

**SUBJECT:** Warrantless arrest of a person who confesses to committing a felony

**COMMITTEE:** Law Enforcement — favorable, without amendment

**VOTE:** 5 ayes — Driver, Garza, Hegar, Hupp, Keel  
2 nays — Burnam, Y. Davis  
0 absent

**SENATE VOTE:** On final passage, April 25— 31-0, on Local and Uncontested Calendar

**WITNESSES:** (*On companion bill, HB 982:*)  
For — Denise Nassar, Harris County District Attorney’s Office; Lt. Murray Smith, Houston Police Department  
  
Against — None

**BACKGROUND:** Code of Criminal Procedure (CCP), art. 14.03 allows a peace officer to pursue and arrest an accused person without a warrant when:

- the officer finds a person in a suspicious place, under circumstances that reasonably show that the person has been guilty of a felony, breach of the peace, disorderly conduct, or public intoxication;
- the officer has probable cause to believe that a person has committed an assault resulting in bodily injury, and the officer has probable cause to believe that there is danger of further bodily injury to the victim;
- the officer has probable cause to believe that a person has violated a protective order; or
- the officer has probable cause to believe that a person has committed an assault resulting in bodily injury to a member of the person’s family or household.

Under CCP, art. 38.21, a statement of an accused person may be used in evidence against the accused if the statement was made freely and voluntarily, without compulsion or persuasion, under rules contained in the code. Written statements made by an accused person as a result of custodial interrogation

are admissible only if the accused received warnings regarding the right to remain silent and to have a lawyer present before and during questioning, and the right to end the interview at any time. Oral statements made as a result of custodial interrogations are admissible only if the accused person received the proper warning and if an electronic recording was made of the statement, among other requirements.

**DIGEST:** SB 1896 would amend CCP, art. 14.03 to allow a peace officer to arrest a person without obtaining a warrant if the person made a statement to the officer that would be admissible against the person under CCP, art. 38.21 and that established probable cause to believe that the person had committed a felony.

The bill would take effect September 1, 2003.

**SUPPORTERS SAY:** SB 1896 would close a loophole in current law to allow a peace officer to arrest, without a warrant, a person who voluntarily confessed to committing a felony. Current law is overly restrictive in allowing a warrantless arrest in such a case only if the suspect is about to escape and the officer has no time to obtain a warrant.

The bill would prevent law enforcement from having to release offenders who had confessed to grave crimes such as murder or sexual assault and who would pose a danger to the public if released. Under current law, when a person comes into a police station and makes a voluntary confession to even the most egregious crime, the police cannot detain the person. A peace officer must secure a probable-cause warrant before the suspect can be detained, which can take several hours in even the largest counties, giving the suspect the opportunity to escape, destroy evidence, or warn accomplices. It is illogical to require police to release a confessed murderer and to take the risk that the suspect would escape or cause harm to himself or others.

Under current law, peace officers run the risk of having any additional evidence thrown out of court if they make an arrest without a warrant, even after the suspect confesses to the crime. Any evidence secured thereafter, such as a subsequent confession or lineup identification, would be placed in jeopardy. In *Dowthitt v. State*, 931 S.W.2d 244 (1996), the Court of Criminal Appeals held that a warrantless arrest following a suspect's confession at the

police station was illegal because there was insufficient evidence that his escape was imminent. In the wake of that decision, law enforcement has faced uncertainty about what to do with a person who comes to a police station voluntarily and makes a confession.

To prevent a dangerous felon from escaping, officers must follow suspects home after they have confessed to serious crimes to ensure that they can locate the suspect after a magistrate prepares and signs a warrant. As an alternative, a peace officer might ask a suspect to wait at the police station until the necessary paperwork was obtained, but the officer could not force the suspect to do so if he or she refused.

As a result of the *Dowthitt* decision, some police officers are told not to read suspects their rights when they make a confession but to treat them like any other witness. This deprives suspects of many of the constitutional safeguards regarding confessions at the time when they are needed most. To avoid the appearance of unlawfully detaining suspects before obtaining a warrant, in violation of *Dowthitt*, officers advise suspects that they are free to go at any time, no matter what they have done.

Allowing peace officers to detain a suspect immediately after a confession would help ensure that officers could obtain other valuable evidence. Often, the period immediately after a confession is critical in obtaining evidence or taking additional statements. Having to obtain an arrest warrant or follow the suspect until a warrant is obtained is a waste of law enforcement resources.

SB 1896 would encourage people to turn themselves in for serious crimes. When suspects finally are ready to take responsibility for their actions, it sends the wrong message to make them go back home or wait at the police station until a warrant can be obtained for their arrest.

The bill would not infringe on suspects' due-process rights. All constitutional safeguards with regard to confessions would remain in effect. The bill would ensure that law enforcement officers read suspects their rights and gave them all of the necessary protections before taking statements. Also, the officer making the warrantless arrest still would have to take the arrested person before a magistrate within 48 hours after the person was arrested.

SB 1896 logically would extend the exceptions to the requirement of a warrant under current law, when a suspect poses a threat to the public and the peace officer has ample evidence that a crime has been committed.

**OPPONENTS  
SAY:**

The Legislature should not expand the exceptions to making an arrest without a warrant. Requiring a neutral and detached magistrate to determine whether probable cause exists is an important safeguard that ensures due process for suspects.

Warrantless arrests should be limited strictly to emergency situations in which an arrest must be made without delay, such as when a suspect might escape or when more family violence might result if the perpetrator were set free. After a defendant makes a voluntary confession, the sense of urgency that justifies a warrantless arrest does not exist. If there were evidence that the suspect would attempt to escape, the exception under current law would apply. The inconvenience to law enforcement of having to monitor a suspect while a warrant is obtained is not sufficient justification to do away with the warrant requirement.

The bill actually might discourage suspects from cooperating with law enforcement, because they could be arrested on the spot for making incriminating statements.

**NOTES:**

On May 9, the House passed HB 982 by Talton, the companion bill, which was referred to the Senate Criminal Justice Committee on May 13.