

By: Rogers, Cook, Darby, Slawson, Price,
et al.

H.B. No. 1178

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

1 circumstances, and the phone call is not answered by the magistrate
2 within a reasonable time; or

3 (B) by any other means for which there is a
4 reasonable expectation of establishing communication with the
5 magistrate, and contact with the magistrate has not been made
6 within five minutes of the first attempt at contact; or

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

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

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

16 (c) A search warrant may not be issued under Article
17 18.02(a)(10) unless the sworn affidavit required by Subsection (b)
18 sets forth sufficient facts to establish probable cause: (1) that a
19 specific offense has been committed, (2) that the specifically
20 described property or items that are to be searched for or seized
21 constitute evidence of that offense or evidence that a particular
22 person committed that offense, and (3) that the property or items
23 constituting evidence to be searched for or seized are located at or
24 on the particular person, place, or thing to be searched. Except as
25 provided by Subsections (d) and[7] (i) of this article[7] and
26 Article 18.0216(a) [~~(j)~~], only a judge of a municipal court of
27 record or a county court who is an attorney licensed by the State of

1 Texas, a statutory county court judge, a district court judge, a
2 judge of the Court of Criminal Appeals, including the presiding
3 judge, a justice of the Supreme Court of Texas, including the chief
4 justice, or a magistrate with jurisdiction over criminal cases
5 serving a district court may issue warrants under Article
6 18.02(a)(10).

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8 repealed.

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