

BILL ANALYSIS

H.B. 2256
By: Flores
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Under current law there are two rulings as to whether or not a bail bond should be returned to the defendant in the full amount received. Article 17.02 of the Code of Criminal Procedure requires all cash deposited as a bail bond to be refunded to the defendant, and Section 117.055 of the Local Government Code requires an administrative fee to be withheld from a cash bail refund. Thus, the statutes conflict. Although conflicting statutes may be reconciled by reading the more specific statute as an exception to the more general one, neither 17.02 nor 117.055 is more specific or general than the other. When two statutes are irreconcilable, the statute latest in date of enactment prevails.

Article 17.02 of the Code of Criminal Procedure was enacted in 1965 and has not been amended since that time. Section 117.055 of the Local Government Code was enacted in 1987 and has been amended several times, including during the latest legislative session. Prior to amendment in 1997, section 117.055 authorized withholding of an administrative fee only from trust funds deposited by litigants in civil proceedings. Section 117.055 was amended in 1997 to make the administrative fee withholding provision applicable to “registry funds,” which are defined by statute to include funds deposited as cash bail bonds. Because it is the later-enacted statute, section 117.055 of the Local Government Code prevails over article 17.02 of the Code of Criminal Procedure.

“Bail” is “the security given by the accused that he will appear and answer before the proper court the accusation brought against him, and includes a bail bond or a personal bond,” Texas Code of Criminal Procedure. Ann. art. 17.01 (Vernon 1977). Courts and the Office of the Attorney General have said that the primary purpose of bail is to secure the presence of an accused upon trial of an accusation against him. “It is not a revenue, measure intended to be a substitution for a fine, but is intended to secure the trial of the alleged offender rather than turn his securities of those of his bondsman into a penalty.” *See McConathy v. State*, 528 S.W. 2d 594, 596 (Tex. Crim. App. 1975) Thus it is the conclusion of the Office of the Attorney General that once a defendant has complied with the conditions of his bond, the cash deposited as bail must be refunded to him and may not be withheld to pay any fines or penalties owed by the defendant. After a defendant has come through on his agreement made to the courts his bail should be returned to him in full.

House Bill 2256 would amend Article 17.02 of the Code of Criminal Procedure, thus making it the most current enacted statute. Likewise this bill would secure the total amount of a defendant’s bail be returned to the defendant if a ruling of not guilty is received.

RULEMAKING AUTHORITY

It is the committee’s opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

House Bill 2256 amends the Code of Criminal Procedure, require that cash funds deposited to be receipted for by the officer receiving the funds and refunded to the defendant if the defendant complies with the conditions of the bond and upon order of the court. The bill adds the provision that the custodian of funds of the court must refund the full amount of the funds deposited by the defendant to the defendant if found

not guilty.

EFFECTIVE DATE

September 1, 2003.