

By: Carona, et al.

S.B. No. 298

A BILL TO BE ENTITLED

AN ACT

relating to the authority of the Department of Public Safety of the State of Texas and certain local law enforcement agencies to establish a checkpoint on a highway or street to determine whether persons are driving while intoxicated.

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

SECTION 1. Title 1, Code of Criminal Procedure, is amended by adding Chapter 65 to read as follows:

CHAPTER 65. SOBRIETY CHECKPOINTS

Art. 65.01. DEFINITIONS. In this chapter:

(1) "Highway or street" and "limited-access or controlled-access highway" have the meanings assigned by Section 541.302, Transportation Code.

(2) "Law enforcement agency" means:

(A) the Department of Public Safety;

(B) the sheriff's department of a county with a population of 250,000 or more; or

(C) the police department of a municipality with a population of 500,000 or more.

(3) "Sobriety checkpoint" means a checkpoint authorized under Article 65.02.

Art. 65.02. AUTHORIZATION FOR SOBRIETY CHECKPOINTS.

(a) Except as provided by Subsection (b), a law enforcement agency may operate a temporary checkpoint as provided by this chapter to

1 determine whether persons operating motor vehicles on a highway or
2 street are intoxicated and in violation of Section 49.04 or 49.045,
3 Penal Code. The checkpoint must be operated on a highway or street
4 other than:

- 5 (1) a limited-access or controlled-access highway;
- 6 (2) an overpass;
- 7 (3) a bridge or causeway; or
- 8 (4) the single ingress to or egress from a designated
9 area.

10 (b) The Department of Public Safety may not operate a
11 temporary checkpoint in a county with a population of less than
12 250,000.

13 Art. 65.03. LAW ENFORCEMENT AGENCY COORDINATION. Each law
14 enforcement agency shall coordinate efforts with other law
15 enforcement agencies as appropriate to implement this chapter.

16 Art. 65.04. APPROVAL OF AND PROCEDURES FOR SOBRIETY
17 CHECKPOINTS. (a) As applicable, a captain for the Texas Highway
18 Patrol, the sheriff elected to that position, or the mayor of the
19 municipality must approve the operation of a sobriety checkpoint by
20 peace officers of the Department of Public Safety, a sheriff's
21 department, or a municipal police department and the procedures to
22 be used in the operation of the checkpoint before the checkpoint
23 begins operation.

24 (b) The law enforcement agency must record in writing and
25 publish on an appropriate publicly accessible Internet website the
26 procedures:

- 27 (1) used in selecting each site for a sobriety

1 checkpoint; and

2 (2) to be used in the operation of each sobriety
3 checkpoint, including procedures regarding the selection of motor
4 vehicles to be stopped.

5 (c) The procedures for the operation of a sobriety
6 checkpoint must ensure that the selection of motor vehicles to be
7 stopped is reasonably predictable and nonarbitrary.

8 (d) The criteria for selecting the location for a sobriety
9 checkpoint must include the number of traffic accidents in the
10 vicinity of the location in which the use of alcohol was a factor
11 and that occurred in the preceding 12 months and the number of
12 arrests for intoxication-related offenses in that vicinity in the
13 preceding 12 months. The selection of the location of a sobriety
14 checkpoint must be made without regard to the ethnic or
15 socioeconomic characteristics of the area in which the checkpoint
16 is located.

17 (e) The law enforcement agency, in establishing the
18 location, time, and design of a sobriety checkpoint, shall consider
19 the safety of the public entering the checkpoint and the peace
20 officers operating the checkpoint. The law enforcement agency
21 shall make reasonable efforts to place signs or other devices to
22 advise operators of oncoming motor vehicles of the sobriety
23 checkpoint and the purpose of the checkpoint, to demarcate the
24 checkpoint with flares, flags, or traffic cones, and to otherwise
25 illuminate the checkpoint as necessary.

26 (f) The peace officer who makes the initial traffic
27 directive or other communication with the operator of a motor

1 vehicle at the sobriety checkpoint must be wearing a uniform of the
2 law enforcement agency that is distinguishable from civilian dress.

3 (g) The law enforcement agency shall establish procedures
4 governing the encounters between motor vehicle operators and the
5 peace officers to ensure that:

6 (1) a video and audio recording is made of the
7 encounter;

8 (2) intrusion on the operator is minimized; and

9 (3) an inquiry is reasonably related to determining
10 whether the operator is intoxicated and in violation of Section
11 49.04 or 49.045, Penal Code.

12 (h) Notwithstanding Section 521.025 or 601.053,
13 Transportation Code, a peace officer may not request a person
14 operating a motor vehicle at the sobriety checkpoint to display the
15 person's driver's license or concealed handgun license or to
16 furnish evidence of financial responsibility unless the officer has
17 reasonable suspicion or probable cause to believe that the person
18 has committed or is committing an offense. A peace officer may not
19 direct the operator of a motor vehicle to leave the vehicle or move
20 the vehicle off the highway or street or routine sobriety
21 checkpoint diversion route unless the officer has reasonable
22 suspicion or probable cause to believe that the person has
23 committed or is committing an offense. The design of a sobriety
24 checkpoint may require that each motor vehicle passing through the
25 checkpoint be diverted to a location adjacent to the highway or
26 street to ensure safety.

27 (i) A peace officer at the sobriety checkpoint may not

1 require a motor vehicle operator to perform a sobriety test unless
2 the officer has reasonable suspicion or probable cause to believe
3 that the operator is in violation of Section 49.04 or 49.045, Penal
4 Code. A peace officer who requires or requests an operator to
5 provide a specimen of breath, blood, or urine must comply with
6 Chapter 724, Transportation Code.

7 (j) Unless a peace officer has reasonable suspicion or
8 probable cause to detain a motor vehicle operator for a criminal
9 offense, the time during which an officer makes an inquiry of an
10 operator should not exceed three minutes, and the total time during
11 which the operator must wait to pass through the checkpoint should
12 not exceed 10 minutes. The law enforcement agency shall make
13 reasonable efforts to reduce these periods to not more than one and
14 five minutes, respectively.

15 (k) Before beginning the operation of a sobriety
16 checkpoint, the law enforcement agency shall publicize through the
17 use of the media the date and time for the operation of a sobriety
18 checkpoint but is not required to disclose the location of the
19 checkpoint.

20 (l) A law enforcement agency may not operate a sobriety
21 checkpoint at one location for more than four hours and may not
22 operate a checkpoint at the same location more than once in a
23 12-month period. For the purposes of this subsection, sobriety
24 checkpoints located within one mile of each other are considered to
25 be at the same location.

26 (m) A law enforcement agency shall maintain until at least
27 the fifth anniversary of the date on which the agency concludes the

1 operation of a sobriety checkpoint a record of the operation of the
2 checkpoint that contains:

3 (1) the date, time, location, and duration of the
4 checkpoint;

5 (2) the procedures used in selecting the site for the
6 checkpoint;

7 (3) the number and characteristics of motor vehicles
8 stopped at the checkpoint and the number and nature of arrests made
9 and citations issued at the checkpoint; and

10 (4) the identities of the peace officers operating the
11 checkpoint.

12 (n) A law enforcement agency shall maintain until at least
13 the second anniversary of the date on which the agency concludes the
14 operation of a sobriety checkpoint any video or audio recording
15 made at the checkpoint of an encounter between a motor vehicle
16 operator and a peace officer under Subsection (g)(1).

17 Art. 65.05. REPORT ON EFFECTIVENESS OF CHECKPOINTS.

18 (a) Not later than January 15 of each calendar year, a law
19 enforcement agency shall report the operation of each checkpoint
20 during the preceding calendar year to the traffic safety section of
21 the traffic operations division of the Texas Department of
22 Transportation at its offices in Austin.

23 (b) The traffic operations division is entitled to inspect
24 any information in the possession of the law enforcement agency
25 that relates to the operation of a sobriety checkpoint by the
26 agency.

27 (c) Not later than February 1, 2015, the traffic operations

1 division shall submit a report on the effectiveness of sobriety
2 checkpoints operated under this chapter to the governor, the
3 lieutenant governor, and the speaker of the house of
4 representatives.

5 Art. 65.06. EXPIRATION. This chapter expires August 31,
6 2015.

7 SECTION 2. A law enforcement agency authorized to operate a
8 sobriety checkpoint under Chapter 65, Code of Criminal Procedure,
9 as added by this Act, shall submit the first report required by
10 Article 65.05 of that chapter not later than January 15, 2010.

11 SECTION 3. This Act takes effect immediately if it receives
12 a vote of two-thirds of all the members elected to each house, as
13 provided by Section 39, Article III, Texas Constitution. If this
14 Act does not receive the vote necessary for immediate effect, this
15 Act takes effect September 1, 2009.