88R23934 CJD-F

By:  Rogers, Cook, Darby, Slawson, Price, H.B. No. 1178

     et al.

Substitute the following for H.B. No. 1178:

By:  Moody C.S.H.B. No. 1178

A BILL TO BE ENTITLED

AN ACT

relating to the authority of a magistrate to issue a search warrant to collect a blood specimen from a person arrested for certain intoxication offenses.

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

SECTION 1.  Chapter 18, Code of Criminal Procedure, is amended by adding Article 18.0216 to read as follows:

Art. 18.0216.  ISSUANCE OF SEARCH WARRANT FOR CERTAIN INTOXICATION OFFENSES. (a) Subject to Subsection (b), any magistrate may issue a search warrant under Article 18.02(a)(10) to collect a blood specimen from a person who:

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

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

(b)  A magistrate who is not authorized by Article 18.01(c) or (i) to issue a search warrant under Article 18.02(a)(10) may issue a search warrant under Article 18.02(a)(10) to collect a blood specimen as described by Subsection (a) only if:

(1)  the applicant for a search warrant, or another person at the direction of the applicant, attempts to contact a magistrate authorized to issue the warrant under Article 18.01(c):

(A)  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

(B)  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

(2)  the county in which the magistrate serves assigns consideration of warrants described by Subsection (a) on a rotating or scheduled basis.

(c)  Evidence obtained under a warrant issued by a magistrate as authorized under Subsection (a) is not inadmissible in a criminal action solely because the warrant was issued in violation of Subsection (b).

SECTION 2.  Article 18.01(c), Code of Criminal Procedure, is amended to read as follows:

(c)  A search warrant may not be issued under Article 18.02(a)(10) unless the sworn affidavit required by Subsection (b) sets forth sufficient facts to establish probable cause: (1) that a specific offense has been committed, (2) that the specifically described property or items that are to be searched for or seized constitute evidence of that offense or evidence that a particular person committed that offense, and (3) that the property or items constituting evidence to be searched for or seized are located at or on the particular person, place, or thing to be searched. Except as provided by Subsections (d) and[~~,~~] (i) of this article[~~,~~] and Article 18.0216(a) [~~(j)~~], only a judge of a municipal court of record or a county court who is an attorney licensed by the State of Texas, a statutory county court judge, a district court judge, a judge of the Court of Criminal Appeals, including the presiding judge, a justice of the Supreme Court of Texas, including the chief justice, or a magistrate with jurisdiction over criminal cases serving a district court may issue warrants under Article 18.02(a)(10).

SECTION 3.  Article 18.01(j), Code of Criminal Procedure, is repealed.

SECTION 4.  This Act takes effect September 1, 2023.