

By: Deuell, et al.

S.B. No. 261

A BILL TO BE ENTITLED

AN ACT

relating to the taking of a specimen of the breath or blood of a person arrested for an intoxication offense under certain circumstances.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act shall be known as the Nicole "Lilly" Lalime Act.

SECTION 2. Subsections (b) and (d), Section 724.012, Transportation Code, are amended to read as follows:

(b) A peace officer shall require the taking of a specimen of the person's breath or blood under any of the following circumstances if ~~+~~

~~(1)~~ the officer arrests the person for an offense under Chapter 49, Penal Code, involving the operation of a motor vehicle or a watercraft and the person refuses the officer's request to submit to the taking of a specimen voluntarily: ~~+~~

(1) ~~(2)~~ the person was the operator of a motor vehicle or a watercraft involved in an accident that the officer reasonably believes occurred as a result of the offense and, ~~+~~

~~(3)~~ at the time of the arrest, the officer reasonably believes that as a direct result of the accident:

(A) any individual has died or will die; ~~or~~

(B) an individual other than the person has suffered serious bodily injury; or

1 (C) an individual other than the person has
2 suffered bodily injury and been transported to a hospital or other
3 medical facility for medical treatment;

4 (2) the offense for which the officer arrests the
5 person is an offense under Section 49.045, Penal Code; or

6 (3) at the time of the arrest, the officer possesses or
7 receives reliable information from a credible source that the
8 person:

9 (A) has been previously convicted or placed on
10 probation for an offense under Section 49.045, 49.07, or 49.08,
11 Penal Code, or an offense under the laws of another state containing
12 elements substantially similar to the elements of an offense under
13 those sections; or

14 (B) has been previously convicted or placed on
15 probation on two or more occasions for an offense under Section
16 49.04, 49.05, 49.06, or 49.065, Penal Code, or an offense under the
17 laws of another state containing elements substantially similar to
18 the elements of an offense under those sections ~~and~~

19 ~~[(4) the person refuses the officer's request to~~
20 ~~submit to the taking of a specimen voluntarily].~~

21 (d) In this section, "bodily injury" and "serious bodily
22 injury" have ~~has~~ the meanings ~~meaning~~ assigned by Section 1.07,
23 Penal Code.

24 SECTION 3. Article 18.01, Code of Criminal Procedure, is
25 amended by amending Subsection (c) and adding Subsection (j) to
26 read as follows:

27 (c) A search warrant may not be issued under Article

1 18.02(10) [~~pursuant to Subdivision (10) of Article 18.02 of this~~
 2 ~~code~~] unless the sworn affidavit required by Subsection (b) [~~of~~
 3 ~~this article~~] sets forth sufficient facts to establish probable
 4 cause: (1) that a specific offense has been committed, (2) that the
 5 specifically described property or items that are to be searched
 6 for or seized constitute evidence of that offense or evidence that a
 7 particular person committed that offense, and (3) that the property
 8 or items constituting evidence to be searched for or seized are
 9 located at or on the particular person, place, or thing to be
 10 searched. Except as provided by Subsections (d), [and] (i), and (j)
 11 [of this article], only a judge of a municipal court of record or a
 12 county court who is an attorney licensed by the State of Texas, a
 13 statutory county court judge, a district court judge, a judge of the
 14 Court of Criminal Appeals, including the presiding judge, or a
 15 justice of the Supreme Court of Texas, including the chief justice,
 16 may issue warrants under Article 18.02(10) [~~pursuant to Subdivision~~
 17 ~~(10), Article 18.02 of this code~~].

18 (j) Any magistrate who is an attorney licensed by this state
 19 may issue a search warrant under Article 18.02(10) to collect a
 20 blood specimen from a person who:

21 (1) is arrested for an offense under Section 49.04,
 22 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code; and

23 (2) refuses to submit to a breath or blood alcohol
 24 test.

25 SECTION 4. (a) Section 724.012, Transportation Code, as
 26 amended by this Act, applies only to an offense committed on or
 27 after the effective date of this Act. An offense committed before

1 the effective date of this Act is governed by the law in effect when
2 the offense was committed, and the former law is continued in effect
3 for that purpose. For purposes of this section, an offense was
4 committed before the effective date of this Act if any element of
5 the offense was committed before that date.

6 (b) Article 18.01, Code of Criminal Procedure, as amended by
7 this Act, applies only to a search warrant issued on or after the
8 effective date of this Act. A search warrant issued before the
9 effective date of this Act is governed by the law in effect on the
10 date the warrant was issued, and the former law is continued in
11 effect for that purpose.

12 SECTION 5. This Act takes effect September 1, 2009.