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Written Testimony, 2011
House Bill 440

Dear Members of the Committee,

Thank you for this opportunity to present testimony in favor of H.B. 440. This bill proscribes an ineffective law enforcement policy and curbs costly civil litigation as a result of poor peace officer phlebotomy practices. Police officers must focus their efforts on law enforcement and evidence gathering, not on the medical procedures that aid those tasks. The criminal justice system has functioned for decades with this division of labor, and adherence to the existing requirements in the Transportation Code effectively serves public safety.

PROBLEM

Texas' Transportation Code allows qualified individuals to remove blood specimens from drivers suspected of driving under the influence of alcohol or prohibited substances. Historically, this function had been performed by professionals operating under the direction of a peace officer. Peace officers, however, have undergone venipuncture training so they too can remove blood specimens, and municipal law enforcement agencies throughout Texas have expressed interest in seeking funding to train peace officers in phlebotomy.

KEY FINDINGS

- Peace officers who perform phlebotomy do so for the purpose of gathering evidence. Medical personnel who perform phlebotomy do so for the purpose of safely gathering a biological specimen, which may then be used in law enforcement efforts. Allowing peace officers to engage in an invasive medical procedure solely for the purpose of gathering evidence leaves little incentive for peace officers to concern themselves with medical safety.
- Phlebotomy training for peace officers has been controversial and condemned in some major Texas municipalities as a poor use of police resources.¹
- Texas Transportation Code § 724.017(b) shields qualified technicians from civil liability, but does not shield qualified technicians from suits for negligence if they take blood upon the order of law enforcement or a warrant. Therefore, by becoming qualified technicians for the purposes of §724.017, peace officers may become liable for costly negligence actions outside of their immunity for civil liability.
- Peace officers who draw blood specimens themselves also risk increased liability from civil rights litigation over the potential problems that occur as a result of taking blood specimens in the field or in unsanitary conditions.

SOLUTION: SUPPORT H.B. 440 BY REPRESENTATIVE TURNER

H.B. 440 prevents peace officers from taking a blood specimen under the Transportation Code under any circumstances, regardless of whether they have been authorized to do so.

Prohibiting peace officers from taking drivers' blood specimens, even if they have been trained in the practice, will keep them in the field and better ensure their focus remains on higher-level crime-fighting efforts.

¹ Stephen Dean, "HPD Practices on Prisoners for Drawing Blood From Drunk Driving Suspects," June 17, 2010, <http://www.click2houston.com/news/23938401/detail.html>.