BILL ANALYSIS

Senate Research Center
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S.B. 239
By: Wentworth
Jurisprudence
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DIGEST AND PURPOSE

Currently, a probationer in Texas, during a revocation hearing, may raise "due diligence" as a defense, asserting that the arresting law enforcement body did not act in a timely manner following the alleged violation of probation. The law enforcement body must prove it acted with due diligence based on a preponderance of the evidence. As proposed, S.B. 239 defines the term "due diligence" to broaden the scope of law enforcement action fitting within the parameters of judicial scrutiny, and transfers the burden of persuasion from law enforcement to the probationer, thereby creating an affirmative defense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 5, Article 42.12, Code of Criminal Procedure, to add Subsection (g), to define "due diligence." Provides that at a hearing under Subsection (b), the failure of the state to exercise due diligence is an affirmative defense to a determination by the court to proceed with an adjudication of guilt. Requires the defendant to prove the failure by a preponderance of the evidence.

SECTION 2. Amends Section 21, Article 42.12, Code of Criminal Procedure, to add Subsection (e), to provide that in a community supervision revocation hearing, the failure of the state to exercise due diligence is an affirmative defense to revocation. Makes conforming changes.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: upon passage or September 1, 2001.