

BILL ANALYSIS

Senate Research Center

H.B. 1574
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A person arrested with or without a warrant is taken before a magistrate for the duties required under Article 15.17, Code of Criminal Procedure. The arrested person is told what they are charged with, their bond amount, their constitutional rights, and their right to a court-appointed attorney if they cannot afford one. In the case of an arrest without a warrant, the magistrate must also determine if probable cause existed for the arrest by a peace officer. At present, under the Code of Criminal Procedure, it is not clear how the probable cause is transmitted from the peace officer to the magistrate.

This issue was brought to light by the United States Supreme Court (Supreme Court) case *County of Riverside vs. McLaughlin*, which was filed in 1987 by Donald Lee McLaughlin against the County of Riverside (California). He asked the United States District Court (Central District of California) to issue an injunction ordering that the county stop its policies on warrantless arrests, arguing that the practice may be unconstitutional.

The County of Riverside eventually appealed the case to the United States Court of Appeals for the Ninth Circuit after the district court sided with the plaintiff; the court of appeals also agreed with the plaintiff's arguments. The case then went before the Supreme Court. In a 5-4 vote, the Supreme Court justices found that the County of Riverside's practices in regards to warrantless arrests were unconstitutional and ruled that suspects who are arrested without a warrant must be given probable cause within 48 hours.

H.B. 1574 codifies the Supreme Court case and requires a sworn affidavit of probable cause be submitted by the arresting officer at the time of arrest but before bringing the arrested person before a neutral magistrate.

H.B. 1574 amends current law relating to documentation regarding an arrest of a person without a warrant.

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 Chapter 14, Code of Criminal Procedure, by adding Article 14.052, as follows:

Art. 14.052. AFFIDAVIT REQUIRED AFTER ARREST WITHOUT WARRANT. (a) Requires a peace officer who arrests a person without a warrant, as soon as practicable but before the person is taken before a magistrate as provided by Article 14.06 (Must Take Offender Before Magistrate), to:

- (1) prepare an affidavit containing a statement of the probable cause for the arrest; and

(2) either file the affidavit with the magistrate before whom the defendant is to be taken or give the affidavit to the officer to whom custody of the person is transferred.

(b) Requires that the affidavit be in writing. Provides that an affidavit in an electronic format with an electronic signature satisfies the requirements of this subsection.

(c) Requires that the affidavit required by Subsection (a), if a peace officer arrests a person without a warrant for an offense punishable by a fine only, include a statement of the reason the officer determined that it was necessary to arrest the person and take the person or have the person taken before a magistrate as provided by Article 14.06, instead of issuing to the person a citation containing written notice of the time and place the person must appear before a magistrate.

SECTION 2. Amends Article 17.033(a), Code of Criminal Procedure, to require that a person who is arrested without a warrant and who is detained in jail be released on bond, in a certain amount, not later than the 24th hour after the person's arrest if the person was arrested for a misdemeanor and a magistrate has not determined whether probable cause exists to believe that the person committed the offense or an affidavit meeting the requirements of Article 14.052 has not been filed with the court, rather than to believe that the person committed the offense.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2017.