

## **BILL ANALYSIS**

Senate Research Center

H.B. 749  
By: Dunnam (Sibley)  
Criminal Justice  
4-27-97  
Engrossed

### **DIGEST**

Currently, Article 32.01, Code of Criminal Procedure, requires a defendant who is in custody or held on bail awaiting formal charges by the prosecution to be dismissed and bail discharged if an indictment or information is not presented against the defendant to the court by the next term of that court to which the defendant is being detained. Throughout Texas, district courts have varying specific terms from six terms per year to two terms per year. Thus, in McLennan County, the prosecution must proceed in as little as eight weeks while in Smith County it may take up to one year. The limit of eight weeks can make prosecution difficult in some cases, such as when lab tests must be completed in drug cases. This legislation would authorize dismissal and discharge of bail if an indictment or information is not presented against a defendant on or before the last day of the term of the court to which the defendant is being held or by the 180th day after the date of commitment or admission to bail, whichever date is later. In this way, H.B. 749 lengthens the time period for court with terms of less than 4.5 months, but does not shorten those with longer terms.

### **PURPOSE**

As proposed, H.B. 749 provides for the discharge of criminal proceedings because of delay in prosecution.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 28.061, Code of Criminal Procedure, to delete the provision establishing that a discharge under Article 32.01 of this code is a bar to any further prosecution for the offense discharged and for any other offense arising out of the same transaction, with certain exceptions.

SECTION 2. Amends Article 32.01, Code of Criminal Procedure, to require the prosecution, when a defendant has been detained in custody or held to bail for the person's appearance to answer any criminal accusation before the district court, to be dismissed and the bail discharged, if indictment or information is not presented against such defendant on or before the last day of, rather than at, the next term of the court held after the person's commitment or admission to bail, or on or before the 180th day after the date of commitment or admission to bail, whichever date is later.

SECTION 3. Amends Chapter 15, Code of Criminal Procedure, by adding Article 15.14, as follows:

Art. 15.14. ARREST AFTER DISMISSAL BECAUSE OF DELAY. Authorizes the defendant, if the prosecution of a defendant is dismissed, to be rearrested for the same criminal conduct alleged in the dismissed prosecution only upon presentation of indictment or information for the offense and the issuance of an arrest warrant subsequent to the indictment or information.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Emergency clause.

Effective date: upon passage.