SUBJECT: Defendants release on surety, personal bonds

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Talton, Dunnam, Farrar, Hinojosa, Keel, Nixon, A. Reyna

0 nays

1 present, not voting — Galloway

1 absent — Place

WITNESSES: For — Gerald R. Arrendondo, Bexar County Bail Bond Association; William R. Hubbarth, Justice For All; Rod Mitchell, Strike Back; Kathy Peavy Bailey; Dorthea Walker; Lynn H. Wobbe

Against — Keith S. Hampton, Texas Criminal Defense Lawyers Association; Jim Rust, Travis Co. CSCD and Pretrial Services; Arvilla Banks, Smith County Pretrial; Aaryce Hayes, Advocacy, Inc.

Cheryl Johnson; Roy H. Williams; Rick Zinsmeyer

On — Bonita White, Texas Department of Criminal Justice; Carol Oellar

BACKGROUND: Magistrates are authorized to release some defendants on personal bond without sureties or other securities. Defendants charged with the following offenses may be released on personal bond only by the courts before which their case is pending: capital murder; aggravated kidnapping; aggravated sexual assault; injury to a child, elderly individual or disabled individual; aggravated robbery; burglary; engaging in organized criminal activity; and certain felony drug offenses. In addition, only courts can release on personal bond defendants whom the court or the magistrate requires to submit to drug and alcohol testing and who do not submit to the testing or who have tested positive for drug or alcohol testing.

DIGEST:

HB 1864 would prohibit magistrates and courts from releasing on personal bond persons charged with the following offenses:

- criminal solicitation;
- murder;
- capital murder;
- kidnapping;
- aggravated kidnapping;
- indecency with a child;
- assault involving bodily injury;
- sexual assault;
- aggravated assault;
- aggravated sexual assault;
- injury to a child, elderly individual or disabled individual;
- prohibited sexual conduct (incest);
- enticing a child;
- sale or purchase of a child;
- aggravated robbery;
- burglary;
- aggravated promotion of prostitution;
- sale, distribution or display of harmful material to minors;
- sexual performance by a child;
- employment harmful to children;
- engaging in organized criminal activity;

Courts and magistrates also would be prohibited from releasing on personal bond persons:

- charged with certain felony drug offenses;
- required to submit to drug and alcohol testing but do not agree to or produce positive drug or alcohol tests;
- released on parole or community supervision (probation) and then brought before the magistrate or court on a charge of having violated their parole or probation; and

- who have previously engaged in bail jumping or failing to appear in court, regardless of whether the person was convicted of this offense.

Magistrates would be required to release on personal bond defendants who would not be ineligible under the above criteria and had not been previously convicted of one of the offenses in listed above.

Employees of personal bond offices would be prohibited from communicating directly or indirectly with defendants about their release on personal bond within 48 hours after the person had been presented to a magistrate.

HB 1864 would take effect September 1, 1997.

SUPPORTERS SAY:

HB 1864 would provide more accountability in the bond system by prohibiting personal bonds for persons accused of violent and serious crimes and ensure that persons who would more appropriately be released on surety bonds are not released on personal bonds. First time, non violent offenders could continue to be released by magistrates or courts on personal bonds.

Persons accused of the violent and serious crimes listed in HB 1864 should not be released on personal bond by either magistrates or courts. Currently, magistrates cannot release on personal bond persons accused of certain violent crimes, but courts can. However, because of the seriousness of these crimes and the risk these defendants represent to society, offenders listed in HB 1864 should not be released on personal bond even by a court. These defendants represent the highest risk to society and those most likely to not appear in court. Because a personal bond does not require sureties or other security, it is not enough of a guarantee that these defendants would return to court, and personal bonds are an inappropriate way for either magistrates or courts to release these defendants.

HB 1864 would not reduce judges' discretion because they would be able to evaluate and set surety bonds for all defendants. HB 1864 would ensure that all high risk defendants are treated the same and would shore up the positions of judges who might feel pressure from attorneys they know or campaign contributors to release certain violent, high-risk defendants.

HB 1864 would not require these violent and serious defendants to stay in jail but would require that they be released only under the guarantee of a surety bond. Defendants who have put up a surety bond have invested either their own money, or that of their family or friends, to ensure that they will return to court. Under a personal bond, there is no such guarantee. Those such as family and friends who have contributed to a surety bond and bail bondsmen who have posted the bond would be accountable to the court to ensure defendants return to court.

HB 1864 would address problems that have arisen because of the lack of accountability with the use of personal bonds. Statistics show that persons released on surety bonds have a lower failure to appear rate than those released on personal bond. In addition, because of heavy dockets and a lack of manpower, the courts and personal bond offices are often unable to provide adequate monitoring of persons released on personal bond. Local personal bond offices sometimes are little more than tax-payer funded bond services. These problems would be remedied by requiring the highest risk defendants to be released only if someone — defendants, their family and friends and bail bondsmen — are held accountable through a surety bond for a defendants' appearance in court.

Imposing a reasonable 48-hour waiting period before a personal bond office could contact a defendant would prevent persons that should more appropriately be released on surety bonds from being let out on personal bonds because of the overzealousness of the personal bond office or other reason. Persons would still be able to be released on personal bond if the waiting period was over. Jails would not be overcrowded because some defendants would be released under the more appropriate surety bond.

OPPONENTS SAY:

HB 1864 would usurp judicial discretion to release defendants on personal bond, unfairly restrict some defendants' access to personal bonds and establish a different, and perhaps unconstitutional, bail system for defendants with and without the means to obtain a surety bond. Courts should retain the maximum flexibility for the use of both personal and surety bonds without unnecessary statutory restrictions or incentives.

A prohibition against the release of certain defendants on personal bond would be an unwarranted infringement on judicial authority. Current law

prohibits magistrates — but not judges — from releasing certain defendants on personal bond. This properly places the decision for the release of defendants accused of more serious crimes with judges but does not prohibit these defendants' release on personal bond. Judges are accountable to the public and should have full discretion to make these decisions.

Setting up a system that favors release on surety bonds over personal bonds would not ensure that defendants are better monitored or that society is safer, only that those who have money — despite their risk — would have a better chance of being released. Personal bond offices often work well to ensure persons appear in court and provide accountability because judges can look to the office if a defendant does not appear in court. Personal bond offices evaluate the risk defendants represent, their criminal history and other information, which bail bondsmen seldom do, and then allow judges to make decisions concerning defendants' release. In addition, personal bond offices can provide monitoring once defendants are released. For example, personal bond offices can require defendants released on personal bond to attend substance abuse counseling or be electronically monitored.

It is unfair and unnecessary to establish a 48-hour waiting period before personal bond offices can contact defendants. Because persons understandably want to be released from custody as soon as possible, HB 1864 would result in persons having no where to turn except to bail bondsmen for immediate release from jail. In many cases defendants should be released on personal bond because they are a low-risk to the community and are highly likely to appear in court. In these cases, it might be better for defendants to spend their funds on a vigorous defense than on paying a bail bondsman to post a surety bond. In fact, some counties tie release on personal bond to the retention of a lawyer. The state should not establish two justice systems — one for those with money who could afford to post a bond and get out of jail immediately and one for those without money who must wait 48 hours before being able to post a personal bond.

HB 1864 could result in jail overcrowding and increased costs to counties as persons wait 48 hours before being able to start the personal bond process. In some counties persons can be released on personal bond within four to eight hours of being contacted by the personal bond office. One county estimates that about three-quarters of defendants would not be able to afford

a surety bond and would have to wait in the county facility for 48 hours before being released on personal bond.