

BILL ANALYSIS

Senate Research Center

S.B. 21
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The current bail bond system in Texas allows for the continual release of habitual and violent offenders on multiple felony and Personal Recognizance (PR) Bonds. Unfortunately, these practices have led to almost 100 murders in Harris County by defendants out on multiple felony PR bonds in the past two years alone.

S.B. 21 seeks to address the release practices surrounding habitual and violent offenders and aims to better protect the safety of their victims, law enforcement officers, and their communities as a whole.

Many judges and magistrates across the state do not take vital information into consideration when setting bail amounts. Without a defendant's entire personal profile at their disposal, the defendant's overall flight and re-offense risk is nearly impossible to determine. S.B. 21 would resolve this issue by requiring judges and magistrates to evaluate specific information on defendants, such as criminal history reports, allowing them to make the most educated bail determinations.

Additionally, S.B. 21 seeks to create a more transparent and accountable system by requiring county clerks to collect and report all relevant bail bonding information to be published by the Office of Court Administration. By making this information more readily accessible, the legislature could more properly study the effectiveness and best practices surrounding our bail system, while also allowing the public to track and analyze how well judges are ensuring their safety.

As proposed, S.B. 21 amends current law relating to rules for fixing the amount of bail, to the release of certain defendants on a bail bond or personal bond, to related duties of a magistrate in a criminal case, to the reporting of information pertaining to bail bonds, and to the regulation of charitable bail organizations.

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 Articles 17.03(b) and (b-1), Code of Criminal Procedure, as follows:

(b) Authorizes only the trial court with jurisdiction over the case, rather than only the court before whom the case is pending, to release on personal bond a defendant who is charged with an offense under certain sections of the Penal Code. Deletes existing text providing that Section 22.03 (Deadly Assault on Law Enforcement or Corrections Officer, Member or Employee of Board of Pardons and Paroles, or Court Participant), Penal Code, is among sections under which a defendant charged is eligible for release on personal bond. Makes nonsubstantive changes.

(b-1) Provides that a defendant is not eligible to be released on personal bond if the defendant, rather than prohibits the magistrate from releasing on personal bond a defendant who:

- (1) creates this subdivision from existing text and makes nonsubstantive changes;
- (2) has, in the preceding two years, failed to appear after being released on personal bond or has had a bond found to be insufficient;
- (3) is charged with committing any offense while released on bail for another offense;
- (4) was convicted of any felony offense in the preceding three years or any Class A or Class B misdemeanor offense in the preceding year;
- (5) is currently charged with multiple offenses, regardless of whether the offenses are pending before the same court;
- (6) is charged with any offense under Title 5 (Offenses Against the Person), Penal Code, in which there is an identifiable victim;
- (7) is charged with an offense that involves possession of four or more grams of a controlled substance;
- (8) is charged with, or in the preceding five years was charged with, an offense under Section 38.06 (Escape), Penal Code;
- (9) has been convicted of an offense under Section 22.011 (Sexual Assault) or 22.021 (Aggravated Sexual Assault), Penal Code; or
- (10) is charged with any offense involving the use of a deadly weapon as defined by Section 1.07 (Definitions), Penal Code.

SECTION 2. Amends Article 17.15, Code of Criminal Procedure, as follows:

Art. 17.15. RULES FOR FIXING AMOUNT OF BAIL. (a) Creates this subsection from existing text. Provides that the amount of bail to be required in any case is to be regulated by the court, judge, magistrate or officer taking the bail; they are to be governed in the exercise of this discretion by the Constitution and by certain rules, including requiring that the criminal history and immigration status of the defendant, including any prior offenses committed against a public servant or involving family violence, be considered.

(b) Defines "family violence."

SECTION 3. Amends Chapter 17, Code of Criminal Procedure, by adding Article 17.1501, as follows:

Art. 17.1501. BAIL SCHEDULE; HEARING. (a) Authorizes the judges of the courts trying criminal cases in a county to promulgate a standing order setting out a schedule of suggested bail amounts for any offense over which the courts have jurisdiction under Chapter 4 (Courts and Criminal Jurisdiction).

(b) Authorizes a defendant who is unable to give bail in the amount required by the schedule to file with the applicable magistrate a sworn affidavit declaring the maximum amount that the defendant would be able to pay or provide as security within 48 hours of arrest for purposes of obtaining a bail bond. Requires that the affidavit set out sufficient facts to clearly establish that amount, given the totality of the defendant's circumstances.

(c) Entitles a defendant who files an affidavit under Subsection (b) to a hearing before the magistrate on the bail amount. Requires that the hearing be held not later than 48 hours after the charges were filed against the defendant or 48 hours after the defendant was arrested, whichever is later. Requires the magistrate, at the hearing, to consider the facts stated in the affidavit and the rules established by Article 17.15 and set the defendant's bail. Requires the magistrate to issue oral or written findings of fact supporting the decision.

(d) Requires a defendant who has not given bail before the fourth business day after the date bail is set under this article to be taken before the court before whom the case is pending for a hearing to reconsider the bail amount. Authorizes the court, at a hearing under this subsection, to adjust the bail, keep the bail as previously set, or impose any additional conditions of release on bond the court considers necessary.

(e) Prohibits this article from being interpreted as creating a right to release on bail in Texas that does not exist under the constitution of Texas.

SECTION 4. Amends Section 27.005, Government Code, as follows:

Sec. 27.005. EDUCATIONAL REQUIREMENTS. (a) Provides that, for purposes of removal under Chapter 87 (Removal of County Officers from Office; Filling of Vacancies), Local Government Code, "incompetency" in the case of a justice of the peace includes the failure of the justice to successfully complete certain continuing education courses relating to the duties of the justice under Article 15.17 (Duties of Arresting Officer and Magistrate), Code of Criminal Procedure, and with respect to setting bail in criminal cases.

(b) Requires, rather than authorizes, that the courses be completed in an accredited state-supported school of higher education or through a course in bail bond law that is approved by the State Bar of Texas and offered by a public or accredited private institution of higher education in Texas. Makes nonsubstantive changes.

SECTION 5. Amends Subchapter C, Chapter 71, Government Code, by adding Section 71.0354, as follows:

Sec. 71.0354. BAIL & PRETRIAL RELEASE INFORMATION. (a) Requires the clerk of each court at law, as a component of the official monthly report submitted to the Office of Court Administration of the Texas Judicial System (OCA), to report certain bail-related information.

(b) Requires that OCA post the information in a publicly accessible place on its website without disclosing any personal information of any defendants, judges, or magistrates.

SECTION 6. Amends Chapter 17, Code of Criminal Procedure, by adding Article 17.071, as follows:

Art. 17.071. CHARITABLE BAIL ORGANIZATIONS. (a) Defines "charitable bail organization."

(b) Provides that this article does not apply to a charitable bail organization that pays a bail bond for not more than one defendant in any 180-day period.

(c) Requires a charitable bail organization to file in the office of the county clerk of each county where the organization intends to pay bail bonds an affidavit designating the individuals authorized to pay bonds on behalf of the organization.

(d) Authorizes a charitable bail organization to only pay bail bonds for indigent defendants charged with misdemeanors. Prohibits the organization from paying more than a total amount of \$2,000 for each defendant, regardless of the number of misdemeanor charges pending against the defendant.

(e) Requires a charitable bail organization, not later than the 10th day of each month, to submit to the sheriff of each county in which the organization files an affidavit under Subsection (c), a report that includes certain information for each defendant for whom the organization paid a bail bond in the preceding calendar month.

(f) Requires a charitable bail organization, not later than January 10 and June 10 of each year, to submit to the sheriff of each county in which the organization files an affidavit under Subsection (c), a report that includes certain donor information for each donation of \$100 or more received after the organization's most recent report under this subsection.

(g) Requires a charitable bail organization's initial report submitted under Subsection (f) to include the information required by that subsection for donations received by the organization in the preceding two years.

(h) Requires a charitable bail organization to maintain records of all donations received and bail bonds paid by the organization until the fifth anniversary of the date the donation was received or bond was paid. Authorizes the sheriff or county clerk to audit the records.

(i) Prohibits a charitable bail organization from paying a bail bond for a defendant at any time the organization is considered to be out of compliance with the reporting requirements of this article.

(j) Authorizes a sheriff to suspend a charitable bail organization from paying bail bonds in the sheriff's county for one year if the sheriff determines the organization has paid bonds in violation of this article.

(k) Provides that Chapter 22 (Forfeiture of Bail) applies to a bail bond paid by a charitable bail organization.

(l) Requires a charitable bail organization to maintain an office in each county in which the organization files an affidavit under Subsection (c).

(m) Prohibits a charitable bail organization from accepting a premium or compensation for paying a bail bond for a defendant.

SECTION 7. (a) Makes application of Section 27.005(a)(1) (relating to the removal of a justice of the peace for failure to complete certain continuing education requirements), Government Code, as amended by this Act, prospective.

(b) Requires a justice of the peace serving on the effective date of this Act to complete the justice's initial two hours of instruction required by Section 27.005(a)(2)(A) (relating to certain continuing education of a justice of the peace), Government Code, as added by this Act, not later than September 1, 2022.

(c) Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2021.