

By: Davis

S.B. No. 1418

A BILL TO BE ENTITLED

AN ACT

relating to the authority of the Department of Public Safety and certain local law enforcement agencies to establish a temporary checkpoint on a highway or street to determine whether persons are driving while intoxicated.

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

SECTION 1. Title 1, Code of Criminal Procedure, is amended by adding Chapter 65 to read as follows:

CHAPTER 65. SOBRIETY CHECKPOINTS

Art. 65.01. DEFINITIONS. In this chapter:

(1) "Department" means the Department of Public Safety.

(2) "Highway or street" and "limited-access or controlled-access highway" have the meanings assigned by Section 541.302, Transportation Code.

(3) "Law enforcement agency" means:

(A) the department;

(B) the sheriff's department of a county with a population of 250,000 or more; or

(C) the police department of a municipality with a population of 350,000 or more.

(4) "Sobriety checkpoint" means a checkpoint authorized under Article 65.02.

Art. 65.02. AUTHORIZATION FOR OPERATION OF SOBRIETY

1 CHECKPOINTS. (a) Except as otherwise provided by Subsections (b)
2 and (c), a law enforcement agency may operate on a highway or street
3 a temporary sobriety checkpoint as provided by this chapter to
4 determine whether motor vehicle operators are intoxicated and in
5 violation of Section 49.04 or 49.045, Penal Code.

6 (b) A law enforcement agency may not operate a sobriety
7 checkpoint on:

8 (1) a limited-access or controlled-access highway;

9 (2) an overpass;

10 (3) a bridge or causeway; or

11 (4) the single ingress to or egress from a designated
12 area.

13 (c) The department may not operate a sobriety checkpoint in
14 a county with a population of less than 250,000.

15 Art. 65.03. LAW ENFORCEMENT AGENCY COORDINATION. Each law
16 enforcement agency shall coordinate efforts with other law
17 enforcement agencies as appropriate to implement this chapter.

18 Art. 65.04. APPROVAL OF AND PROCEDURES FOR OPERATION OF
19 SOBRIETY CHECKPOINTS. (a) Before a law enforcement agency begins
20 operating a sobriety checkpoint, the procedures to be used in the
21 operation of the checkpoint must be approved by:

22 (1) a captain for the Texas Highway Patrol for a
23 checkpoint operated by the department;

24 (2) the elected sheriff of a county for a checkpoint
25 operated by the sheriff's department of the county; or

26 (3) the police chief of a municipality for a
27 checkpoint operated by the police department of the municipality.

1 (b) The law enforcement agency must record in writing and
2 publish on an appropriate publicly accessible Internet website:

3 (1) the criteria for and procedures used in selecting
4 each location of a sobriety checkpoint; and

5 (2) the procedures to be used in the operation of each
6 sobriety checkpoint, including procedures for selecting motor
7 vehicles to be stopped.

8 (c) The procedures for the operation of a sobriety
9 checkpoint must ensure that the selection of motor vehicles to be
10 stopped is reasonably predictable and nonarbitrary.

11 (d) The criteria for selecting the location for a sobriety
12 checkpoint must include the number of traffic accidents in the
13 vicinity of the location in which the use of alcohol was a factor
14 and that occurred in the preceding 12 months and the number of
15 arrests for intoxication-related offenses in that vicinity in the
16 preceding 12 months. The criteria for selecting the location of a
17 sobriety checkpoint may not include, and the selection of the
18 location of a sobriety checkpoint must be made without regard to,
19 the ethnic or socioeconomic characteristics of the area in which
20 the checkpoint is located.

21 (e) The law enforcement agency, in establishing the
22 location, time, and design of a sobriety checkpoint, shall consider
23 the safety of the public entering the checkpoint and the peace
24 officers operating the checkpoint. The law enforcement agency
25 shall make reasonable efforts to place signs or other devices to
26 advise an operator of an oncoming motor vehicle of the existence and
27 purpose of the sobriety checkpoint, to demarcate the checkpoint

1 with flares, flags, or traffic cones, and to otherwise illuminate
2 the checkpoint as necessary. The design of a sobriety checkpoint
3 may require each motor vehicle passing through the checkpoint to be
4 diverted to a location adjacent to the highway or street to ensure
5 safety.

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

10 (g) The law enforcement agency shall establish procedures
11 governing the encounters between motor vehicle operators and the
12 peace officers to ensure that:

13 (1) a video and audio recording is made of each
14 encounter;

15 (2) intrusion on the operator is minimized; and

16 (3) any inquiry by the peace officer is reasonably
17 related to determining whether the operator is intoxicated and in
18 violation of Section 49.04 or 49.045, Penal Code.

19 (h) Notwithstanding Section 521.025 or 601.053,
20 Transportation Code, or Section 411.205, Government Code, a peace
21 officer may not request a motor vehicle operator at the sobriety
22 checkpoint to display the operator's driver's license or license to
23 carry a concealed handgun or to furnish evidence of financial
24 responsibility unless the officer has reasonable suspicion or
25 probable cause to believe that the operator has committed or is
26 committing an offense. A peace officer may not direct a motor
27 vehicle operator to leave the vehicle or move the vehicle off the

1 highway or street or sobriety checkpoint diversion route unless the
2 officer has reasonable suspicion or probable cause to believe that
3 the operator has committed or is committing an offense.

4 (i) A peace officer at the sobriety checkpoint may not
5 require a motor vehicle operator to perform a sobriety test unless
6 the officer has reasonable suspicion or probable cause to believe
7 that the operator is in violation of Section 49.04 or 49.045, Penal
8 Code. A peace officer who requests or requires an operator to
9 provide a specimen of breath or blood must comply with Chapter 724,
10 Transportation Code.

11 (j) Unless a peace officer has reasonable suspicion or
12 probable cause to detain a motor vehicle operator for a criminal
13 offense, the time during which an officer makes an inquiry of an
14 operator should not exceed three minutes, and the total time during
15 which the operator must wait to pass through the checkpoint should
16 not exceed 10 minutes. The law enforcement agency shall make
17 reasonable efforts to reduce these periods to not more than one and
18 five minutes, respectively.

19 (k) Before beginning the operation of a sobriety
20 checkpoint, the law enforcement agency shall publicize through the
21 use of the media the date and time for the operation of that
22 checkpoint but is not required to disclose the location of the
23 checkpoint.

24 (l) A law enforcement agency may not operate a sobriety
25 checkpoint at one location for more than four hours and may not
26 operate a checkpoint at the same location more than once in a
27 12-month period. For the purposes of this subsection, sobriety

1 checkpoints located within one mile of each other are considered to
2 be at the same location.

3 (m) For each sobriety checkpoint operated under this
4 chapter, the law enforcement agency operating the checkpoint shall
5 maintain:

6 (1) until at least the fifth anniversary of the date on
7 which the agency concludes the operation of the checkpoint, a
8 record of the operation of the checkpoint that contains:

9 (A) the date, time, location, and duration of the
10 checkpoint;

11 (B) the procedures used in selecting the location
12 for the checkpoint;

13 (C) the number and characteristics of the motor
14 vehicles stopped at the checkpoint;

15 (D) the number and nature of any arrests made or
16 citations issued at the checkpoint; and

17 (E) the identity of each peace officer operating
18 the checkpoint; and

19 (2) until at least the second anniversary of the date
20 on which the agency concludes the operation of the checkpoint, any
21 video or audio recording made under Subsection (g)(1) of an
22 encounter between a motor vehicle operator and a peace officer at
23 the checkpoint.

24 Art. 65.05. PUBLIC NOTICE. (a) Not later than the third
25 day before the date the operation of a sobriety checkpoint is
26 scheduled to begin, the captain, sheriff, or police chief who
27 approved the checkpoint, as applicable, shall provide public notice

1 of the date, time, location, and duration of the checkpoint by:

2 (1) posting notice on the law enforcement agency's
3 Internet website; or

4 (2) if the law enforcement agency does not have an
5 Internet website or is otherwise unable to comply with Subdivision
6 (1):

7 (A) requesting the secretary of state to post the
8 notice on the secretary of state's Internet website, if the
9 department will operate the checkpoint;

10 (B) posting the notice on a bulletin board in the
11 county courthouse at a location convenient and clearly visible to
12 the public, if the sheriff's department of the county will operate
13 the checkpoint; or

14 (C) posting the notice on a bulletin board in the
15 city hall at a location convenient and clearly visible to the
16 public, if the police department of the municipality will operate
17 the checkpoint.

18 (b) On receipt of a request by the department under
19 Subsection (a)(2)(A), the secretary of state shall post notice on
20 the secretary of state's Internet website of the date, time,
21 location, and duration of the sobriety checkpoint with respect to
22 which the request is made.

23 (c) The law enforcement agency or secretary of state shall
24 post a notice required by this article continuously for the
25 three-day period preceding the operation of the sobriety
26 checkpoint.

27 Art. 65.06. REPORT ON EFFECTIVENESS OF SOBRIETY

1 CHECKPOINTS. (a) Not later than January 15 of each calendar year,
2 each law enforcement agency that operated a sobriety checkpoint
3 during the preceding calendar year shall submit a report on the
4 operation of the checkpoint to the traffic safety section of the
5 traffic operations division of the Texas Department of
6 Transportation.

7 (b) The traffic operations division is entitled to inspect
8 any information in the possession of the law enforcement agency
9 that relates to the operation of a sobriety checkpoint by the
10 agency.

11 (c) Not later than February 1, 2019, the traffic operations
12 division shall submit a report on the effectiveness of sobriety
13 checkpoints operated under this chapter to the governor, the
14 lieutenant governor, and the speaker of the house of
15 representatives.

16 Art. 65.07. EXPIRATION. This chapter expires August 31,
17 2019.

18 SECTION 2. A law enforcement agency authorized to operate a
19 sobriety checkpoint under Chapter 65, Code of Criminal Procedure,
20 as added by this Act, shall submit the first report required by
21 Article 65.06, Code of Criminal Procedure, as added by this Act, not
22 later than January 15, 2014.

23 SECTION 3. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2013.