

## **BILL ANALYSIS**

Senate Research Center  
85R5068 MAW-F

S.B. 630  
By: Buckingham  
Criminal Justice  
4/28/2017  
As Filed

### **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 of the 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.

S.B. 630 would codify the Supreme Court case and require 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.

As proposed, S.B. 630 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 to, as soon as practicable but before the person is taken before a magistrate as provided by Article 14.06 (Must Take Offender Before Magistrate) prepare an affidavit containing a statement of the probable cause for the arrest and 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 or provided orally to the applicable magistrate and recorded.

SECTION 2. Amends Article 17.033(a), Code of Criminal Procedure, as follows:

(a) Requires a person, except as provided by Subsection (c) (relating to authorizing a magistrate to postpone the release of a certain person for a certain period on the filing of an application by the attorney representing the state), who is arrested without a warrant and who is detained in jail to be released on a certain bond 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.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2017.