

## **BILL ANALYSIS**

S.B. 876  
By: Patrick  
Corrections  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties note that if a defendant who has been released on bond fails to appear before the court, the state has four years to prosecute the resulting bond forfeiture. However, if the criminal case is never set for a hearing, the bond remains in effect forever. The parties contend that the number of incidents wherein the state is setting old criminal cases for hearings with no intent to go forward with the criminal case has increased. In these cases, the state seeks to forfeit the bond so that forfeiture may be prosecuted. Once the forfeiture proceeds to judgment, the underlying criminal case is dismissed. The parties assert that by waiting until judgment in the bond forfeiture is entered, the state is manipulating the system in order to increase bond revenue. The goal of S.B. 876 is 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**

S.B. 876 amends the Code of Criminal Procedure to require the judge or magistrate in whose court a criminal action is pending to discharge a surety's liability on a bond if the surety files with the judge or magistrate a motion for discharge supported by an affidavit stating the following: that more than five years have elapsed since the date on which the surety posted the bond; that either the defendant has never been required to appear in court in the criminal action or, during the three-year period preceding the date of the motion for discharge or on that date, there was no apparent activity in the criminal action and the prosecutor did not file a written request to set a date for the action; that the bond was not forfeited before or on the date of the motion for discharge; that the surety no longer wishes to be a surety on the bond; that the surety has served the defendant's attorney, if the defendant is represented by an attorney, with a copy of the motion for discharge in the manner provided by the Texas Rules of Civil Procedure; and that the surety has provided a copy of the motion for discharge to the prosecuting attorney.

S.B. 876 authorizes a judge or magistrate who discharges a surety's liability in that manner to issue a capias for the defendant or a summons for the defendant to appear before the judge or magistrate for the purpose of giving another bond if the indictment, information, or complaint remains pending against the defendant.

### **EFFECTIVE DATE**

September 1, 2013.