

BILL ANALYSIS

C.S.H.B. 1178
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There is a need to broaden the powers of certain magistrates to expedite the process of collecting a blood specimen from a person who is arrested for certain intoxication offenses and who refuses to submit to a breath or blood alcohol test. C.S.H.B. 1178 seeks to remedy the lack of power of magistrates who are not licensed attorneys and thus are unable to issue such search warrants by authorizing any magistrate, not only a licensed attorney, to issue a search warrant to collect a blood specimen from such persons if certain conditions are met.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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

C.S.H.B. 1178 amends the Code of Criminal Procedure to authorize any magistrate authorized to issue a search warrant to search for and seize property or items constituting evidence of an offense or constituting evidence tending to show that a particular person committed an offense, subject to the bill's conditions, to issue a search warrant to collect a blood specimen from a person who is arrested for any of the following intoxication offenses and refuses to submit to a breath or blood alcohol test:

- driving, boating, or flying while intoxicated;
- driving while intoxicated with a child passenger;
- assembling or operating an amusement ride while intoxicated; or
- intoxication assault or manslaughter.

The bill authorizes a magistrate who is not authorized under applicable law to issue a search warrant for the previously described purpose to issue a search warrant to collect a blood specimen from such a person only if either of the following applies:

- the applicant for a search warrant, or another person at the direction of the applicant, attempts to contact an applicable magistrate authorized under state law to issue a warrant:
 - by phone, at a number at which it is reasonable to expect the magistrate to answer under the circumstances, and the phone call is not answered by the magistrate within a reasonable time; or
 - by any other means for which there is a reasonable expectation of establishing communication with the magistrate, and contact with the magistrate has not been made within five minutes of the first attempt at contact; or

- the county in which the magistrate serves assigns consideration of warrants to collect a blood specimen from persons arrested for the applicable intoxication offenses on a rotating or scheduled basis.

The bill establishes that evidence obtained under a warrant issued by a magistrate as authorized under the bill is not inadmissible in a criminal action solely because the warrant was issued in violation of the bill's conditions on that issuance.

C.S.H.B. 1178 repeals Article 18.01(j), Code of Criminal Procedure.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 1178 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

While both the introduced and the substitute authorize any magistrate to issue a search warrant for search and seizure of certain property or items to collect a blood specimen from certain persons arrested for specified intoxication offenses, the substitute conditions this authorization for a magistrate not otherwise authorized under law to issue such a search warrant on either the attempted contact of a magistrate authorized under law to do so in a specified manner or the county in which the magistrate serves assigning consideration of such warrants on a rotating or scheduled basis, whereas the introduced did not include any conditions on the authorization.

The substitute includes a provision absent from the introduced establishing that evidence obtained under a warrant issued by an authorized magistrate is not inadmissible in a criminal action solely because the warrant was issued in violation of the substitute's additional conditions.