

## **BILL ANALYSIS**

C.S.H.B. 2077  
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Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The current cash bail system not only fails to protect the constitutional presumption of innocence but also vastly contributes to jail overpopulation that too often induces the innocent to accept guilty plea bargains. Many individuals held in the state's jail systems who cannot post cash bail are people of color accused of nonviolent crimes who are working poor, homeless, or suffering from mental health issues at the time of their arrests. Under the current bail system, a wealthy, high-risk individual charged with a violent offense is more likely able to post a cash bail than a poor, low-risk individual accused of a nonviolent crime, who may spend years in pretrial detention waiting for their case to be heard. It is argued that such a system violates the accused's constitutional rights and the equal protection clause of the Fourteenth Amendment. C.S.H.B. 2077 makes a number of changes to the state's bail laws in an effort to remedy this situation.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Court of Criminal Appeals in SECTION 3 of this bill.

### **ANALYSIS**

C.S.H.B. 2077 provides for the use of pretrial risk assessments in criminal cases, sets out procedures governing bail proceedings, establishes educational requirements for justices of the peace, and, contingent on approval of a related constitutional amendment, creates an exception to the right to bail for certain criminal defendants.

#### **Right to Bail Exception**

C.S.H.B. 2077 amends the Code of Criminal Procedure to authorize a judge or magistrate to deny bail pending trial to a person who is charged with a felony offense involving the use or exhibition of a deadly weapon or an offense that is ineligible for judge-ordered community supervision, other than a nonviolent drug offense under the Texas Controlled Substances Act, if the judge or magistrate determines by clear and convincing evidence that requiring bail and conditions of release is insufficient to reasonably ensure the person's required court appearance or the safety of the community or of any person, including the victim of the alleged offense. This authorization takes effect December 1, 2021, but only if the constitutional amendment authorizing the denial of bail to an accused person if a judge or magistrate makes such a determination is approved by the voters.

## **Pretrial Risk Assessment**

C.S.H.B. 2077 amends the Government Code to require the Office of Court Administration of the Texas Judicial System (OCA) to take the following actions not later than January 1, 2022:

- develop an automated pretrial risk assessment system;
- make the system available to judges and other magistrates in Texas at no cost to a county, municipality, or magistrate; and
- make available nonautomated pretrial risk assessment instruments to such judges and magistrates at no cost to the county, municipality, or magistrate.

C.S.H.B. 2077 amends the Code of Criminal Procedure to require the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county to adopt, not later than January 1, 2022, a pretrial risk assessment instrument to be used with respect to defendants charged with offenses in that county. The instrument adopted must be the automated pretrial risk assessment system developed by the OCA or another instrument that meets specified criteria prescribed by the bill, including the criteria that it be designed to reduce the likelihood of bail decisions being affected by bias based on sex, race, or other protected classifications. The bill requires a magistrate considering the release on bail of a defendant charged with an offense punishable as a Class B misdemeanor or any higher category of offense to order the following:

- that the personal bond office for the county in which the defendant is being detained, or another suitably trained person, use the adopted instrument to conduct a pretrial risk assessment with respect to the defendant; and
- that the assessment results be provided to the magistrate without unnecessary delay to ensure that the magistrate is able to make a bail decision within the required period.

The bill prohibits a magistrate from ordering a sheriff or sheriff's department personnel to conduct such a pretrial risk assessment without the sheriff's consent and authorizes the magistrate to personally conduct such an assessment using the instrument. The bill requires the results of a pretrial risk assessment to be promptly provided to the defendant and the state's attorney and requires the magistrate to consider the results before making a bail decision.

## **Bail Proceedings**

C.S.H.B. 2077 requires a magistrate to take the following actions without unnecessary delay but not later than 48 hours after a defendant is arrested:

- hold a proceeding open to the public; and
- after considering all circumstances and the results of the pretrial risk assessment, order:
  - the release of the defendant on personal bond without conditions;
  - the release of the defendant on personal bond or monetary bail bond with any condition the magistrate determines necessary to reasonably ensure the defendant's required court appearance and the safety of the community and of any person, including the victim of the alleged offense; or
  - the denial of bail in accordance with the law.

The bill requires the magistrate, in making a bail decision, to impose, as applicable, the least restrictive conditions and minimum amount of bail necessary to reasonably ensure the defendant's required court appearance and the safety of the community and of any person, including the victim of the alleged offense.

C.S.H.B. 2077 establishes that, in a criminal case, there is a rebuttable presumption that personal bond, conditions of release, or both personal bond and conditions of release are sufficient to reasonably ensure the defendant's required court appearance and the safety of the community and of any person, including the victim of the alleged offense. The bill authorizes the court, for purposes of rebutting that presumption, to consider the defendant's pretrial risk assessment results and other information as applicable. The bill prohibits a magistrate from requiring a defendant to provide a monetary bail bond for the sole purpose of preventing the defendant's release on bail and entitles a defendant who remains in custody for more than 48 hours after a magistrate enters an order requiring such bond to a bail review hearing.

C.S.H.B. 2077 requires a magistrate who denies a defendant's bail to inform the defendant of the entitlement to a bail review hearing under the bill's provisions and, as soon as practicable but not later than 24 hours after denying bail, to issue a written order of denial that includes findings of fact and a statement of the magistrate's reasons for the denial. If a magistrate determines that a defendant is not indigent and is able to pay any costs related to a condition of the defendant's bail, the magistrate must assess the costs as court costs or order the costs to be paid directly by the defendant as a condition of release. The bill authorizes a judge to enter a standing order to release defendants charged with specified offenses on personal bond before a pretrial risk assessment has been conducted but prohibits a judge from otherwise adopting a bail schedule or entering a standing order related to bail that:

- is inconsistent with the bill's provisions related to a bail decision; or
- authorizes a magistrate to make a bail decision for a defendant without considering the defendant's pretrial risk assessment or the ability of the defendant to pay a monetary bail bond.

The bill expressly does not prohibit a sheriff or other peace officer, or a county jailer, from accepting bail in a misdemeanor or felony case before a pretrial risk assessment has been conducted or before a bail decision has been made by a magistrate under the bill's provisions.

C.S.H.B. 2077 establishes that a defendant who appears before a magistrate as ordered by citation may not be temporarily detained for purposes of conducting a pretrial risk assessment or for a magistrate to issue a bail decision. The bill requires the magistrate, after performing the requisite duties of a magistrate for an arrest under warrant, to release the defendant on personal bond unless the defendant is lawfully detained on another matter.

C.S.H.B. 2077 establishes procedures for a bail review hearing. As soon as practicable after a defendant's bail is denied under the bill's provisions or after the defendant becomes eligible for a bail review hearing but not later than the third day after the date the magistrate issues the written order denying or setting bail, the court in which the defendant's case is pending must conduct a hearing regarding whether to detain the defendant pending the trial of the offense. The bill provides for the waiver by the defendant of the defendant's right to a bail review hearing and the withdrawal of such a waiver by the defendant. The bill entitles a defendant to representative counsel at a bail review hearing and entitles an indigent defendant to have counsel appointed for that purpose. The bill authorizes a defendant to present any relevant information at the bail review hearing. The rules of evidence applicable to criminal trials do not apply to a bail review hearing. The bill authorizes the defendant or the state's attorney to request a proffer of a witness's testimony before the witness is presented. The bill prohibits a defendant from using a bail review hearing to seek discovery or conduct an examining trial or to harass a victim of or witness to the alleged offense. The bill provides for the reopening of a bail review hearing by the court at any time during the period occurring after the bail review hearing concludes and before the trial of the offense commences.

C.S.H.B. 2077 sets out the matters a court is required to consider in a bail review hearing and requires a judge to reduce any applicable amount of monetary bail in accordance with the defendant's ability to pay and order a defendant to be released on bail unless the judge finds by clear and convincing evidence that requiring bail and conditions of release is insufficient to reasonably ensure the defendant's required court appearance or the safety of the community or any person, including the victim of the alleged offense. If a judge makes such a finding, the judge must deny the defendant's bail and issue a written order of denial that includes the following information:

- findings of fact;
- a statement of the judge's reasons for the denial; and
- an explanation of how the denial was supported by the results of the defendant's pretrial risk assessment.

The bill prohibits the court, except for good cause shown, from authorizing a continuance of a bail review hearing for more than five days, excluding weekends and legal holidays. The bill

entitles a defendant to appeal a denial of bail and requires the defendant to be detained in jail pending the appeal. The bill requires the Texas Court of Criminal Appeals (CCA) to adopt rules accelerating the disposition by the appellate court and the CCA of such an appeal.

C.S.H.B. 2077 prohibits a judge or magistrate in whose court a criminal action is pending from ordering the accused to be rearrested or requiring the accused to give another bond in a higher amount because the accused is formally charged with the same offense for which the accused was initially arrested and bond was given. The bill revises the rules governing setting the amount of bail in any case as follows:

- adds requirements that the results of the defendant's pretrial risk assessment and the defendant's criminal history, including any prior offenses involving peace officers or family violence, be considered;
- replaces the authorization for proof to be taken on the matter of a defendant's ability to make bail with a requirement for such proof to be taken before a bail decision is made; and
- requires the future safety of any person to be considered, instead of just the future safety of a victim of the alleged offense.

The bill requires a magistrate authorizing a defendant's release on bail to provide, if applicable, written notice to the defendant of the conditions of the defendant's release and the penalties of violating a condition of release, including the defendant's arrest, and requires the notice to be provided in a manner that is sufficiently clear and specific to serve as a guide for the defendant's conduct while released.

C.S.H.B. 2077 authorizes a court to waive a personal bond reimbursement fee or assess a lesser fee if the court determines that the defendant is indigent or demonstrates an inability to pay the fee. The bill clarifies that a court may require a personal bond reimbursement fee to be paid as court costs. The bill prohibits the court or jailer from refusing to release a defendant based solely on the defendant's failure to pay a personal bond reimbursement fee if the defendant is indigent or demonstrates an inability to pay the fee. The bill repeals provisions exempting a personal bond pretrial release office that on January 1, 1995, was operated by a community corrections and supervisions department from the applicability of statutory provisions requiring a personal bond office to take the following actions:

- to prepare, update, and file with certain district or county clerks a record about any accused person who, after review by the office, is released on personal bond before sentencing in a pending case; and
- to submit to the commissioners court or district and county judges that established the office an annual report containing certain information about the operations of the office during the preceding year.

### **Justice of the Peace Training**

C.S.H.B. 2077 amends the Government Code to require a justice of the peace to complete the following amounts of instruction on the justice's duties relating to an arrest under warrant and the justice's duties with respect to setting bail in criminal cases:

- not less than four hours of instruction within one year after the date the justice is first elected; and
- not less than two hours of instruction each following year.

A justice of the peace serving on the bill's effective date is only required to comply with the annual two-hour requirement. The bill requires such a justice to complete their initial two hours of instruction not later than January 1, 2022.

### **Applicability**

C.S.H.B. 2077 applies only to a person who is arrested on or after January 1, 2022.

### **Repealers**

C.S.H.B. 2077 repeals the following Code of Criminal Procedure provisions:

- Article 17.03(g); and
- Sections 5(c) and 6(c), Article 17.42.

**EFFECTIVE DATE**

Except as otherwise provided, September 1, 2021.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 2077 differs from the original by revising the description of the constitutional amendment that must be approved in order for the bill's provisions authorizing the denial of bail for defendants charged with certain offenses to take effect.