

BILL ANALYSIS

C.S.H.B. 3077
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law sets out ways in which a surety may discharge the surety's liability on a bail bond before forfeiture. The surety may physically return the accused into the custody of the appropriate county sheriff, but interested parties note that this method is rarely used. As an alternative to discharging liability, the surety may deliver to the county sheriff an affidavit stating that the accused is currently incarcerated in federal custody or in the custody of another county or state. The interested parties contend that the reasoning behind this alternative method is that the surety is no longer able to perform on the surety's promise to ensure the appearance of the accused because the accused is no longer at large. Once the affidavit is verified, the surety is relieved of liability on the bond.

The interested parties believe that this law is effective but that it is not used uniformly in every county in Texas, citing reports that several counties refuse to verify affidavits of incarceration based on the belief that there is no mechanism for issuing a warrant to ensure the return of the accused. C.S.H.B. 3077 attempts to remedy this situation by providing such a mechanism.

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. 3077 amends the Code of Criminal Procedure to add the prosecuting attorney and the clerk of the court of the county in which a prosecution is pending, as alternatives to the sheriff, as persons to whom a surety may deliver an affidavit stating that the accused is incarcerated in federal custody, in the custody of any state, or in any Texas county for purposes of discharging the surety's liability on a bail bond. The bill requires the sheriff, prosecuting attorney, or clerk of the court of the county in which the prosecution is pending, on receipt of such an affidavit, to verify whether the accused is incarcerated as stated in the affidavit. The bill requires the sheriff who verifies the statement in the affidavit, after verification, to notify the magistrate before which the prosecution is pending of the verification. The bill requires the prosecuting attorney who makes the verification, after verification, to notify the magistrate before which the prosecution is pending and the sheriff of the verification. The bill requires the clerk who verifies the statement in the affidavit, after verification, to notify the sheriff of the verification.

C.S.H.B. 3077 requires the sheriff, on a verification or the receipt of notice of verification, to place a detainer against the accused with the appropriate officials in the jurisdiction in which the accused is incarcerated and requires the magistrate before which the prosecution is pending, on a verification or the receipt of notice of verification, to direct the clerk of the court to issue a capias for the arrest of the accused. The bill specifies that a capias for the arrest of the accused is not required if a warrant has been issued for the accused's arrest and remains outstanding or the issuance of a capias would otherwise be unnecessary for the purpose of taking the accused into custody.

C.S.H.B. 3077 requires an affidavit delivered by a surety for purposes of discharging the surety's liability on a bail bond and the documentation of any verification of the accused's incarceration to be filed in the court record of the underlying criminal case in the court in which the prosecution is pending or, if such a court record does not exist, in a general file maintained by the clerk of the court. The bill makes a surety liable for all reasonable and necessary expenses incurred in returning the accused into the custody of the sheriff of the county in which the prosecution is pending. The bill makes a conforming change and nonsubstantive changes.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3077 differs from the original by authorizing the delivery to the sheriff, prosecuting attorney, or the clerk of the court of the county in which a prosecution is pending of an affidavit relating to an accused's incarceration for purposes of discharging the surety's liability on a bail bond, whereas the original authorizes such delivery to the sheriff only.

C.S.H.B. 3077 differs from the original by requiring the sheriff, after verification of the information contained in the surety's affidavit, to notify the magistrate before which the prosecution is pending of the notification, whereas the original requires the sheriff after verification to notify the court or magistrate before which the prosecution is pending of the verification and makes a conforming change relating to that requirement.

C.S.H.B. 3077 contains a provision not included in the original requiring a prosecuting attorney who makes the verification to notify the magistrate and the sheriff of the verification. The substitute contains a provision not included in the original requiring a clerk of the court who makes the verification to notify the sheriff of the verification.

C.S.H.B. 3077 contains a provision not included in the original requiring a surety's affidavit and the documentation of any verification of the accused's incarceration to be filed in a certain court of record or in a general file maintained by a court clerk. The substitute contains a provision not included in the original making a surety liable for all reasonable and necessary expenses incurred in returning the accused into the custody of the sheriff of the county in which the prosecution is pending.

C.S.H.B. 3077 differs from the original in nonsubstantive ways.