

## BILL ANALYSIS

Senate Research Center

H.B. 1634  
By: Hilderbran (Staples)  
Criminal Justice  
5/18/2003  
Engrossed

### DIGEST AND PURPOSE

Current case law requires the state to "exercise due diligence" to apprehend a defendant for violating probation including for absconding. The state is penalized if it does not continually, until the defendant is apprehended, make efforts to locate the absconder. Some feel that the defendant, who has been given a second chance by being placed on probation, should have the responsibility to comply with all terms and conditions of probation and not have as a possible result the dismissal of the state's motion to revoke probation. H.B. 1634 ensures the ability of a court to maintain jurisdiction over a person who absconds while on probation.

### 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 Section 5, Article 42.12, Code of Criminal Procedure, by adding Subsection (h), as follows:

(h) Provides that a court retains jurisdiction to hold a hearing under Subsection (b) and to proceed with an adjudication of guilt, regardless of whether the period of community supervision imposed on the defendant has expired, if before the expiration the attorney representing the state files a motion to proceed with the adjudication and a *capias* is issued for the arrest of the defendant.

SECTION 2. Amends Section 21, Article 42.12, Code of Criminal Procedure, by adding Subsection (e), to provide that a court retains jurisdiction to hold a hearing under Subsection (b) and to revoke, continue, or modify community supervision, regardless of whether the period of community supervision imposed on the defendant has expired, if before the expiration the attorney representing the state files a motion to revoke, continue, or modify community supervision and a *capias* is issued for the arrest of the defendant.

SECTION 3. Amends Article 42.12, Code of Criminal Procedure, by adding Section 24, as follows:

Sec. 24. DUE DILIGENCE. Provides that for the purposes of a hearing under Section 5(b) or 21(b), a supervision officer, peace officer, or other officer with the power of arrest under a warrant issued by a judge on the violation of a condition of community supervision satisfies a due diligence requirement if, not earlier than the 45th day before the date a motion to adjudicate or a motion to revoke is filed or not later than the 45th day after the date the motion is filed, the officer contacts or attempts to contact the defendant:

- (1) by United States mail directed to the defendant at, as reflected in the files of the department serving the county in which the order of community supervision was entered, the defendant's last known residence address or last known employment address; or
- (2) by telephone at, as reflected by the files of the department serving the county

in which the order of community supervision was entered, the defendant's last known residence telephone number.

SECTION 4. Provides that the change in law made by this Act applies to a hearing under Article 42.12, Code of Criminal Procedure, as amended by this Act, that commences on or after the effective date of this Act, regardless of whether the defendant was placed on community supervision before, on, or after the effective date of this Act.

SECTION 5. Effective date: upon passage or September 1, 2003.