

SUBJECT: Expanding list of those who can apprehend a defendant released on bail

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Keel, Riddle, Ellis, Hodge, Talton

0 nays

4 absent — Denny, Dunnam, P. Moreno, Pena

WITNESSES: For — Edward (Eddie) J. Dees, Jr., and Tillmin G. Welch, Professional Bondsmen of Texas

Against — Kathy Braddock, Harris County District Attorney's Office; Sgt. Bruce Carr, Harris County Sheriff's Office; David L. Finney, Denton County District Attorney's Office; Barry Macha

BACKGROUND: A bail bond is a written undertaking entered into by a defendant, also known as a principal, to appear before a court or magistrate to answer a criminal accusation. A bond forfeiture occurs when the defendant fails to meet the conditions of the bail bond. A surety is a person who agrees 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 *capias* is a court order that authorizes seizure of the defendant upon bond forfeiture.

Occupations Code, sec. 1702.3863 makes it a state jail felony (punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000) for a person to contract with or be employed by a bondsman to apprehend a defendant who has failed to appear in court unless the person is a peace officer, licensed private investigator, manager of a licensed investigation company, or a commissioned security officer employed by a licensed guard company.

Code of Criminal Procedure, art. 17.19 allows a surety to apply to a magistrate for a warrant to surrender the defendant. If the court finds cause for the surety to surrender the defendant, the court must issue an arrest

warrant. Arrest warrants may be executed only by peace officers, security officers, or a licensed private investigator.

Code of Criminal Procedure, art. 23.05 requires that a *capias* be issued for a defendant's arrest when a forfeiture of bail is declared. The *capias* may be executed only by a peace officer or a licensed private investigator.

DIGEST:

HB 172 would expand the list of those who can recapture defendants who forfeit on bail bonds to include licensed bail-bond sureties, agents of licensed corporate bail-bond sureties, and full-time employees of licensed bail-bond sureties and of agents of licensed corporate bail-bond sureties.

The bill would expand the list of people who could execute arrest warrants issued when a surety wants to surrender a defendant to include managers of licensed investigation firms, licensed bail-bond sureties, agents of licensed corporate bail-bond sureties, and full-time employees of licensed bail-bond sureties and of agents of licensed corporate bail-bond sureties.

The list of people who can execute a *capias* issued for a defendant's arrest would be expanded to include a manager of a licensed investigating company, a commissioned security officer employed by a guard company, a licensed bail-bond surety, an agent for a licensed corporate bail-bond surety, and a full-time employee of a licensed bail-bond surety or of an agent of a licensed corporate bail-bond surety.

The bill would take effect September 1, 2003.

SUPPORTERS
SAY:

HB 172 would help bail bondsmen ensure that their clients appear in court as required. Common law always has allowed sureties to apprehend their clients, but changes made by the 76th Legislature have been interpreted by some to mean that licensed bail bondsmen cannot pursue defendants unless they also are licensed peace officers, security guards, or private investigators. HB 172 would codify common practice. The state trusts bondsmen to be responsible for defendants, so it should give bondsmen the tools to enforce their contracts with defendants.

If a bondsman had a client who was not meeting the bond's requirements, it would be much easier and more efficient to have the bondsman apprehend the

defendant than to wait for a law enforcement officer to execute the warrant or *capias*. For example, a bondsman might have a defendant sitting in the office and could make the apprehension immediately instead of waiting for a law enforcement officer. Bondsmen are familiar with their clients' homes, work, and leisure habits, making it easier for them to make the apprehension.

HB 172 would not turn bail bondsmen into law enforcement officers. Bail bondsmen and others would have to work within the law. Any abuse of power or inappropriate use of force by bondsmen would be subject to other laws, such as those prohibiting false imprisonment or bodily injuries. If a situation were dangerous, a bondsman or other person could call law enforcement.

A court still would have to issue an arrest warrant or *capias* before an apprehension could be made, ensuring that apprehensions would be made only when warranted and legal. The people whom HB 172 would authorize to make apprehensions all would hold some state license or would be overseen by a state licensee.

HB 172 would help prevent the use of bounty hunters, private citizens who sometimes apprehend defendants. Instead, bondsmen or others named in the bill could make apprehensions, for which they would be held accountable.

**OPPONENTS
SAY:**

It would be inappropriate to allow people who were not trained in law enforcement or private security to apprehend defendants out on bond. Public safety could be threatened by allowing too many untrained people to make apprehensions. Past incidents have involved false imprisonment and an untrained bondsman shooting a fleeing suspect.

Some people whom HB 172 would authorize to make apprehensions are not licensed by the state but simply are employees of licensees. The bill could allow a person with a criminal record to apprehend defendants.

NOTES:

During the 77th Legislature in 2001, the House passed a similar bill, HB 1848 by Keel and Hinojosa, which died in the Senate Criminal Justice Committee.