

SUBJECT: Allowing a person arrested for public intoxication to have blood analysis

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Place, Talton, Farrar, Greenberg, Pickett, Pitts

0 nays

3 absent — Hudson, Nixon, Solis

WITNESSES: For — None

Against — Jimmy Fawcett, Texas Police Chiefs Association; S. C. Van Vlech, Fort Worth Police Department

DIGEST: HB 2558 would entitle a person arrested for public intoxication under section 49.02 of the Penal Code to have a physician, qualified technician, chemist, or registered professional nurse of the person's choice draw a specimen and make an analysis of the person's blood.

The person would need to make a request for the analysis within two hours after arrest. An officer's refusal or inability to comply with a person's request would be admissible at trial. The analysis would be admissible to prove the extent, if any, to which the person was influenced by alcohol.

The bill would take immediate effect if approved the two thirds of the membership of each house.

SUPPORTERS SAY: HB 2558 would give persons arrested for public intoxication the opportunity to defend against the charge. At this time, it is just the officer's word against the accused's word. A tired or professionally medicated person might behave in a manner that falsely indicates intoxication and should have the opportunity to show non-intoxication.

This bill would allow the state to use the analysis in court to prove the accused's guilt if the analysis so indicates. Because of this possibility, it is unlikely that truly intoxicated persons would request this analysis.

Those who could afford to pay for the test would be required to do so, but the state should pay for the test if necessary for indigents to prove their innocence.

**OPPONENTS
SAY:**

HB 2558 would place an unrealistic burden on police officers. The city of Houston alone arrested 29,567 people in 1994 for public intoxication. This bill would tie up officers forced to escort intoxicated people from the hospital or lab, wait for a doctor or nurse to take blood, and then escort the person back to jail. Furthermore, the taking of blood could not be accomplished at the jail because of sanitary concerns. The delay might cause a shortage of police officers on the streets.

The bill does not state who would pay for the analysis, and could create a financial burden on the local governments. Moreover, the bill would not really accomplish its purpose since public intoxication is not based on blood alcohol content, but is based on whether the person "appears in a public place while intoxicated to the degree that the person may endanger the person or another."