

SUBJECT: Bail presumption that unlawful presence in U.S. presents flight risk

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 9 ayes — Cook, Craddick, Frullo, Gallego, Hilderbran, Huberty, Oliveira, Smithee, Turner

0 nays

4 absent — Menendez, Geren, Harless, Solomons

WITNESSES: For — Rebecca Forest; (*Registered, but did not testify*: Marvin Brooke, Maria Martinez, Immigration Reform Coalition of Texas; Maria Espinoza, The Remembrance Project; MerryLynn Gerstenschlager, Texas Eagle Forum; Ann Hettinger, Michelle Smith, Concerned Women for America of Texas; Timothy Lyng, Stolen Lives Quilt; Elizabeth Theiss, Texans for Immigration Reform (TFIR); Paul Day; Paul Hindelang)

Against — Rebecca Bernhardt, Texas Criminal Justice Coalition; Douglas Interiano, Proyecto Inmigrate and RITA; Elizabeth Riebschlaeger, Srs. of Charity of the Incarnate Word; Jacqueline Watson, American Immigration Lawyers Association Texas, Oklahoma & New Mexico Chapter; (*Registered, but did not testify*: Kristian Aguilar, Luis Figueroa, Mexican American Legal Defense & Education Fund; Andreyez Alvarado, Carlos Cardenas, Christina Rodriguez, University of Texas Students/ Longhorn LULAC; Victor Andrade, Coalition for Immigration for North Texas; David Atwood, Houston Peace & Justice Center.; Maria Barajas, Jessica Luna, University Leadership Initiative; Bill Beardall, Equal Justice Center; Jennifer Daniels, Jose Moriel, North Texas Dream Team; Julio Diaz, Jose Manuel Escobedo, Border Network For Human Rights; Jean Thomas Dwyer, Daughters of Charity Advocacy & Social Justice Committee; Angelina Espinoza, Tomas Lobo, C.I.R. of North Texas; Michael Espinoza, Luis Ruiz, Houston United; Tanya Garduno, Southwest Workers Union; William Gonzalez, Unite Here Local 251; Shanna Igo, Texas Municipal League; Bobbi K. Jones, United Methodist Bishops of Texas; Martina Morales, Border Network for Human Rights and RITA; Esther Reyes, Reform Immigration for Texas; Andrew Rivas, TX Catholic Conference; Jannell Robles, Central American Resource Center (CRECEN); Maria Robles, Coalition For Immigration Reform of DFW &

North Texas; Cecile Roeger, Dominican Sisters of Houston; Matthew Simpson, ACLU of Texas; T. Randell Smith, Texas Impact; Margaret Snyder, Srs. of Charity of the Incarnate Word; Blanca Tovar, Sandra Tovar, Council for Minority Student Affairs; Celeste Villarreal, Mexican American Bar Association of Texas; and 16 others representing themselves)

DIGEST:

HB 875 would require sheriffs or other officers in charge of correctional facilities, upon receiving a defendant arrested for a felony or certain intoxication offenses, to immediately make a reasonable effort to determine the defendant's citizenship status.

Sheriffs who had reason to believe a defendant was a foreign national would have to make a reasonable effort to verify that the defendant had been lawfully admitted to the U.S. and, if lawfully admitted, that lawful status had not expired. A sheriff who could not verify a defendant's immigration status from documents in the defendant's possession would have 48 hours after the defendant was received to check the immigration status with federal authorities. Sheriffs would have to verify the defendant's immigration status by contacting the Law Enforcement Support Center of the U.S. Department of Homeland Security or other office designated by the U.S. Department of Homeland Security.

A sheriff would have to notify the judge or magistrate considering bail in the case and the Department of Homeland Security if the sheriff determined that the defendant was not lawfully admitted to the U.S. or if lawfully admitted, that the lawful status had expired.

The Commission on Jail Standards would have to prepare and issue guidelines and procedures to ensure compliance with HB 875.

If a sheriff notified a judge or magistrate that a defendant was not lawfully admitted to the U.S. or that a defendant's lawful status had expired, there would be a rebuttable presumption at any bail proceeding that the defendant presented a risk of flight from prosecution.

The bill would apply to all felonies and the following intoxication offenses in the Penal Code: sec. 49.04, driving while intoxicated; sec. 49.045, driving while intoxicated with a child passenger; sec. 49.05, flying while intoxicated; sec. 49.06, boating while intoxicated; and sec. 49.065, assembling or operating an amusement ride while intoxicated.

The bill would take effect September 1, 2011. It would apply only to defendants admitted to correctional facilities on or after that date.

**SUPPORTERS
SAY:**

HB 875 is needed to ensure that judges have full information when making decisions about bail for persons accused of serious crimes who are in the U.S. unlawfully. There have been problems with persons who were here illegally and fled after being granted bail, and HB 875 would help address that problem. HB 875 would address the legitimate need to know the immigration status of persons arrested for serious crimes.

HB 875 would be narrowly drawn to apply only to felonies and intoxication offenses. These are crimes that endanger public safety and for which a person's flight risk is of special concern.

HB 875 would not infringe on local control. It would require only that sheriffs make reasonable efforts to gather information about citizenship status so that judges could have the information when making their bail decisions. For many sheriffs, HB 875 would not require any efforts in addition to those that they currently make. All Texas jurisdictions participate in the federal screening program called Secure Communities program, and many have routine contact with Immigration and Customs Enforcement (ICE).

HB 875 would not require sheriffs to enforce federal immigration law or to make any determinations that were federal responsibilities. Instead, it would direct sheriffs to use federal resources to gather information to pass on to judges. The bill would direct sheriffs to examine documents in the possession of arrestees only if they had reason to believe an arrestee was a foreign national and would require only that reasonable efforts be made. Since federal law requires noncitizens to carry evidence of immigration status, noncitizens who are here legally should be able easily to meet this request. For others, the bill would direct sheriffs to contact federal entities who could report on arrestees' immigration status.

While the information gathering that would be done under HB 875 may already be done, the bill is necessary to ensure that it is done uniformly across the state in all cases and that the information is passed on to judges considering bail.

HB 875 would not mandate that bail be denied to anyone. Judges would continue to have complete discretion about granting bail. By having sheriffs gather certain information, HB 875 would make sure that judges and magistrates received information about arrestees' citizenship status in an efficient manner to facilitate fully informed decision-making about bail. Decisions about bail would continue to be guided by Code of Criminal Procedure, art. 17.15.

A presumption that someone who is in the country unlawfully would present a flight risk would be appropriate. Such persons would have strong incentives to not appear in court after being released. The presumption in HB 875 would be rebuttable to ensure that arrestees could make their case about their likelihood to flee and the setting of their bail.

While any fiscal impact of this bill to local entities should not be significant, persons arrested for the felonies and intoxication offenses that would fall under the bill are accused of serious crimes. These are the type of offenders for which it is appropriate to use criminal justice resources.

OPPONENTS
SAY:

The state should not infringe on local control by mandating that sheriffs make determinations about the immigration status of arrestees. Sheriffs should be able to make decisions about how to handle arrestees without a state requirement that they take certain actions within certain deadlines to determine citizenship status.

Making determinations about immigration status is a federal – not state – responsibility. Requiring Texas sheriffs and jailers to make these determinations without explicit authorization could run afoul of federal law and could raise liability issues for the sheriffs. Federal immigration law is complex, and sheriffs would need special, costly training to make proper determinations about legal status. For example, for many people immigration status is fluid and may change, and others may have applications to remain in the country pending.

HB 875 is unnecessary. All Texas jurisdictions participate in the federal Secure Communities program under which the fingerprints of those arrested are checked against Federal Bureau of Investigation (FBI) criminal history records and a Department of Homeland Security database. When fingerprints match a record in one of those databases, ICE is notified, and enforcement actions may be taken. Arrestees can have an ICE hold placed on them so that when they are released, they are turned

over to ICE custody. In addition, some jurisdictions may participate in the Criminal Alien Program (CAP), which identifies and removes criminal aliens in jails and prisons.

The presumption that would be created by HB 875 that a person who did not have lawful status would present a flight risk is unreasonable and could lead to costly, unnecessary detentions. A person's immigration status is not an appropriate proxy for flight risk. Many persons who are undocumented have the type of community ties that would give reasonable assurance of their appearance in court after being released on bail. Bail should continue to be based on the factors in Code of Criminal Procedure, art. 17.15, which include the nature of the offense, the circumstances under which it was committed, and the safety of the victim and the community.

Local resources, including detention space, already are stretched thin, and HB 875 could lead to local resources being used to house higher numbers of undocumented persons denied bail or persons unable to make bail because it was set higher than it would be under current law. Many Texas jails are full or overcrowded, and HB 875 could make matters worse. With the cost per day to house a person in a jail ranging from \$45 to \$70, each additional person jailed because of HB 875 could be costly.