

BILL ANALYSIS

Senate Research Center

C.S.S.B. 59
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Transportation & Homeland Security
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

According to the National Highway Traffic Safety Administration, in 2004, there were 1,642 alcohol-related fatalities in Texas, making up 46 percent of the state's total vehicle fatalities. Results from the National Center for Injury Prevention and Control indicate that sobriety checkpoints reduce alcohol-related crashes by nearly 20 percent, in addition to assisting in the prevention of drunk driving and saving lives.

The U.S. Supreme Court has held sobriety checkpoints to be constitutional (*Michigan Department of State vs. Sitz*, 1990). Texas law enforcement agencies conducted sobriety checkpoints until 1994, when the Texas Court of Criminal Appeals ruled that the checkpoints are unconstitutional until the legislature establishes uniform standards.

C.S.S.B. 59 establishes uniform standards for Texas law enforcement agencies to enforce sobriety checkpoints on Texas highways. It does not require law enforcement agencies to conduct sobriety checkpoints, however, it does provide law enforcement with guidelines if the agency decides to conduct a checkpoint.

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. (a) Authorizes a law enforcement agency to operate a temporary checkpoint to determine whether drivers on a highway or street are intoxicated and in violation of Section 49.04 (Driving While Intoxicated) or 49.045 (Driving While Intoxicated With Child Passenger), Penal Code.

(b) Requires law enforcement agencies, as defined under this chapter, to coordinate their efforts for the implementation of this chapter.

Art. 65.03. APPROVAL OF AND PROCEDURES FOR SOBRIETY CHECKPOINTS. (a) Requires that the operation of a sobriety checkpoint, and the procedures thereof, be approved by a peace officer of at least the rank of lieutenant or its equivalent in the law enforcement agency before the checkpoint begins operation. Requires the selection of the location of the checkpoint to be made without regard to the ethnic or socioeconomic characteristics of the area in which the checkpoint is located.

(b) Requires a law enforcement agency conducting a sobriety checkpoint to record, in writing, the procedures used in selecting the checkpoint site and those for the operation thereof.

- (c) Requires that the procedures ensure that the selection of vehicles to be stopped is reasonably predictable and nonarbitrary.
- (d) Requires the law enforcement agency to consider the safety of the public entering the checkpoint and the peace officers operating it when establishing the location, time, and design of a checkpoint. Requires the law enforcement agency to make reasonable efforts to post signs or other devices advising drivers of a checkpoint and to demarcate the checkpoint with flares, flags, or traffic cones, and 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 (driver) to wear a distinguishable uniform of the law enforcement agency.
- (f) Requires the law enforcement agency to establish procedures to ensure minimized intrusion on the driver, and that the inquiry is reasonably related to determining whether the driver is intoxicated and in violation of Section 49.04 or 49.045, Penal Code.
- (g) Prohibits a peace officer from directing the driver of or a passenger in a motor vehicle to leave the vehicle or move the vehicle away from the street or highway, or routine checkpoint diversion route unless the officer has reasonable suspicion or probable cause to believe that the person is committing or has committed an offense. Authorizes the design of the checkpoint to require that each vehicle that passes through the checkpoint be diverted to a location adjacent to the highway.
- (h) Prohibits a peace officer from requiring a driver of a vehicle that passes through a sobriety checkpoint to perform a field sobriety test unless the officer has reason to believe that the driver is in violation of Section 49.04 or 49.045, Penal Code. Provides that an officer who requires or requests a driver to provide a breath, blood, or urine specimen must comply with Chapter 724 (Implied Consent), Title 7, Transportation Code.
- (i) Provides that, unless the officer has reasonable suspicion or probable cause to detain a driver or passenger for a criminal offense, the time during which an officer makes an inquiry of a driver or passenger should not exceed three minutes, and the total time that a driver must wait to pass through a checkpoint should not exceed 10 minutes. Requires the law enforcement agency to make reasonable efforts to reduce these time periods to not more than one and five minutes, respectively.
- (j) Requires the law enforcement agency to publicize the operation of the checkpoint, but not the precise date, time, location, or purpose.
- (k) Prohibits a checkpoint from being operated in one location for more than four hours and from being operated in the same location more than twice in a seven-day period. Provides that checkpoints within one-half mile of each other are considered to be the same location. Provides an exception in case of an emergency.
- (l) Requires a law enforcement agency to keep a record of each sobriety checkpoint. Sets forth the content requirements that the record is required to contain.

SECTION 2. Effective date: upon passage or September 1, 2007.