

SUBJECT: Limiting eligibility for release from jail after a delay in prosecution

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Keel, Riddle, Denny, Escobar, Hodge, Pena, Raymond

0 nays

2 absent — P. Moreno, Reyna

WITNESSES: For — Elmer Beckworth; William Hubbarth, Justice for All

Against — None

On — Shannon Edmonds, Texas District and County Attorneys Association

BACKGROUND: When an individual is charged with an offense, the judge may release the defendant on bail. The purpose of bail is to ensure that the defendant appears for trial. When setting bail, a judge considers the nature of the offense and the circumstances under which it was committed, the safety of the victim and the community, and the defendant's ability to make bail.

Under Code of Criminal Procedure, art. 17.151, most defendants in jail pending trial must be released either on personal bond or by reducing the amount of bail required, if the state is not ready for trial within:

- 90 days from the commencement of detention if the defendant is accused of a felony;
- 30 days from the commencement of detention if the defendant is accused of a misdemeanor punishable by a sentence of imprisonment in jail for more than 180 days;
- 15 days from the commencement of detention if the defendant is accused of a misdemeanor punishable by a sentence of imprisonment for 180 days or less; or
- five days from the commencement of detention if the defendant is accused of a misdemeanor punishable by a fine only.

However, the defendant need not be released if the defendant is serving a sentence of imprisonment for another offense, being detained pending trial of another accusation against him as to which the applicable period has not elapsed, or is incompetent to stand trial.

Under sec. 3 of art. 17.151, if a person is released due to delay in prosecution and then is arrested and detained for violating the conditions of his or her release, the time for determining whether the defendant should be released again for delay in prosecution starts as of the date of the subsequent arrest.

DIGEST:

CSHB 1662 would create another exception to mandatory release under Code of Criminal Procedure, art. 17.151 due to a delay in prosecution. A judge could deny release to a defendant who was detained for violating the conditions of a previous release if those conditions were related to the safety of a victim of the alleged offense or to the safety of the community.

The bill also would repeal sec. 3 of art. 17.151, concerning when the time period for a delay in prosecution begins when a defendant was arrested for violating the conditions for his or her previous release.

The bill would take effect on September 1, 2005, and would apply only to individuals arrested on or after this date.

**SUPPORTERS
SAY:**

CSHB 1662 would deny automatic release on personal bond or reduced bail due to a delay in prosecution when a defendant violated the conditions of the defendant's previous release due to such a delay and those conditions had involved the safety of the victim or the community. This change especially would help protect victims of domestic violence. In such cases, it is not uncommon for a defendant arrested for violating a restraining order and later released to cause the victim further injury or even death. Studies have shown that family violence victims are in greatest danger of violent attack from the offender after seeking help or filing charges.

CSHB 1662 is narrowly tailored so as not to deny the defendant guaranteed protections. Denying automatic release for delay in prosecution would be limited to circumstances in which the defendant had shown an unwillingness to follow the conditions of an earlier release and posed a continuing threat to the community or the victim.

OPPONENTS
SAY:

The breadth of the language in this bill would deny release due to delay in prosecution in virtually any situation in which an individual charged with a felony violated a condition of his or her previous release. "Safety of the victim" or "safety of the community" could be interpreted to include almost any circumstance. If a defendant is to be detained prior to trial and the defendant's right to a speedy trial is violated, the conditions for continued detention should be very narrowly limited to preserve the defendant's fundamental rights.

NOTES:

The committee substitute narrowed the circumstances in which a defendant could be denied automatic release due to a delay in prosecution after being detained for violating the conditions of a previous release to conditions related to the safety of the victim or the community.

The companion bill, SB 599 by Staples, passed the Senate by 25-0 on April 7 and was reported favorably, without amendment, by the House Criminal Jurisprudence Committee on May 3, making it eligible to be considered in lieu of HB 1662.

HJR 56 by Gattis, which would amend the Texas Constitution to allow a district judge to deny bail to an individual accused of felony who has violated a condition of release related to the safety or the victim or the community, was postponed until today's calendar to allow consideration of its Senate-passed companion, SJR 17 by Staples.