

**SUBJECT:** Limiting release on bond of certain criminal defendants by a magistrate

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

**VOTE:** 5 ayes — Keel, Riddle, Denny, Escobar, Raymond  
1 nay — Hodge  
1 present not voting — P. Moreno  
2 absent — Pena, Reyna

**WITNESSES:** None

**BACKGROUND:** Code of Criminal Procedure, art. 17.03 authorizes magistrates, at their discretion, to release criminal defendants on personal bond. Defendants charged with certain crimes may be released on personal bond only by the court before which the case is pending. This restriction applies to persons charged with capital murder; aggravated kidnapping; aggravated sexual assault; deadly assault on a law enforcement or corrections officer; deadly assault on a member of the parole board or court participant; aggravated robbery; burglary; engaging in organized crime; or injury to a child, elderly individual, or disabled individual. It also includes a person charged with a felony for violation of the Health and Safety Code, sec. 485.033, prohibiting the intentional sale, or possession with intent to use or sell, inhalant paraphernalia.

The court may order that a personal bond fee be paid before the defendant is released, paid as a condition of bond, paid as court costs, reduced, or waived.

Health and Safety Code, sec. 485.032, prohibits the knowing delivery of an abusable volatile chemical to a person who is younger than 18 years old.

**DIGEST:** CSHB 85 would add persons accused of murder, manslaughter, criminally negligent homicide, intoxication manslaughter, and delivery an abusable volatile chemical to a minor to the list of defendants who could be released on personal bond only by the court before which the case was pending.

The provision prohibiting the sale, possession, or use of inhalant paraphernalia would be removed from the list.

The bill would take effect on September 1, 2005, and would apply to offenses committed on or after the effective date.

**SUPPORTERS  
SAY:**

CShB 85 would ensure that only judges familiar with cases made decisions about releasing on personal bond defendants accused of serious crimes. Currently, persons accused of crimes such as murder or manslaughter can be released on personal bond by any court, not just the one before which the case is pending. This means that a judge unfamiliar with the case could make an ill-informed decision to release a defendant who might pose a danger to the public. Currently, a judge who has the case pending could disagree with a release decision but would have no say in the deliberation. The five offenses that CShB 85 would add to the statute are serious, and decisions about releasing defendants accused of these crimes should be made only by the judge who best understood each case.

The bill also would correct a mistake in the current law by adding to its provisions the knowing delivery of an abusable volatile chemical to a minor. This section of the Code of Criminal Procedure originally was intended to include this provision, rather than the provision prohibiting the sale, possession, or use of inhalant paraphernalia.

CShB 85 would not slow down the criminal justice system or overload individual judges. Judges making the bond decisions in these cases already would have the cases in their courts. Making these decisions would not necessarily involve long, drawn out, trial-like hearings. If an individual judge had to spend a little extra time to make bond decisions in these additional cases, decisions in other cases involving personal bonds could be made by other courts.

**OPPONENTS  
SAY:**

CShB 85 excessively would expand the list of offenses that require decisions about release on personal bond to be made by specific courts. This would slow down the criminal justice system and could overload certain judges who might have to take part in numerous bond decisions when their time might be better spent tending to their dockets. The criminal court system should retain its current flexibility to allow any court to make personal bond decisions for all but the most serious crimes.

Not all of the offenses that would be added to the list by the bill are serious enough to warrant the resulting restrictions. For example, criminally negligent homicide could involve a car wreck, which is not on par with the type of criminal behavior involved in crimes like capital murder or aggravated sexual assault. Many individuals charged with criminally negligent homicide do not present a danger to the public.

**NOTES:**

The original bill would have included provisions dealing with the definition and deposit of bail bonds.