

- SUBJECT:** Requiring pretrial release offices to report certain information
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 8 ayes — Place, Talton, Farrar, Hudson, Nixon, Pickett, Pitts, Solis
0 nays
1 absent — Greenberg
- WITNESSES:** For — Jerry Watson, American Legislative Exchange Council and National Association of Bail Insurance Companies.

Against — Jim Rust, Travis County Pretrial Services.

On — Tom Krampitz, Texas District and County Attorneys Association; Carol Oeller, Harris County Pretrial Services.
- BACKGROUND:** Counties and multi-county judicial districts are authorized to establish personal bond offices to gather information on a defendant's potential compliance with conditions of a personal bond and to report to courts. Commissioners court approval of creating such an office is required.

Courts that release an accused on personal bond on the recommendation of a personal bond office must assess a fee of \$20 or 3 percent of the amount of bail, whichever is greater. Fees are to be used to defray expenses of the personal bond office.
- DIGEST:** CSHB 1396 would amend Code of Criminal Procedure sec. 17.42 to require a personal bond pretrial release office to prepare and maintain certain records about defendants released on a personal bond after review by the office. The records would identify the accused by case number only and would list the offense the person is charged with, any convictions in the last six years, court appearance history, any arrest warrant issued for failing to appear, and if person did not comply with personal bond release conditions. The record would be updated weekly and posted in the county court clerk's office.

A personal bond office would be responsible for submitting an annual report each April 1 to the commissioners court or district or county judges beginning in 1996. The annual report would include the following information: the office operating budget; the number of office employees; the number of accused persons released by personal bond court who were convicted of the same offense or any felony within the last six years; persons who did not comply with court appearances; and persons who were issued a warrant for failing to appear.

The bill would take effect September 1, 1995.

**SUPPORTERS
SAY:**

The county pretrial release offices established in some large counties are using public money to help defendants make bail and get back on the streets yet make very little information available about their operations and those released. The public has the right to know the kinds of offenders being released on personal bonds provided by these offices and the subsequent misconduct rates, such as failure to appear in court and arrest for a new offense, of the released persons. The pretrial process should be monitored for effectiveness, accountability and equity, and CSHB 1396 would establish a mechanism to provide this information.

There have been a number of notorious cases in which violent criminals and sex offenders have been freed under the auspices of a personal bond agency only to commit new crimes. In a 21-month period in Harris County, for example, the perpetrators of 9,357 crimes, of which 2,826 were felonies, many of them violent offenses, were released on bail bonds funded by taxpayers and the Harris County Pretrial Release Agency.

Recent national studies show that persons released through pretrial release offices are more prone to re-arrest for other crimes than those released through other means. This justifies gathering more information about who is released and what happens after they are released in order to evaluate the effectiveness of the program.

The public has a right to full accountability and disclosure from these agencies authorized by state law, created by the judiciary and county governments and authorized to use court-imposed fees and tax dollars. The confidentiality and privacy of the offenders would be protected under CSHB 1396 by their being listed by case number rather than by name.

**OPPONENTS
SAY:**

CSHB 1396 could have a number of unintended consequences beyond just providing a means of monitoring personal bond pretrial release offices. The state should be very cautious about requiring release of information that federal law may safeguard. For example, conviction or warrant information obtained from the Federal Bureau of Investigation through the National Crime Information Center (NCIC) can only be released to the public when it "is reasonably contemporaneous with the event to which the information relates." Criminal history information compiled for the courts by pretrial services or personal bond programs usually contain information from NCIC.

The bill would raise serious due process of law and privacy concerns, even if defendants are referred to by case number only. Conditions imposed for release on personal bond may include compliance with substance abuse or mental health service provider recommendations. Federal confidentiality rules prohibit the release of any information regarding a person's participation in such programs (attending Alcoholics Anonymous meetings, for example), unless defendant signs a "release of information" form.

Defendants released on a personal bond are not yet convicted under the law. Publishing information regarding defendant's pending status can be punitive. In Harris County, 10 percent of the cases against defendants are dismissed and 33 percent receive deferred adjudication, which allows them to legally claim no conviction on a job application.

Public announcements concerning "open" warrants are left to the discretion of law enforcement agencies. Posting notice of failure to appear warrants could hamper rearrest efforts that are successful in counties such as Harris. Sixty percent of all defendants released on a personal bond and who fail to appear in court are arrested within 30 days.

The bill would burden counties with a cumbersome and costly task. Additional staff would have to be hired to do and post the weekly reports. Estimates for annual staff, programming and office supply costs range from approximately \$70,000 in Travis County to \$135,000 in Harris County.

Some counties handle approximately 300 personal bonds a week. Weekly updates would cause the number of cases being reported to increase exponentially. Within six months, the number of cases to be tracked and reported could reach 6,000 per week. One solution might be to publish these reports on a quarterly basis instead.

The information that would be required by the bill is already accessible to anyone in the public who seeks it in a form that meets confidentiality requirements. The district clerk's office maintains records about defendants' release and any subsequent warrant or bond revocation actions. The pretrial services agency maintains supervision records. Records can be obtained with approval by the Justice Information Management Board. In addition, the Harris County Pretrial Services Agency's "in-house" computer can generate this information.

NOTES:

The committee substitute stipulated that defendants be referred to as case numbers in published records, added the words "pretrial release" to the term personal bond office and eliminated a requirement that the office supply a description of a defendant's conduct pertaining to noncompliance.