

SUBJECT: Allowing justices of the peace to issue warrants to collect blood

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Collier, Zedler, K. Bell, J. González, P. King, Moody, Murr, Pacheco

0 nays

1 absent — Hunter

WITNESSES: For — (*Registered, but did not testify:* TJ Patterson, City of Fort Worth; Frederick Frazier, Dallas Police Association, FOP 716 and State FOP; David Sinclair, Game Warden Peace Officers Association; Bill Elkin, Houston Police Retired Officers Association; JJ Rocha, Texas Municipal League; J. Chancellor, Texas Police Chiefs Association; Noel Johnson, TMPA)

Against — (*Registered, but did not testify:* Allen Place, Texas Criminal Defense Lawyers Association; Darwin Hamilton)

On — Lynn Holt, Justice of the Peace and Constables Association of Texas

BACKGROUND: Under Code of Criminal Procedure art. 18.01(j), any magistrate who is an attorney licensed in Texas may issue a search warrant to collect a blood specimen from anyone arrested for driving while intoxicated or certain other intoxication offenses and who refuses to submit to a breath or blood alcohol test.

Art18.01(i) gives authority in certain counties for any magistrate to issue a search warrant in these cases. This authority applies in a county that does not have a municipal court of record with a courtroom located in that county and a judge who is an attorney licensed by the state, a county court judge who is an attorney licensed by the state, or a statutory county court judge.

DIGEST: CSHB 2260 would allow a justice of the peace to issue a search warrant to collect a blood specimen from a person who was arrested for driving while intoxicated or certain other intoxication offenses if a magistrate authorized under current law was unavailable and unreachable or exigent circumstances existed.

CSHB 2260 would prevail over another Act of the 86th Legislature, regular session, 2019, relating to nonsubstantive additions to and corrections in enacted codes.

The bill would take effect September 1, 2019.

SUPPORTERS SAY: CSHB 2260 would ensure that small and rural counties could continue their efforts to keep Texas roads safe by enforcing driving while intoxicated laws. In some counties, it can be difficult to meet requirements to have a magistrate who is an attorney sign a warrant to collect a blood sample. Magistrates might not be lawyers, and the district judge or other person who met the criteria could be miles away from law enforcement activity. In some counties there might be only one magistrate who met the current criteria, and that magistrate would carry the burden of responding to all requests. Provisions in current law allowing any magistrate to sign these warrants are narrowly drawn and might not apply to a particular county.

CSHB 2260 would be a logical extension of current law, which allows any magistrate in some counties to sign these warrants and of the duties of justices of the peace. Justices handle inquests, arrest warrants, and other duties that give them ample experience and knowledge to issue warrants in driving while intoxicated cases.

OPPONENTS SAY: The authority to issue warrants to take blood specimens in driving while intoxicated cases should be reserved for licensed attorneys because of the heightened expertise needed to authorize law enforcement officers to take something from an individual's body. Authorizing search warrants requires knowledge of constitutional law and expertise in criminal matters

such as what constitutes probable cause. Because taking blood involves an individual's body, it is important that these requests go before judges and magistrates who are attorneys and have knowledge in these areas.