

SUBJECT: Denial of appeal bonds for certain defendants

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Hinojosa, Garcia, Green, Keel, Smith, Talton
1 nay — Dunnam
2 absent — Nixon, Wise

SENATE VOTE: On final passage, March 11 — voice vote

WITNESSES: For — Kathryn Dittman, Shaken Baby Alliance; Bill Barrows, Shaken Baby Alliance, Coalition for Greater Houston’s Children, Justice for All, Justice for Children; Cay Quoyeser
Against — None

BACKGROUND: Code of Criminal Procedure, art. 44.04 prohibits the release on bail of certain defendants who are appealing felony convictions. Defendants who have received punishments in excess of 15 years confinement must be placed in custody immediately and may not be released on bail.
Code of Criminal Procedure, art. 42.12, sec. 3(g)(a)(1) prohibits persons convicted of certain crimes from receiving judge-ordered probation. The “3g” offenses are murder, capital murder, sexual assault of a child, aggravated sexual assault, indecency with a child involving contact, aggravated kidnapping, aggravated robbery, and some repeat drug-free zone offenses.

DIGEST: SB 306 would prohibit the release on bail pending appeal of a felony conviction in which the defendant had received a punishment of at least 10 years confinement or in cases in which the defendant had been convicted of a “3g” offense.
The bill would take effect September 1, 1999, and would apply to requests for bail pending appeal made on or after that date.

**SUPPORTERS
SAY:**

SB 306 would improve public safety by ensuring that felons who committed serious crimes and received prison sentences of 10 years or more would not be walking the streets while they appealed their convictions.

Persons convicted of crimes serious enough to be given a 10-year sentence or of one of the serious, violent 3g offenses should not be eligible for appeals bonds. Putting these people on the streets threatens public safety, especially since they might feel they have little to lose with a prison sentence likely in their future. Current law also sends a the wrong message to society — especially to children — when serious offenders such as drug dealers and killers can be back on the streets after a conviction.

The state currently has a benchmark to define who can be released on appeals bonds. Setting that benchmark at convictions for 10 years or more and convictions for all 3g offenses would be a reasonable, prudent change. Currently, property offenses such as theft and criminal mischief that result in certain levels of losses are second- or first-degree felonies, eligible for 15-year sentences that can result in denial of appeals bonds.

Limiting appeals bonds only to a list of certain violent offenses would fail to consider that some crimes, such as drug dealing, are serious enough and threaten public safety enough that they should fall under SB 306 if the sentence is long enough. In addition, any list of violent offenses might not cover situations in which, for example, a person was convicted of injury to a child that caused a child to die and then was freed on an appeals bond and back in a position to hurt other children.

SB 306's criminal justice policy impact statement and fiscal note project no significant impact on programs or workload or fiscal implication for the state or local governments.

**OPPONENTS
SAY:**

SB 306 is unnecessary and would limit judicial discretion unwisely. Judges already have the discretion to deny appeals bonds for defendants if there is good cause to believe that the defendants would not appear when their convictions became final or that they were likely to commit another offense while out on bail. Also, judges may impose reasonable conditions on bail and may revoke bail on evidence of a violation of a condition. This gives judges proper discretion to release persons who are not at risk of fleeing and not a danger, unless their appeals are denied.

SB 306 could strain criminal justice resources if it resulted in large numbers of persons who now are released on appeals bonds being incarcerated during their appeals. The bill would cast such a wide net that it would include some lower-level, nonviolent property offenses such as first-degree felony theft and criminal mischief.

It would be especially unfair to set the benchmark for denying an appeals bond at 10 years. Many juries impose the 10-year sentences in close cases because it has the appearance of being much tougher than nine years.

OTHER
OPPONENTS
SAY:

It might be more appropriate to limit the application of SB 306 to violent offenses or offenses against persons, which would confine the bill to those proved to be dangerous.