

BILL ANALYSIS

C.S.H.B. 1686
By: Fletcher
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently in Texas, a bail bond that is written to obtain the release of a defendant from custody is valid for an infinite amount of time. If the defendant fails to appear, the state has a certain amount of time to prosecute the resulting bond forfeiture. However, if the underlying criminal case is never set for hearing, the bond can remain in effect forever. It has been reported that in an increasing number of incidents, the state sets a several-year-old criminal case for a hearing with no intent to act on the case and to instead seek to forfeit the bond so that forfeiture may be prosecuted. Once the forfeiture proceeds to judgment, the underlying criminal case is dismissed. C.S.H.B. 1686 seeks to end this practice.

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

C.S.H.B. 1686 amends the Code of Criminal Procedure to require a judge or magistrate in whose court a criminal action is pending to discharge a surety's liability on a bail bond under the following conditions: the surety files with the judge or magistrate an affidavit stating that more than five years have elapsed since the date on which the surety posted the bond, that the surety no longer wishes to be a surety on the bond, and that the surety will give the prosecuting attorney notice of the affidavit; and the surety gives such notice of the affidavit to the prosecuting attorney. The bill requires a judge or magistrate who discharges a surety's liability in that manner, if an indictment or information remains pending against the defendant, to issue a capias for the defendant. The bill makes nonsubstantive changes.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1686 contains a provision not included in the original requiring the affidavit filed with a judge or magistrate by a surety for purposes of discharging liability on a bail bond to state that the surety will give the prosecuting attorney notice of the affidavit. The substitute contains a provision not included in the original making the requirement that the judge or magistrate discharge a surety's liability if the surety files the affidavit contingent on the surety giving the prosecuting attorney the notice of the affidavit. The substitute contains a provision not included in the original requiring the judge or magistrate to issue a capias for the defendant if the judge or magistrate discharges a surety's liability and an indictment or information remains pending against the defendant.