

SUBJECT: Allowing sureties to file motion to discharge bail in certain circumstances

COMMITTEE: Corrections — committee substitute recommended

VOTE: 7 ayes — Murphy, J. White, Allen, Keough, Krause, Schubert, Tinderholt
0 nays

WITNESSES: For — Ken Good, Professional Bondsmen of Texas; (*Registered, but did not testify*: Wynn Dillard and John McCluskey, Professional Bondsmen of Texas; Douglas Smith, Texas Criminal Justice Coalition)

Against — (*Registered, but did not testify*: Michael Butera, Harris County District Attorney's Office; Tiana Sanford, Montgomery County District Attorney's Office; John Dahill, Texas Conference of Urban Counties; Tim Labadie, Travis County Attorney's Office; Julie Wheeler, Travis County Commissioners Court)

BACKGROUND: Under Code of Criminal Procedure, art. 32.01, if a criminal defendant is in custody or released on bail, the case must be dismissed and the bail discharged if criminal charges are not brought within certain deadlines. The charges must be brought within 180 days of the defendant being committed or admitted to bail or within other deadlines tied to the end of a court's term, whichever is later. There is an exception to this requirement under which courts do not have to dismiss a case and discharge bail if the prosecutor shows good cause.

DIGEST: CSHB 643 would authorize a surety to file a motion to have bail discharged if criminal charges were not brought within the deadlines in Code of Criminal Procedure, art. 32.01.

The bill would take effect September 1, 2015.

SUPPORTERS SAY: CSHB 643 would provide clear authority for sureties who issue bail bonds in criminal cases to request that bail be discharged if no criminal charges were filed within certain deadlines. While current law says that bail must

be discharged in these cases, discharge does not always occur, and the authority for sureties to ask for the discharge is unclear.

Although rare, in some cases no action is taken to discharge bail even though the deadline has passed for charges to be filed. This can occur if the prosecutor or defendant does not file the necessary motion with a court. While some courts allow sureties to make such a motion to take a defendant off of bail, other courts do not.

This situation creates a problem for sureties because they continue to have the liability for the bond even though the case did not move forward and the deadline has passed for charges to be filed. Continuing to have this liability affects the sureties' business because there are limits on the amount of potential liability sureties can have at any time.

CSHB 643 would resolve this situation by authorizing sureties to file a motion to discharge bail. This authorization would apply only to a motion to discharge bail and would not apply to the criminal charges in the case. Decisions on such motions would continue to be made individually, and there would be no requirement that courts automatically discharge the bail. This process would align with provisions in Code of Criminal Procedure, art. 22.13 that recognize a defense for sureties from bond forfeiture in certain cases in which a prosecution was not continued.

The bill would not cause problems with the process of filing motions or having bail discharged. The requests authorized by the bill would use the existing procedures for filing motions, and courts would use their existing practices for making decisions on those motions. Prosecutors and courts are well aware of these procedures, so there should be no confusion about the filing of or the ruling on such a motion.

OPPONENTS
SAY:

CSHB 643 would authorize sureties to file motions without establishing the checks and balances necessary to ensure that the process was fair and that others involved in the case were part of the process. For example, prosecutors should have to receive notice of any request to have bail discharged, and courts could have a standard for ruling on the motion.

Without these, it could be confusing if courts sign orders without prosecutors knowing what occurred or why.

It is rare that bail is not discharged under the circumstances in Code of Criminal Procedure, art. 32.01. In those unusual instances, sureties should work with prosecutors to remedy the situation and have a request to discharge the bail filed as provided for under current law.

NOTES:

Unlike the committee substitute, the original bill would have required courts to dismiss the prosecution and discharge bail on its own motion or on the motion of a defendant or the prosecutor if charges had not been timely filed.