

- SUBJECT:** Allowing certain applicants for habeas corpus to be released on bond
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 7 ayes — Keel, Riddle, Ellis, Denny, Hodge, Pena, Talton  
0 nays  
2 absent — Dunnam, P. Moreno
- SENATE VOTE:** On final passage, May 14 — 31-0
- WITNESSES:** No public hearing
- BACKGROUND:** Defendants convicted of misdemeanor or felony offenses in Texas may challenge their convictions in two ways: with a direct appeal, which deals only with errors of fact or law in the original trial, or by applying for writ of habeas corpus, which can raise issues outside of the trial record. Applications for habeas corpus typically center on constitutional rights and may be filed in both state and federal court.
- Under Code of Criminal Procedure (CCP), art. 44.04(b), a defendant may not be released on bail pending the appeal from any felony conviction when the punishment is at least 10 years of confinement or when the defendant has been convicted of certain serious, aggravated offenses.
- DIGEST:** SB 1948 would allow a convicting court to order the release on bond of an applicant for a writ of habeas corpus, other than from a judgment imposing the death penalty, subject to conditions imposed by the convicting court, until the applicant was denied relief, remanded to custody, or ordered released. The convicting court could release the applicant on bond only if the court made proposed findings of fact and conclusions of law jointly stipulated to by the applicant and the state, or if the court approved proposed findings of fact and conclusions of law made by an attorney or magistrate appointed by the court to perform that duty, and jointly stipulated to by the applicant and the state. An applicant released on bond would remain restrained in his or her liberty.

CCP, art. 44.04(b) would not apply to the release of an applicant on bond under SB 1948.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003. It would apply to an applicant whose application for a writ of habeas corpus was pending on the effective date, regardless of when the application was filed.

**SUPPORTERS  
SAY:**

SB 1948 would end the injustices suffered by the 13 Texans who remain in prison after the notorious drug raid in the Panhandle town of Tulia. The uncorroborated testimony of one undercover law enforcement officer there led to the conviction of 38 defendants for drug trafficking, more than two dozen of whom went to prison for terms ranging from 20 to 90 years. Thirteen wrongly convicted Texans remain in prison, although the undercover officer has been indicted and arrested on felony perjury charges. An evidentiary hearing has been held and joint, stipulated findings of fact and conclusions of law have been submitted to the Court of Criminal Appeals. All parties agree that the case presented against those defendants was rife with inconsistencies and blatant perjury and that allowing the convictions to stand would be a travesty of justice. The presiding judge at the evidentiary hearings halted proceedings after concluding that the undercover officer was not credible, and recommended that the convictions be thrown out and new trials ordered.

The parties have asked the Court of Criminal Appeals to remand the cases to the convicting court, and the special prosecutors have said they will dismiss the cases at that time. However, it could take the court up to two years to act on this matter. In the meantime, the 13 Texan whose lives already have been destroyed will be forced to remain in prison. The imprisoned defendants include a mother of two young children and an elderly defendant with acute diabetes, who desperately need their freedom now.

The bill appropriately would allow applicants for a writ of habeas corpus to be released on bond in limited circumstances. It would be tailored narrowly and would apply only if the prosecutor and defendant agreed on findings of fact and conclusions of law. Also, the convicting court would have to be convinced that release on bond was appropriate until a decision was reached in the case.

SB 1948  
House Research Organization  
page 3

OPPONENTS  
SAY: No apparent opposition.

NOTES: On May 23, SB 1948 was recommitted to the Criminal Jurisprudence Committee, which reported the bill again without amendment and recommended it be sent to the Local and Consent Calendars Committee.

A related bill, HB 2625 by Lewis, which would have prohibited a defendant from being convicted of an offense under the Controlled Substances Act solely because of the uncorroborated testimony of an undercover peace officer, was placed on the House General State Calendar for May 12 but died in the House. The companion bill, SB 515 by Hinojosa, was reported favorably, as substituted, by the Senate Criminal Justice Committee on May 14 and placed on the Senate Intent Calendar.