

BILL ANALYSIS

Senate Research Center
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S.B. 44
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Criminal Justice
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DIGEST AND PURPOSE

The United States Supreme Court has held that sobriety checkpoints are legal. The Texas Court of Criminal Appeals ruled in 1994 that because no state guidelines exist governing the proper conduct of checkpoints, such checkpoints are unconstitutional. The federal Transportation for the 21st Century Act created new funding opportunities for highway safety programs. The Texas Department of Transportation has identified the Alcohol-Impaired Driving Prevention Incentive Grants, also known as Section 410 grants, as a possible source for more revenue, if Texas meets certain criteria. As proposed, S.B. 44 would assist Texas in possibly qualifying for an additional \$2.3 million in federal traffic safety funds by meeting said criteria.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 1, Code of Criminal Procedure, by adding Chapter 65 as follows:

CHAPTER 65. SOBRIETY CHECKPOINTS

Art. 65.01. DEFINITIONS. Defines "highway or street" and "law enforcement agency."

Art. 65.02. AUTHORIZATION FOR SOBRIETY CHECKPOINTS. Authorizes a law enforcement agency to operate a temporary checkpoint as provided by this chapter on a highway or street to determine whether persons operating motor vehicles on the highway or street are intoxicated and in violation of Section 49.04, Penal Code.

Art. 65.03 APPROVAL OF AND PROCEDURES FOR SOBRIETY CHECKPOINTS. (a) Requires a peace officer of at least the rank of lieutenant or its equivalent in the law enforcement agency to approve the operation of a checkpoint by peace officers of the agency and the procedures to be used in the operation of the checkpoint before the checkpoint begins operation.

(b) Requires the law enforcement agency to record in writing certain procedures related to the operation of the checkpoints.

(c) Requires the procedures for the operation of a checkpoint to ensure that the selection of motor vehicles to be stopped is reasonably predictable and nonarbitrary.

(d) Requires the law enforcement agency, in establishing the location, time, and design of a checkpoint, to consider the safety of the public entering the checkpoint and the peace officers operating the checkpoint. Requires the law enforcement agency to make reasonable efforts to place signs or other devices to advise operators of oncoming motor vehicles of the checkpoint and the purpose of the checkpoint, to demarcate the checkpoint

with flares, flags, or traffic cones, and to otherwise illuminate the checkpoint as necessary.

(e) Requires the peace officer who makes the initial traffic directive or other communication with the operator of a motor vehicle at the checkpoint to be wearing a uniform of the law enforcement agency that is distinguishable from civilian dress.

(f) Requires the law enforcement agency to establish procedures governing the encounters between motor vehicle operators and the peace officers to ensure that certain criteria are met.

(g) Authorizes a peace officer to request a person operating a motor vehicle at the checkpoint to display the person's driver license and to furnish evidence of financial responsibility as required by law. Prohibits a peace officer from directing the operator of or a passenger in a motor vehicle to leave the vehicle or move the vehicle off the highway or street or routine checkpoint diversion route unless the officer has reasonable suspicion or probable cause to believe that the person has committed or is committing an offense. Authorizes the design of a checkpoint to require that each motor vehicle passing through the checkpoint be diverted to a location adjacent to the highway or street to ensure safety.

(h) Prohibits a peace officer at the checkpoint from requiring a motor vehicle operator to perform a sobriety test unless the officer has reasonable suspicion or probable cause to believe that the operator is in violation of Section 49.04, Penal Code. Requires a peace officer who requires or requests an operator to provide a specimen of breath, blood, or urine to comply with Chapter 724, Transportation Code.

(i) Provides that unless a peace officer has reasonable suspicion or probable cause to detain a motor vehicle operator or passenger for a criminal offense, the time during which an officer makes an inquiry of an operator or passenger should not exceed three minutes, and the total time during which the operator must wait to pass through the checkpoint should not exceed 10 minutes. Requires the law enforcement agency to make reasonable efforts to reduce these periods to not more than one and five minutes, respectively.

(j) Requires the law enforcement agency to publicize the operation of a checkpoint but provides that it is not required to disclose the precise date, time, location, or purpose of the checkpoint.

(k) Prohibits a law enforcement agency from operating a checkpoint at one location for more than four hours and from operating a checkpoint at the same location more than twice in a seven-day period. Provides that for the purposes of this subsection, checkpoints located within one-half mile of each other are considered to be at the same location. Prohibits this subsection from applying in an emergency.

(l) Requires the law enforcement agency to keep a record of the operation of a checkpoint that contains certain information.

SECTION 2. Effective date: upon passage or September 1, 2003.