

BILL ANALYSIS

S.B. 261
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

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, nearly one-half of all Texas drivers arrested for DWI refuse a breathalyzer test. 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: 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).

S.B. 261 requires the warrantless collection of a breath or blood specimen from suspected offenders arrested for alcohol-related offenses involving a motor vehicle or a watercraft under certain circumstances. The bill authorizes any magistrate licensed as an attorney by Texas to issue a search warrant to collect a blood specimen from certain persons.

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

S.B. 261 shall be known as the Nicole "Lilly" Lalime Act.

S.B. 261 amends the Transportation Code to add to the circumstances under which a peace officer is required to take a specimen of breath or blood from a person who refuses the officer's request following the arrest of that person for an intoxication and alcoholic beverage offense involving the operation of a motor vehicle or a watercraft the following circumstances: if, at the time of an arrest, the officer reasonably believes that as a direct result of the motor vehicle or watercraft accident an individual other than the person under arrest for the offense has suffered bodily injury and been transported to a hospital or other medical facility for treatment; if the offense for which the officer arrests the person is an offense of driving while intoxicated with a child passenger; or if, at the time of the arrest, the officer possesses or receives reliable information from a credible source that the person has been previously convicted or placed on probation for an offense of driving while intoxicated with a child passenger, intoxication assault, or intoxication manslaughter or an offense under another state's laws containing elements substantially similar to the elements of those offenses, or has been previously convicted or placed on probation on two or more occasions for an offense of driving, flying, boating, or assembling or operating an amusement park ride while intoxicated, or an offense under another state's laws containing elements substantially similar to the elements of those offenses. The bill defines "bodily injury."

S.B. 261 amends the Code of Criminal Procedure to authorize any magistrate who is an attorney licensed by Texas to issue a warrant for the search and seizure of property or items, except the personal writings by the accused, constituting evidence of an offense or constituting evidence tending to show that a particular person committed an offense to collect a blood specimen from a person who is arrested for a certain intoxication offense and refuses to submit to a breath or blood alcohol test.

EFFECTIVE DATE

September 1, 2009.