

## BILL ANALYSIS

Senate Research Center  
81R2226 KEL-D

S.B. 498  
By: Wentworth  
Criminal Justice  
2/23/2009  
As Filed

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, magistrates are not authorized to release a defendant on bail for a cash bond of less than the amount set for bail in the hearing.

As proposed, S.B. 498 authorizes a magistrate to release a defendant on a cash bond of less than the amount set in the bail hearing. The bill authorizes a county to impose a fee of up to 10 percent of the amount deposited to cover administrative costs. The bill also amends Section 103.027 (Miscellaneous Fees and Costs: Government Code), Government Code, to conform to changes made by certain Acts of the 80th Legislature, Regular Session, 2007.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 17.02, Code of Criminal Procedure, as follows:

Art. 17.02. New heading: DEFINITION OF "BAIL BOND"; CASH BOND AUTHORIZED. (a) Creates this subsection from existing text. Redefines "bail bond."

(b) Creates this subsection from existing text. Requires that any cash funds deposited under this Article or Article 17.025 be received for by the officer receiving those funds. Requires the officer to deposit the funds in an interest-bearing account established for purposes of this subsection. Authorizes interest on the amount in the account to be retained by the county to cover the costs of administering this subsection. Authorizes the county, in addition, to impose a fee, not to exceed 10 percent of the amount deposited, to cover those administrative costs. Requires the officer to refund the amount deposited, less any amount retained under this subsection as an administrative fee, to the defendant, or to another person to whom that amount is assigned by the defendant in a signed written instrument filed with that officer, when the defendant complies with the conditions of the defendant's bond, and upon order of the court.

SECTION 2. Amends Chapter 17, Code of Criminal Procedure, by adding Article 17.025, as follows:

Art. 17.025. RELEASE ON BAIL IN PARTIAL AMOUNT. (a) Authorizes a magistrate to release a defendant on bail by permitting the defendant to deposit an amount of cash bond or to submit a surety bond in an amount that is less than the total amount of bail set in the case if the magistrate determines that requiring the defendant to deposit a cash bond or to procure a surety bond in the full amount of bail will impose an unreasonable hardship on the defendant.

(b) Provides that only the court before whom the case is pending may release a defendant under this article if the defendant is a defendant described by Article 17.03(b) (related to authorizing only the court before whom the case is pending to release on a personal bond a defendant who is charged with a certain offense or felony or who does not submit to certain testing).

(c) Authorizes a magistrate who releases a defendant under this article to impose any conditions on the release that the magistrate could impose if the defendant were released on personal bond.

(d) Provides that a release on bail in a partial amount is not a reduction in bail for purposes of Article 17.091 (Notice of Certain Bail Reductions Required).

SECTION 3. Amends Sections 41.258(b) and (f), Government Code, as follows:

(b) Requires a court, judge, magistrate, peace officer, or other officer taking a cash or surety bond, rather than a bail bond, for an offense other than a misdemeanor punishable by fine only under Chapter 17 (Bail), Code of Criminal Procedure, to require the payment of a \$15 cost by each person posting the cash or surety bond, as applicable, provided the cost does not exceed \$30 for all bail bonds posted at that time for an individual and the cost is not required on the posting of a personal bond.

(f) Provides that a person, rather than a surety, paying a cost under Subsection (b) may apply for and is entitled to a refund of the cost not later than the 181st day after the date the state declines to prosecute an individual or the grand jury declines to indict an individual.

SECTION 4. Amends Section 103.027(2), Government Code, to conform to the amendments made to Section 103.022, Government Code, by Chapter 36 (S.B. 844), Acts of the 80th Legislature, Regular Session, 2007, and further amends it to require that cost paid for each cash or surety bond, rather than cost paid by each surety posting the bail bond, for an offense other than a misdemeanor punishable by fine only under Chapter 17, Code of Criminal Procedure, for the assistant prosecutor supplemental fund, rather than felony prosecutor supplemental fund, and the fair defense account be \$15, provided the cost does not exceed \$30 for all bail bonds posted at that time for an individual and the cost is not required on the posting of a personal bond, rather than a personal or cash bond.

(b) Repealer: Section 103.022 (Miscellaneous Fees and Costs), Government Code, as amended by Chapter 36 (S.B. 844), Acts of the 80th Legislature, Regular Session, 2007. Provides that Section 103.022 (Miscellaneous Fees and Costs: Business Organizations Code), Government Code, as reenacted and amended by Chapter 921 (H.B. 3167), Acts of the 80th Legislature, Regular Session, 2007, to reorganize and renumber that section, continues in effect.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: September 1, 2009.