

SUBJECT: Allowing magistrates to set bail on violations of community supervision

COMMITTEE: Corrections — favorable, without amendment

VOTE: 6 ayes — White, Allen, S. Davis, Romero, Sanford, Tinderholt

1 nay — Schaefer

WITNESSES: For — Michael Haugen, Texas Public Policy Foundation; (*Registered, but did not testify*: Nicholas Hudson, American Civil Liberties Union of Texas; Melissa Shannon, County of Bexar Commissioners Court; Mary Mergler, Texas Appleseed; Andrea Keilen, Texas Criminal Defense Lawyers Association; Douglas Smith, Texas Criminal Justice Coalition; Rebecca Bernhardt, Texas Fair Defense Project)

Against — None

On — (*Registered, but did not testify*: Carey Welebob, Texas Department of Criminal Justice)

BACKGROUND: Under Code of Criminal Procedure, art. 42A.751(b), when criminal defendants who are on probation are accused of violating a condition of their probation, judges can issue warrants for their arrest. Arrested defendants can be detained in a county jail until they can be taken before a judge for a determination about the alleged violation.

Art. 42A.751(c) requires that within 48 hours of being arrested the defendant be taken before the judge who ordered the arrest or, if the judge is unavailable, before a magistrate. The judge or magistrate must perform the duties required under Code of Criminal Procedure, art. 15.17, which include informing the accused of certain rights and providing other information, except that only the judge who ordered the arrest can authorize the defendant's release on bail.

DIGEST: HB 664 would allow magistrates, as well as judges, to release on bail defendants accused of violating a term of their community supervision.

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

**SUPPORTERS  
SAY:**

HB 664 would give local magistrates and judges more flexibility in handling cases in which a probationer was arrested for violating a condition of probation. The bill would increase jail efficiency by allowing magistrates to set bail after an arrest for a probation violation so that probationers did not languish in jail unnecessarily and so that resources were preserved for the most serious cases.

An arrest warrant for violating probation can relate to committing a new offense or violating a condition of probation. Currently, only the judge who ordered that a probationer be arrested for a probation violation may set a bail after such an arrest. Magistrates, who may perform numerous other functions in the case, are excluded from this one task. In some cases, the judge may be unavailable, meaning that the probationer remains in jail for a low-level offense waiting on the original court, with no option to bond out. Some jails are overcrowded and need all available space for those accused of serious crimes.

Magistrates would have adequate information in the case to make an informed decision. If the same person were arrested for a new crime, instead of a probation violation, the magistrate could set bail. It would be reasonable to extend this same authority to the probation violation.

**OPPONENTS  
SAY:**

Current law properly places the authority to set bail for someone accused of a probation violation with the judge who issued the arrest warrant. This judge would be in the best position to make an informed decision in these situations because the judge would be familiar with a defendant's case, background, and circumstances.

**OTHER  
OPPONENTS  
SAY:**

The authority that HB 664 would give to magistrates should be limited to low-level offenders, such as those on probation for misdemeanors, and for arrests for low-level, non-violent crimes. In such cases, everything a magistrate needed to make a fully informed decision would be available.

NOTES:

The author plans to offer a floor amendment that would limit the ability of magistrates to release defendants arrested for probation violations on bail to certain types of defendants and arrests. The proposed amendment would allow magistrates in counties in which a defendant was arrested for alleged probation violations to release the defendant on bail if:

- the defendant was on probation for a misdemeanor offense;
- the alleged violation of probation involved only a non-violent misdemeanor; and
- the arrest took place in the same county in which the defendant was under probation.