

## **BILL ANALYSIS**

H.B. 3381  
By: Fletcher  
Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties note that the legislature has provided that the purpose of bail is to secure a defendant's appearance for a hearing or trial and not to serve solely as a revenue generator for a county. The parties note that if a defendant fails to appear, the law contains certain incentives for a bondsman to return the defendant within certain periods. The parties further assert that, until recently, trial courts have applied one or more factors in considering a request for a trial court to exercise its discretion in returning a portion of the judgment amount to a bondsman.

The interested parties contend that a recent court of criminal appeals opinion changed these factors and provided that a bondsman who did not put on evidence of each factor was not entitled to an appellate review of the trial court's discretion. The parties contend that the decision changed the law as it has existed for many years and turned the law into a procedural trap for bondsmen. The interested parties further assert that legislation is needed to return the law to the way it existed before the recent case cited so that trial courts consider one or more of the factors in determining whether to remit part of the judgment amount to a bondsman when a defendant has been returned to custody within two years of the final judgment in a bond forfeiture proceeding.

H.B. 3381 seeks to address matters relating to the circumstances under which a final judgment of bond forfeiture may be reformed under a special bill of review.

### **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**

H.B. 3381 amends the Code of Criminal Procedure, in a provision of law authorizing a special bill of review to include a request that the final judgment in a bond forfeiture proceeding be reformed and that all or part of the bond amount be remitted to the surety after deductions are made, to remove from the deductions the interest accrued on the bond amount from the date of forfeiture. The bill specifies, for purposes of the deductions made from the bond remittance, that the deduction of costs to the county for the return of the principal is for the return of the principal to that jurisdiction. The bill requires a court, in determining whether to grant a request for a reformation of the final judgment and a remittance under a special bill of review, to consider that the purpose of a bail bond is to secure the presence of the principal for the disposition of criminal charges and that a bail bond is not a punishment, a substitute for a fine, or a method for generating revenue for a governmental entity. The bill authorizes a court, in determining the amount of a remittance granted, to consider any of the following:

- the state's cost or inconvenience in regaining custody of the principal;
- the impact of the delay caused by the principal's failure to appear;
- the degree to which the principal intended to breach the conditions of bond;

- the public interest in ensuring the principal's appearance;
- any prejudice suffered by the state;
- any evidence introduced in a proceeding under a special bill of review that was not introduced during the trial of the issues presented in a forfeiture of bail proceeding and that would have exonerated the defendant and the defendant's surety from liability upon the forfeiture of bail taken;
- the participation of the surety in the rearrest of the principal; or
- any other relevant factor.

The bill makes conforming changes.

**EFFECTIVE DATE**

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