

SUBJECT:	Requiring denial of bail for second violent, sexual offense
COMMITTEE:	Criminal Jurisprudence — favorable, without amendment
VOTE:	8 ayes — Gallego, Aliseda, Burkett, Carter, Christian, Y. Davis, Rodriguez, Zedler 0 nays 1 absent — Hartnett
WITNESSES:	For — Kimberly Segale; (<i>Registering, but did not testify</i> : Katrina Daniels, Bexar County District Attorney Susan Reed) Against — None
BACKGROUND:	<p>A person accused of a crime generally is guaranteed the right to post bail to secure release from jail pending trial. Tex. Const., Art. 1, sec. 11 states that all prisoners shall be eligible for bail unless accused of a capital offense when proof is evident. However, Tex. Const., Art. 1, sec. 11(a) allows courts to deny bail under certain circumstances. Under this provision, a judge has the discretion to deny bail if the defendant is accused of:</p> <ul style="list-style-type: none">• a felony and has been convicted of two prior felonies;• a felony committed while on bail for a prior felony for which the defendant has been indicted;• a felony involving the use of a deadly weapon after being convicted of a prior felony; or• a violent or sexual offense committed while on probation or parole for a prior felony. <p>Violent offenses are defined as murder, aggravated assault if a deadly weapon was used or exhibited, aggravated kidnapping, and aggravated robbery. Sexual offenses are defined as aggravated sexual assault, sexual assault, and indecency with a child.</p> <p>Bail may be denied in these circumstances only after a hearing and upon presentation of evidence substantially showing the guilt of the accused.</p>

Under Tex. Const. Art. 1, sec. 13, excessive bail cannot be required.

Under secs. 11(b) and 11(c), bail also may be denied following a hearing in two other situations. Judges can deny bail to persons who were accused of a felony or any offense involving family violence, had been released on bail on those charges, and whose bond had been revoked or forfeited for violating a condition of that bond related to the safety of the victim or the community. Also, bail can be denied if a judge determines at a hearing that the person violated certain protective orders in family violence cases.

Under Code of Criminal Procedure, art. 17.15, when setting bail a judge considers the nature of the offense and the circumstances under which it was committed, the safety of the victim and the community, and the defendant's ability to make bail. To secure a defendant's attendance at trial, a court may impose any reasonable condition on a bond related to the safety of an alleged victim or the safety of the community. A court may revoke a defendant's bond only if at a hearing it finds by a preponderance of the evidence that the defendant has violated a condition of the bond.

DIGEST:

HJR 98 would require judges, following a hearing, to deny release on bail to persons taken into custody for a violent or sexual offense who have previously been convicted of a violent or sexual offense.

Violent offense would be defined as murder, aggravated assault if a deadly weapon was used or exhibited, aggravated kidnapping, and aggravated robbery. Sexual offenses would be defined as aggravated sexual assault, sexual assault, and indecency with a child.

The proposal would be presented to the voters at an election on Tuesday, November 8, 2011. The ballot proposal would read: "The constitutional amendment denying bail to certain persons charged with a violent or sexual offense after having been previously convicted of a violent or sexual offense."

**SUPPORTERS
SAY:**

HJR 98 would require judges to deny bail in narrowly tailored, justifiable circumstances involving persons accused of a second violent or sexual offense. The proposed constitutional amendment would address shortfalls in current law by requiring judges, in these appropriate cases, to keep defendants off the streets by denying bail. The public deserves to be protected from these defendants while they are awaiting trial because of

the seriousness of their alleged crimes and the fact that they have a previous violent or sexual offense.

The current criteria allowing the denial of bail are too broad to adequately protect the public from the accused potentially repeat offenders described by HJR 98. To deny bail to a person accused of a violent or sexual offense, a defendant must have had two prior felonies or meet other criteria that do not necessarily fit those described by the amendment. HJR 98 would limit the bail denial to the seven most serious violent and sex offenses: murder, aggravated assault if a deadly weapon was used or exhibited, aggravated kidnapping, aggravated robbery, aggravated sexual assault, sexual assault, and indecency with a child

The authority proposed in HJR 98 could have been used in a Garland case in which a man with a previous sex offense was accused of murder and had his bail reduced from \$1 million to \$100,000. In this case, denial of bail would have been appropriate.

These defendants have proven that they are dangerous because of their first violent or sexual offense, and they should not be released under bond conditions when accused of another violent or sexual crime. They may have a propensity to offend, which raises public safety concerns, and they would be more likely to flee as they would be facing substantial prison time for their second violent or sexual offense.

The Texas Constitution long has recognized that there are exceptions to the requirement that bail generally should be made available to criminal defendants. The situations in which bail can be denied have evolved, and it is appropriate for Texas to set limits on bail just as the federal government and many states do. It is appropriate to revise state policy to reflect concerns about violent and sexual offenders and to address shortfalls in current law that do not adequately protect the public.

The serious nature of the violent and sexual offenses listed in HJR 98 requires that bail denial in these situations be mandatory, not discretionary. HJR 98 would be in line with current constitutional provisions and statutes that treat violent and sexual crimes uniquely in the setting of bonds. For example, the Code of Criminal Procedure requires judges and magistrates to notify prosecutors before reducing the amount of bail set for certain serious and sex offenses.

Existing tools do not always work to safeguard the public from repeat violent or sexual offenders. While judges might set high bail in these cases, defendants can have their bail amount reduced or obtain release through writs of habeas corpus. Setting tighter conditions on bonds could be ineffective in these cases. By setting a uniform standard for bail in these cases, HJR 98 would address a problem that can occur when a defendant is transferred to a different jurisdiction and bail amounts are reduced.

Defendants described by the proposed amendment – like those denied bail currently under the Texas Constitution – would retain all their rights to due process and other protections. For example, the determination to deny bail would have to be made at a hearing in which the defendant could appeal the denial of bond or make a case for another bond

HJR 98 should have limited impact on jail populations. The fiscal note says that the cost to local governments for HJR 98 would not be significant. The offenders described by the amendment should be considered high priority for housing in Texas jails.

**OPPONENTS
SAY:**

HJR 98 would erode the basic tenet that bail should not be denied to criminal defendants except in the most limited circumstances. The purpose of requiring bail is to ensure a defendant's appearance at a subsequent hearing or trial, not to punish someone for an alleged offense or to deter hypothetical, future crimes.

Requiring judges to deny bail in the circumstances described by the proposed amendment could violate the longstanding legal principle that bail should not be used as an instrument of oppression and could lead to a further expansion of the circumstances or crimes in which bail could be denied. The problem that this proposed amendment seeks to solve is a limited one that does not justify amending the Bill of Rights article of the Texas Constitution. The proposed amendment could result in the unfair detainment of persons who were innocent or not dangerous.

By requiring judges to deny bail in certain circumstances, HJR 98 would infringe on judges' discretion to make appropriate decisions about bail. Forcing judges to abdicate their responsibilities to evaluate individual cases could result in the loss of due process rights for defendants.

Current law works to protect the public in the types of cases described by HJR 98, and bonds are set appropriately in these cases. For example, courts already are required to consider public safety and the nature of an alleged offense and set higher bail accordingly. Defendants – especially those with a previous violent or sexual offense – who are charged with serious violent or sexual crimes often remain in custody because they cannot make bail. Prosecutors can ask for bail to be increased. Judges can set restrictive conditions on bonds for persons described by HJR 98 and can use supervision strategies such as electronic monitoring to protect the community. Some Texas jails already are overcrowded, and this problem could increase with HJR 98.

OTHER
OPPONENTS
SAY:

It would be better for HJR 98 to allow – but not require – judges to deny bail to persons accused of a repeat violent or sex offense. This would give judges another tool to use if deemed necessary. If HJR 98 were discretionary, judges could evaluate the threat a defendant presented to the community and deny bail in appropriate cases.