

- SUBJECT:** Releasing persons arrested without warrant
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 7 ayes — Hinojosa, Keel, Talton, Garcia, Green, Kitchen, Shields
0 nays
2 absent — Dunnam, Martinez Fischer
- WITNESSES:** For — Larry Sauer, American Civil Liberties Union of Texas
Against — David Hudson, Tarrant County District Attorney’s Office
- BACKGROUND:** *McGill v. Parsons*, 532 F.2d 484 (5th Cir. 1976), a federal civil-rights case, held that arresting agencies are not civilly liable for taking up to 72 hours to file formal charges on a warrantless arrest.
- A bail bond is a written undertaking entered into by a defendant to appear before a court or magistrate to answer a criminal accusation. The defendant either can make bond by depositing the amount of the bond with the bonding magistrate or by paying the bond amount through a surety. A surety is a person who undertakes to pay money or perform other acts in the event that the defendant fails to meet the bond conditions, such as appearing before the court on a specific date. The surety is directly and immediately liable for the debt. A personal bond is a type of bond that does not require the defendant to put forth any money or property.
- DIGEST:** CSHB 512 would require people arrested without a warrant to be released on bond within a specific time.
- A person arrested without a warrant for a misdemeanor would have to be released on a bond not to exceed \$5,000 within 24 hours of the arrest if a magistrate had not determined whether probable cause existed to believe that the person had committed the offense. A person arrested without a warrant for a felony would have to be released on a bond not to exceed \$10,000 within 48 hours of the arrest if a magistrate had not determined whether

probable cause existed to believe that the person committed the offense. In either case, if the person could not obtain a surety for the bond or deposit money in the amount of the bond, the court would have to release the person on a personal bond.

An attorney representing the state could file an application with a magistrate to postpone release of a person arrested without a warrant for not more than 72 hours after the arrest. The application would have to state the reason a magistrate had not determined whether probable cause existed to believe that the person committed the offense for which the person was arrested.

CSHB 512 would take effect September 1, 2001, and would apply only to a person arrested on or after that date.

SUPPORTERS
SAY:

A criminal suspect has the right any time after being arrested to request that a magistrate review the evidence against the person and set a proper bail amount. Some arresting agencies circumvent the law by not charging the suspect with a crime, misinterpreting a civil case, *McGill v. Parsons*, to mean that it is permissible to do this and to hold a suspect in jail for up to 72 hours. These people then are released, with no charges filed, after spending three days in jail with no way to get out. CSHB 512 would compel counties to release people arrested without warrants for misdemeanors within 24 hours and to release people arrested for felonies within 48 hours, unless officials filed charges against the accused or unless an attorney representing the state filed to have the release postponed for up to 72 hours after the arrest.

If the bill allowed a peace officer to file for the extension, that likely would become standard procedure in the counties that now hold persons without charges for 72 hours, and nothing would change.

The bond amounts this bill proposes are more than adequate. If officials in a county believe that a suspect is a flight risk, they should charge the suspect with a crime. Once a person is charged, a judge has discretion to set bond.

OPPONENTS
SAY:

The rigid time periods CSHB 512 proposes would make it difficult for some counties to file charges in time. The extension would not be adequate. It can take several days for a district attorney's office to hear from a police or

sheriff's department that a suspect has been arrested. By then, the suspect already would have been released and the extension would be useless. This time limit would pose a particular problem if a suspect were arrested on a weekend. The bill should allow either an attorney for the state or a peace officer to file an extension. Also, it should extend the period for holding a misdemeanor defendant to at least 36 hours so that a defendant arrested on Saturday night can be charged on Monday morning.

The bond amounts proposed in the bill are too low, particularly the requirement that the suspect be released on personal bond if the suspect cannot afford to make a \$5,000 or \$10,000 bond. Bond amounts should be left to the discretion of the courts. Some suspects may be flight risks, and the court should be able to set an amount of bond to ensure that the suspect can be located once charges are filed.

OTHER
OPPONENTS
SAY:

People who are released without charges filed against them should not have to provide any kind of bond, whether of money or personal recognizance. With no charges filed against them, these people should not be beholden to the legal system. Current law does not require a bond for a person released without charges filed.

NOTES:

HB 512 as filed would not have provided for a person arrested without a warrant to be released on a personal bond if the person could not afford to pay the required bond amount.