

**SUBJECT:** Deadlines for dismissing prosecution for indictment delays

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 7 ayes — Place, Talton, Dunnam, Galloway, Hinojosa, Nixon, A. Reyna  
0 nays  
2 absent — Farrar, Keel

**WITNESSES:** For — Sherri Wallace, Dallas Criminal District Attorney's Office; Beth Toben  
Against — None  
On — Dennis J. McKnight, Bexar County District Attorney's Office and Texas District and County Attorneys Association (TDCAA); W.C. Kirkendall and Rob Kepple, TDCAA; Keith S. Hampton, Texas Criminal Defense Lawyers Association

**BACKGROUND :** The Code of Criminal Procedure prohibits persons from being indefinitely detained in jail or on bail after an arrest if an indictment or information — instruments used to bring charges against individuals — has not been presented. A prosecution for a crime must be dismissed and bail discharged if an indictment or information is not presented “at the next term of the court” held after an arrested individual is jailed or released on bail. The code prohibits further prosecution for an offense discharged because an indictment is not presented within the deadline.

**DIGEST:** CSHB 749 would require that prosecutions for crimes be dismissed if an indictment or information was not presented on or before the last day of the next term of the court held after a person was jailed or released on bail or on or before the 180th day after such commitment or release, whichever date was later.  
CSHB 749 also would delete the provision that automatically bars further prosecution for an offense dismissed because an indictment was not

presented. The person could be rearrested for the same offense *only* if an indictment or information was presented and an arrest warrant issued.

CSHB 749 would apply only to prosecutions of persons arrested for an offense on or after its effective date. The bill would take immediate effect if finally approved by a two-thirds record vote of the membership in each house.

**SUPPORTERS  
SAY:**

CSHB 749 would ensure that all prosecutors have a minimum of 180 days to gather evidence and bring indictments after an arrest in criminal cases. Some terms of court, and the grand jury terms that run concurrently with them, are very short. This makes it difficult in complicated cases for prosecutors to finish their investigations and bring evidence before a grand jury in time to get an indictment. In these cases, suspects may have to be released.

Grand jury terms vary across the state, with some as short as two months and others as long as seven months. When a court has a two-month term, prosecutors could have as little as two months and one day to present an indictment against a defendant arrested on the last day of the previous term. The time allowed is often inadequate in cases involving complicated scientific analysis of evidence, such as DNA testing. For example, Bexar County prosecutors could not obtain scientific evidence to get a timely indictment in the case of a man who was arrested after he confessed to killing his son.

CSHB 749 would set a uniform minimum time limit for prosecutors statewide. Prosecutors would have a minimum of 180 days after a person was jailed or released on bail to bring an indictment; counties with longer terms of court would be allowed longer time frames. If a district court had a term of court longer than 180 days, the time limit would continue to be the last day of the term of court after the person was jailed. CSHB 749 would avoid situations where prosecutors bound by tight time limits feel pressure to either indict someone or to dismiss the prosecution. Furthermore, CSHB 749 would affect only cases in which a person was arrested; it would not set any time limits for cases in which there was no arrest.

CSHB 749 also would give prosecutors new tools to continue their efforts to put wrong-doers behind bars. Current law bars further prosecution of persons discharged because of delayed indictments. This bar improperly works as an artificial statute of limitations and can mean that criminals go free, not because they are innocent but possibly because evidence could not be obtained to meet a deadline. CSHB 749 would remove the bar to prosecution so cases could proceed later if evidence warranted — but only with safeguards to protect the interests of defendant. Prosecution would be permitted only if an indictment and an arrest warrant were issued, provisions that would ensure that there was strong enough evidence to pursue the case. Persons released because of a delay in presenting an indictment but who were still under the statute of limitations would not have a cloud hanging over them. They would have no criminal proceeding pending against them and would be the same position as anyone else who may be suspected but not formally accused of a crime.

Prosecutors have no interest running out the statute of limitations. They know that the sooner a case proceeds, the better for the victims, for society and for the prosecution of the case. Prosecutors who used provisions in CSHB 749 to unreasonably delay proceedings would be held accountable by the public. Also, the bill would have no impact on the right to a speedy trial *after* indictment.

Texas law contains other safeguards to ensure that persons suspected of crimes are treated fairly. Current statutes of limitations would continue to absolutely bar prosecution for crimes after the specified time period. In addition, Code of Criminal Procedure sec. 17.151 requires that persons jailed pending a felony trial be released within 90 days if the state is not ready for the trial.

OPPONENTS  
SAY:

CSHB 749 would better address any perceived problems by changing the short terms of court in certain jurisdictions instead of altering an established part of the Code of Criminal Procedure. Lengthening the time that indictments can be brought in some jurisdictions and removing the absolute bar to prosecution for persons discharged because of a delay in indictment could create unfair situations for persons accused of crimes. The statute of limitations would be the only time limit for prosecutors, and defendants could be in limbo with a cloud hanging over them if they were arrested,

discharged and possibly arrested again while the statute of limitations was in effect.

It could be unwise to remove the absolute bar to prosecution that currently requires prosecutors to do their jobs efficiently by either moving a case to trial or discharging it. The interests of all — victims, defendants, prosecutors and society — require that cases be brought to trial quickly when evidence and witnesses are fresh. If the statute of limitations was the only deadline to bringing a case to trial, prosecutors could unwisely put a case on the back burner until years after an offense. Long delays in bringing a trial could begin to erode a defendant's right to speedy trial.

Other safeguards are not always adequate to ensure that the system of criminal justice treats persons fairly. For example, under Code of Criminal Procedure sec. 17.151, persons who have been arrested have to be released if the state says it is ready for trial within 90 days. Being ready and actually going to trial are two different things, however. The code has no requirement that a trial take place soon.

NOTES:

The committee substitute removed the bar to prosecution if an indictment was not presented in the specified time period and added the requirement that persons could be rearrested for the same conduct only if an indictment was presented and an arrest warrant issued.

The companion bill, SB 604 by Sibley, has been referred to the Senate Criminal Justice Committee.