

- SUBJECT:** Probable cause affidavits for magistrate after arrest without a warrant
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 6 ayes — Moody, Hunter, Gervin-Hawkins, Hefner, Lang, Wilson
0 nays
1 absent — Canales
- WITNESSES:** For — Roxanne Nelson and Bill Gravell, Justices of the Peace and Constables Association of Texas; Lynn Holt, Texas Justice Court Judges Association; Randall Petersen, Texas Public Policy Foundation;
(*Registered, but did not testify:* Katija Gruene, Green Party of Texas; Andrea Schiele, Bobby Gutierrez, and Jama Pantel, Justices of the Peace and Constables Association of Texas; Ender Reed, Texas Association of Counties; Emily Gerrick, Texas Fair Defense Project)
Against — None
- BACKGROUND:** Code of Criminal Procedure, art. 14.06 requires a person making an arrest or having custody of someone who was arrested to take the arrestee before a magistrate within 48 hours of the arrest. Code of Criminal Procedure, art. 15.17 also requires that arrestees go before a magistrate within 48 hours of being arrested to be informed of charges and of certain rights.

Court cases have raised the issue of the need for a sworn affidavit noting the probable cause for the arrest if there was no arrest warrant to be submitted to the magistrate.
- DIGEST:** HB 1574 would require peace officers who arrest someone without an arrest warrant to prepare an affidavit stating probable cause for the arrest and either file the affidavit with the magistrate or give it to an officer taking custody of an arrestee. This would have to be done as soon as practicable but before the arrestee was taken to a magistrate for the initial hearing required within 48 hours of arrest. The affidavit would have to be

in writing or be given orally to the magistrate and recorded.

The bill would revise current provisions that require those arrested for a misdemeanor without a warrant and detained in jail to be released on bond within 24 hours of the arrest if a magistrate had not determined that probable cause for the arrest existed. Under these circumstances, arrestees would not have to be released if an affidavit meeting the requirement of the bill had been filed.

The bill would take effect September 1, 2017, and would apply to those arrested on or after that date.

NOTES:

A companion bill, SB 630 by Buckingham, was reported favorably from the Senate Criminal Justice Committee on May 3 and placed on the Senate intent calendar.