

SUBJECT: Requiring certain DWI suspects to submit breath or blood samples

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Pena, Riddle, Escobar, Mallory Caraway, Talton

2 present not voting — Vaught, Hodge

0 nays

2 absent — Moreno, Pierson

WITNESSES: For — John Bradley, Williamson County District Attorney's Office; John Jordan, Harris County District Attorney's Office; (*Registered, but did not testify*: Charles Bailey, Texas Hospital Association; Katrina Daniels, Bexar County Criminal District Attorney's Office; Jim Kuboviak; Amy Mills, Tarrant County District Attorney's Office; Ballard Shapleigh, 34th Judicial District's District Attorney's Office; David Weeks; Gary Young)

Against — Celeste Villareal, Texas Criminal Defense Lawyers Assoc.

BACKGROUND: Under Transportation Code, sec. 724.012(b), a peace officer must require the submission of a breath or blood sample from a person who:

- is arrested on suspicion of driving or operating a watercraft while intoxicated and caused an accident, in the officer's judgment, as a result of this conduct;
- caused an accident involving serious bodily injury to another person, or in which a person has died or will die, in the officer's judgment; and
- refused to submit a breath or blood sample voluntarily.

DIGEST: HB 1810 would amend Transportation Code, sec. 724.012(b) to require a peace officer to take a specimen of a person's breath or blood if, at the time of the arrest on suspicion of driving or boating while intoxicated, the officer possessed or received reliable information from a credible source that the person previously had been arrested on two or more occasions for an offense under Penal Code, ch. 49 with regard to driving or boating while intoxicated.

The bill would take effect on September 1, 2007, and would apply only to an offense committed on or after that date.

**SUPPORTERS
SAY:**

HB 1810 would help law enforcement gather evidence against habitual drunk drivers. Too many Texans are killed each year by drunk drivers. One reason is that it is difficult to gather evidence against drunk drivers and thus difficult to remove their driving privileges and keep them off the roads. HB 1810 would address this issue by expanding the circumstances under which an officer could gather breath or blood samples during a driving-while-intoxicated (DWI) investigation. The bill would allow an officer to take a breath or blood sample when the officer had probable cause to believe the driver was intoxicated and had been arrested twice before on DWI charges.

Current law is flawed because it requires suspects to provide relevant scientific evidence only in cases that involve a car accident with serious or fatal injuries. Almost half of all drunk drivers refuse to provide a breath or blood sample, and drivers who have two or more prior DWI offenses refuse at a rate of 70 percent. Aside from the scientific value of breath and blood samples, this evidence is special because it is highly fleeting. The body treats alcohol as a poison and immediately works to break it down and eliminate it from the body. After a few hours, breath and blood samples no longer are reliable because the body has processed the alcohol. Texas law recognizes this fact and requires officers to gather breath or blood samples from suspected drunk drivers at an accident scene where an individual has died or suffered serious bodily injury.

HB 1810 is a prophylactic bill designed to prevent lethal or injurious accidents. Habitual drunk drivers are more likely than one-time offenders to be involved in an alcohol-related accident. It therefore is a reasonable expansion of the law to allow for mandatory testing of suspected drunk drivers who have been arrested on two or more prior occasions in order to remove these habitual drunk drivers from the road before they kill or seriously injure another human being.

The bill would not result in a significant increase of violence or assault by officers against suspects as they attempt to gather samples. Officers and medical technicians receive extensive training on acceptable and legal means of collecting the samples. In addition, suspects have civil remedies

available to them to punish officers who have assaulted them in the course of gathering such evidence.

OPPONENTS
SAY:

HB 1810 would be an unacceptable intrusion of the state into the privacy of the person. Requiring suspects to submit samples of their own bodies that can be used against them in court would represent an invasion of privacy that currently is only permitted under very limited circumstances. HB 1810 does not represent a reasonable expansion of current law because samples only are required today when a person is seriously injured or killed. These are situations in which a quantifiable harm has been done, as opposed to simple driving while intoxicated offenses.

Furthermore, HB 1810 would require the submission of samples from people who merely had been arrested on two or more prior occasions. The bill would not even require prior convictions but would allow officers to forcibly extract body samples based only on suspicion, not actual findings that a person was guilty of drunk driving.

HB 1810 could invite violence because it would require a physical intrusion on the person of the suspect. Under current law, it is nearly impossible to successfully sue an officer who unreasonably takes blood from a non-consenting suspect, which renders civil remedies practically useless.