

BILL ANALYSIS

H.B. 1810
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Driving while intoxicated (DWI) is a crime which has many serious and devastating consequences for victims, the victims' families and society at large. According to the National Highway Traffic Safety Administration (NHTSA), approximately three in every ten Americans will be involved in an alcohol-related crash at some time in their lives. In 2005, Texas ranked second, behind only California, in alcohol-related traffic fatalities. Of the estimated 3,500 traffic deaths in Texas in 2005 approximately 45% involved alcohol. NHTSA has also identified that the risk of a drunk driver with one or more DWI convictions becoming involved in a fatality is about 1.4 times greater than for an offender with no prior conviction.

Current Texas law provides that a peace officer shall take a specimen of breath or blood from a DWI suspect involved in a crash where another has died or suffered serious bodily injury. In DWI investigations that do not involve death or serious bodily injury, investigating officers rely on a driver to provide a voluntary breath or blood sample upon request. No Texas law requires habitually drunk drivers to provide a breath or blood sample. Even if there is a long history of drinking and driving, Texas law permits the driver to refuse to provide a breath or blood sample, thereby hiding scientific evidence of intoxication. (In Texas, the first and second DWI arrests are charged as misdemeanor crimes; only on the third DWI is the case charged as a felony offense punishable by 2-10 years in prison and a fine up to \$10,000.)

Presently, nearly half of all drunk drivers in Texas refuse to provide a breath or blood sample when arrested for DWI. That means prosecutors often have no scientific evidence of intoxication to present to a judge or jury. More significantly, for those drivers with at least 2 prior arrests for DWI, the refusal rate is nearly 70% statewide. Given those statistics, the Texas breath test collection program is a failure, and law enforcement is often left empty-handed when it comes to collecting scientific evidence of intoxication in the most serious felony DWI cases.

The United States Supreme Court has long upheld the warrantless seizure of breath or blood from a DWI suspect. *Schmerber v. California*, 384 U.S. 757, 16 L. Ed. 2d 908, 86 S. Ct. 1826 (1966). In that case, the Court held that an officer may reasonably obtain a breath or blood sample, even over the objection of the drunk driver, so long as there was probable cause to believe a DWI had been committed. The need for a search warrant was excused because of the temporary nature of the evidence – alcohol in a defendant's system burns off over a relatively short period of time. Texas law, therefore, could constitutionally be amended to expand the authority of an officer to take a specimen during the investigation of *any* DWI offender. House Bill 1810, however, only seeks to expand the collection of evidence of intoxication to *habitual* DWI offenders.

House Bill 1810 will authorize peace officers to take a specimen, by breath or blood, when the officer has probable cause to believe the driver was intoxicated and the driver has been previously arrested on two or more occasions for a DWI offense. House Bill 1810 will increase the likelihood of removing habitually drunk drivers from the road *before death or serious injury occurs* and provides law enforcement, prosecutors, judges and juries with scientific evidence to show whether the driver was intoxicated.

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

House Bill 1810 amends Section 724.012(b), Transportation Code, by adding the requirement that a peace officer shall take a specimen of the person's breath or blood if at the time of the arrest, the officer possesses or receives reliable information from a credible source that the person has been previously arrested on two or more occasions for an offense under Chapter 49, Penal Code, involving the operation of a motor vehicle or a watercraft. The bill further amends Section 724.012(b), Transportation Code, by striking the language stating that the person must have refused the officer's request to submit to the taking of a specimen voluntarily.

The bill also provides that the change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

EFFECTIVE DATE

September 1, 2007.