

BILL ANALYSIS

S.B. 877
By: Hinojosa
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently in Texas, when a bail bond is written to obtain the release of a defendant from custody, the surety may end its liability on the bond if the principal is rearrested for another offense, as set out in Article 17.16 (Discharge of Liability; Surrender or Incarceration of Principal Before Forfeiture), Code of Criminal Procedure.

However, this article is not uniformly followed across the state. Some sheriff's offices refuse to follow it because of the lack of a mechanism to place a hold or to timely get a warrant for the principal before he or she is released from other jurisdictions.

The purpose of S.B. 877 is to address these concerns by certain sheriff's offices and to ensure that Article 17.16, Code of Criminal Procedure, is being applied and followed uniformly across the state.

S.B. 877 amends current law relating to a verification of the incarceration of an accused person in a criminal case for the purpose of discharging a surety's liability on a bail bond.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends Article 17.16, Code of Criminal Procedure, as follows:

Art. 17.16. New heading: DISCHARGE OF LIABILITY; SURRENDER OR INCARCERATION OF PRINCIPAL BEFORE FORFEITURE; VERIFICATION OF INCARCERATION. (a) Authorizes a surety to before forfeiture relieve the surety of the surety's undertaking by:

- (1) Makes no changes to this subdivision; or
- (2) delivering to the sheriff, prosecuting attorney, or clerk of the court of the county in which the prosecution is pending an affidavit stating that the accused is incarcerated in federal custody, in the custody of any state, or in any county of this state.

Makes nonsubstantive changes.

- (b) Requires the sheriff, prosecuting attorney, or the clerk of the court of the county in which the prosecution is pending, on receipt of an affidavit described by Subsection (a)(2), to verify whether the accused is incarcerated as stated in the affidavit. Requires the sheriff, attorney, or clerk, if the sheriff, attorney, or clerk, as applicable, verifies the statement in the affidavit, to:

(1) if the verification was made by the sheriff or attorney, notify the magistrate before which the prosecution is pending of the verification; or

(2) if the verification was made by the clerk or attorney, notify the sheriff of the verification.

(c) Provides that on a verification of the receipt of notice of a verification as described by this article:

(1) the sheriff is required to place a detainer against the accused with the appropriate officials in the jurisdiction in which the accused is incarcerated; and

(2) except as provided by Subsection (d), the magistrate before which the prosecution is pending is required to direct the clerk of the court to issue a capias for the arrest of the accused.

(d) Provides that a capias for the arrest of the accused is not required if:

(1) a warrant has been issued for the accused's arrest and remains outstanding; or

(2) the issuance of a capias would otherwise be unnecessary for the purpose of taking the accused into custody.

(e) Creates this subsection from existing Subsection (b). Provides that, for the purposes of Subsection (a)(2) of this article, the bond is discharged and the surety is absolved of liability on the bond on the verification, rather than the sheriff's verification, of the incarceration of the accused.

(f) Requires that an affidavit described by Subsection (a)(2) and the documentation of any verification obtained under Subsection (b) be filed:

(1) in the court record of the underlying criminal case in the court in which the prosecution is pending; or

(2) if the court described by Subsection (1) does not exist, in a general file maintained by the clerk of the court.

(g) Provides that a surety is 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.

EFFECTIVE DATE

Upon passage or September 1, 2011.