that the person was the operator of

a motor vehicle or a watercraft involved in an accident that the officer reasonably believes occurred as a result of the offense and at the time of the arrest, the officer reasonably believes that as a direct result of the accident an individual other than the person has suffered bodily injury and been transported to a hospital or other medical facility for medical treatment; the offense for which the officer arrests the person is an offense under Section 49.045 (Driving While Intoxicated With Child Passenger), Penal Code; or at the time of the arrest, the officer possesses or receives reliable information from a credible source that the person has been previously arrested for an offense under Section 49.045, 49.07 (Intoxication Assault), or 49.08 (Intoxication Manslaughter), Penal Code, or an offense under the laws of another state containing elements substantially similar to the elements of an offense under those sections; or has been previously arrested on two or more occasions for an offense under Section 49.04 (Driving While Intoxicated), 49.05 (Flying While Intoxicated), 49.06 (Boating While Intoxicated), or 49.065 (Assembling or Operating an Amusement Ride While Intoxicated), Penal Code, or an offense under the laws of another state containing elements substantially similar to the elements of an offense under those sections.

(d) Defines "bodily injury" and "serious bodily injury."

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2009.