

## **BILL ANALYSIS**

Senate Research Center  
81R2501 PEP-D

S.B. 298  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

According to the National Highway Traffic Safety Administration, in 2007, 1,292 people were killed and almost 30,000 more were injured in alcohol-related crashes on Texas highways. This state leads the nation in alcohol-related traffic fatalities and is one of only 11 states that does not allow law enforcement officials to conduct sobriety checkpoints due to a lack of established guidelines. Traffic safety experts agree that checkpoints are the most effective deterrent against drunk driving.

While the United States Supreme Court (*Michigan Dept. of State Police v. Sitz*, 1990) upheld the constitutionality of sobriety checkpoints, in June 1994, the Texas Court of Criminal Appeals (*State v. Holt*) ruled that sobriety checkpoints were unconstitutional in Texas because no statewide guidelines existed for properly conducting checkpoints. But the Court did not rule that the proposal of sobriety checkpoints violated the Texas Constitution.

As proposed, S.B. 298 amends the Code of Criminal Procedure, by adding Chapter 65 to establish certain guidelines for the use of sobriety checkpoints.

### **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 Title 1, Code of Criminal Procedure, by adding Chapter 65, as follows:

#### **CHAPTER 65. SOBRIETY CHECKPOINTS**

Art. 65.01. DEFINITIONS. Defines "highway or street," "limited-access or controlled-access highway," "law enforcement agency," and "sobriety checkpoint" (checkpoint).

Art. 65.02. AUTHORIZATION FOR SOBRIETY CHECKPOINTS. Authorizes a law enforcement agency to operate a temporary checkpoint as provided by this chapter on a highway or street, other than a limited-access or controlled-access highway, to determine whether persons operating motor vehicles on the highway or street are intoxicated and in violation of Section 49.04 (Driving While Intoxicated) or 49.045 (Driving While Intoxicated with Child Passenger), Penal Code.

Art. 65.03. LAW ENFORCEMENT AGENCY COORDINATION. Requires each law enforcement agency to coordinate efforts with other law enforcement agencies as appropriate to implement this chapter.

Art. 65.04. APPROVAL OF AND PROCEDURES FOR SOBRIETY CHECKPOINTS.  
(a) Requires a peace officer of at least the rank of lieutenant or its equivalent in the law enforcement agency to approve the operation of a sobriety checkpoint by peace officers of the agency and the procedures to be used in the operation of the checkpoint before the checkpoint begins operation.

(b) Requires the law enforcement agency to record in writing the procedures used in selecting the site for the checkpoint and to be used in the operation of the checkpoint.

(c) Requires that the procedures for the operation of a checkpoint ensure that the selection of motor vehicles to be stopped is reasonably predictable and nonarbitrary.

(d) Requires that the criteria for selecting the location for a checkpoint include the number of traffic accidents in the vicinity of the location in which the use of alcohol was a factor and that occurred in the preceding 12 months and the number of arrests for intoxication-related offenses in that vicinity in the preceding 12 months. Requires that the selection of the location of a checkpoint be made without regard to the ethnic or socioeconomic characteristics of the area in which the checkpoint is located.

(e) Requires the law enforcement agency, in establishing the location, time, and design of a checkpoint, to consider the safety of the public entering the checkpoint and the peace officers operating the checkpoint. Requires the law enforcement agency to make reasonable efforts to place signs or other devices to advise operators of oncoming motor vehicles of the checkpoint and the purpose of the checkpoint, to demarcate the checkpoint with flares, flags, or traffic cones, and to otherwise illuminate the checkpoint as necessary.

(f) Requires the peace officer who makes the initial traffic directive or other communication with the operator of a motor vehicle at the checkpoint to be wearing a uniform of the law enforcement agency that is distinguishable from civilian dress.

(g) Requires the law enforcement agency to establish procedures governing the encounters between motor vehicle operators and the peace officers to ensure that intrusion on the operator is minimized and an inquiry is reasonably related to determining whether the operator is intoxicated and in violation of Section 49.04 or 49.045, Penal Code.

(h) Prohibits a peace officer, notwithstanding Section 521.025 (License to be Carried and Exhibited on Demand; Criminal Penalty) or 601.053 (Evidence of Financial Responsibility), Transportation Code, from requesting a person operating a motor vehicle at the checkpoint to display the person's driver's license or to furnish evidence of financial responsibility unless the officer has reasonable suspicion or probable cause to believe that the person has committed or is committing an offense. Prohibits a peace officer from directing the operator of or a passenger in a motor vehicle to leave the vehicle or move the vehicle off the highway or street or routine checkpoint diversion route unless the officer has reasonable suspicion or probable cause to believe that the person has committed or is committing an offense. Authorizes the design of a checkpoint to require that each motor vehicle passing through the checkpoint be diverted to a location adjacent to the highway or street to ensure safety.

(i) Prohibits a peace officer at the checkpoint from requiring a vehicle operator to perform a sobriety test unless the officer has reasonable suspicion or probable cause to believe that the operator is in violation of Section 49.04 or 49.045, Penal Code. Requires a peace officer who requires or requests an operator to provide a specimen of breath, blood, or urine to comply with Chapter 724 (Implied Consent), Transportation Code.

(j) Provides that unless a peace officer has reasonable suspicion or probable cause to detain a motor vehicle operator or passenger for a criminal offense, the time during which an officer makes an inquiry of an operator or passenger should not exceed three minutes, and the total time during which the operator is required to wait to pass through the check point should not exceed 10 minutes. Requires

the law enforcement agency to make reasonable efforts to reduce these periods to not more than one and five minutes, respectively.

(k) Requires the law enforcement agency to publicize the date and time for the operation of a checkpoint but is not required to disclose the location of the checkpoint.

(l) Prohibits a law enforcement agency from operating a checkpoint at one location for more than four hours and from operating a checkpoint at the same location more than twice in a 30-day period. Provides that, for the purposes of this subsection, checkpoints located within one-half mile of each other are considered to be at the same location.

(m) Requires a law enforcement agency to keep a record of the operation of a checkpoint that contains the date, time, location, and duration of the checkpoint; the number of motor vehicles stopped at the checkpoint and the number of arrests made and citations issued at the checkpoint; and the identities of the peace officers operating the checkpoint.

SECTION 2. Effective date: upon passage or September 1, 2009.