BILL ANALYSIS

Senate Research Center   C.S.S.B. 1338
85R24196 MAW-F   By: Whitmire
            Criminal Justice
            4/20/2017
            Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1338 is a major bail reform bill that will change the way that Texas courts decide who is released after arrest and who will continue to be detained throughout their case. It tracks the Texas Judicial Council recommendations, which came from a nearly two-year process that included stakeholders at every level—judges, justices of the peace, clerks, prosecutors, defense lawyers, law enforcement, and elected officials. This legislation will help Texas continue to be a national leader in criminal justice reform.

A committee substitute for S.B. 1338 will address minor concerns with the filed version and provide clarification of a judge's right to deny pre-trial release in specific violent cases where a release could prove dangerous to the public or an individual victim. To authorize this section of S.B. 1338, S.J.R. 50 has been filed.

The primary features of this legislation are:

- Risk-based pretrial system—expands use of validated risk assessments and authorizes judges to decide who gets released based on likelihood to come back to court or commit new crimes.

- Preventive detention—allows judges to detain high-risk defendants charged with violent offenses before trial, no matter how much money they have.

- Least-restrictive release conditions—instructs judges that defendants who can be safely released before trial should have the minimal conditions necessary to make sure they come back to court and that the community remains safe.

- Data collection and reporting—increases statewide collection of data on pretrial release decisions and outcomes.

This bill requires a magistrate within the first 48 hours of detention to make one of three decisions concerning pre-trail release or continued detention of a defendant all based on the risk of failure to appear in court or presence of danger to the public or victim:

1. Release on a personal bond, with or without conditions.

2. Release on a surety, monetary, bond with or without conditions.

3. Deny release until the trial court conducts a pre-trial hearing during the next 10 days.

This bill does not do away with surety or monetary bonds and they are one of the previously listed judge's decisions; this is not the New Jersey law. Opponents of the bill, mostly if not all are bondsman who feel this will have a negative impact on their earnings. Defendants who may receive pre-trail release by personal bond are not bonding out through surety bonds now. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1338 amends current law relating to bail and to judicial education regarding bail practices.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the El Paso Council of Judges is modified in SECTION 10 (Section 54.737, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 17, Code of Criminal Procedure, by adding Articles 17.027, 17.028, 17.029, and 17.034, as follows:

Art. 17.027. PRETRIAL RISK ASSESSMENT. (a) Requires the judges of certain courts to adopt an instrument to be used in conducting a pretrial risk assessment of a defendant charged with an offense in that county. Requires the instrument adopted to be the automated pretrial risk assessment system developed under Section 72.032 (Study to Repeal Certain Court Fees and Costs), Government Code, or another instrument that fulfills certain criteria.

(b) 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 certain actions to be taken.

(c) Authorizes a magistrate, notwithstanding Subsection (b), to personally conduct a pretrial risk assessment using an instrument adopted under Subsection (a).

(d) Requires the magistrate to consider the results of the pretrial risk assessment before making a bail decision under Article 17.028.

Art. 17.028. BAIL DECISION. (a) Requires a magistrate, without unnecessary delay but not later than 48 hours after a defendant is arrested, to order, after considering all circumstances and the results of the pretrial risk assessment conducted under Article 17.027, that, unless otherwise prohibited by law, the defendant be released on personal bond or monetary bail bond without conditions or on personal bond or monetary bail bond with any condition the magistrate determines necessary.

(b) Authorizes a magistrate to release a defendant arrested pursuant to a warrant that was issued in a county other than the county in which the defendant was arrested if a bail decision has not previously been made by another magistrate and if the magistrate would have had jurisdiction over the matter had the warrant been issued in the county of arrest. Requires the magistrate, if applicable, to forward a copy of the bail order to a personal bond office (PBO) in the county in which the arrest warrant was issued.

(c) Requires the magistrate, in making a bail decision under this article, to impose, as applicable, the least restrictive conditions and the minimum amount of bail, whether personal bond or monetary bail bond, necessary to reasonably ensure the defendant's required appearance in court and the safety of the community and the victim of the alleged offense.

(d) 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.

(e) Requires the magistrate, if the magistrate determines that a defendant is not indigent and is able to pay any costs related to a condition of the defendant's bail, to assess the costs as court costs or order the costs to be paid directly by the defendant as a condition of release.

(f) Prohibits a judge from adopting a bail schedule or entering a standing order related to bail that is inconsistent with this article or that authorizes a magistrate to make a bail decision for a defendant without considering the defendant's pretrial risk assessment.

(g) Provides that this article does not prohibit a sheriff or other peace officer, or a jailer licensed under Chapter 1701 (Law Enforcement Officers), Occupations Code, from accepting bail under Article 17.20 or 17.22 before a pretrial risk assessment has been conducted with respect to the defendant or before a bail decision has been made by a magistrate under this article.

Art. 17.029. DEFENDANT APPEARING IN RESPONSE TO CITATION. Prohibits a defendant who appears before a magistrate as ordered by citation from being temporarily detained for purposes of conducting a pretrial risk assessment or for a magistrate to issue a bail decision. Requires the magistrate, after performing the duties imposed by Article 15.17 (Duties of Arresting Officer and Magistrate), to release the defendant on personal bond, unless the defendant is lawfully detained on another matter.

Art. 17.034. RELEASE OF DEFENDANT ARRESTED FOR FAILURE TO APPEAR. Requires a magistrate to release on personal bond a defendant who was released on personal bond and subsequently arrested on a warrant issued for the defendant's failure to appear as ordered if the defendant shows good cause for the failure to appear. Authorizes a magistrate, if good cause is not shown, to release the defendant in accordance with Article 17.028.

SECTION 2. Amends Section 4, Article 17.09, Code of Criminal Procedure, as follows:

Sec. 4. (a) Creates this subsection from existing text. Prohibits a certain judge or magistrate, notwithstanding any other provision of this article, from ordering the accused to be rearrested or from 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, except as provided by Subsection (b). Makes nonsubstantive changes.

(b) Authorizes the judge or magistrate to order the accused to be rearrested or to require the accused to give another bond in a higher amount based on certain circumstances only after providing notice to each party to the action and, on request of any party, an opportunity for a hearing.

SECTION 3. Amends Article 17.20, Code of Criminal Procedure, as follows:

Art. 17.20. BAIL IN MISDEMEANOR. Authorizes the sheriff or other peace officer or jailer licensed under Chapter 1701, Occupations Code, in cases of misdemeanor when the defendant is in the custody of the officer or jailer, to take the bail of the defendant as the officer or jailer may consider reasonable, whether during the term of the court or in vacation. Deletes existing text authorizing the sheriff or other peace officer, or a jailer licensed under Chapter 1701, Occupations Code, in cases of misdemeanor, whether during the term of the court or in vacation, where the officer has a defendant in custody, to take of the defendant a bail bond.

SECTION 4. Amends Article 17.21, Code of Criminal Procedure, as follows:

Art. 17.21. BAIL IN FELONY. (a) Creates this subsection from existing text. Requires the court, in cases of felony when the defendant, rather than the accused, is in the custody of a sheriff or other peace officer or a jailer licensed under Chapter 1701, Occupations Code, rather than the sheriff or other officer, and the court before which the prosecution is pending is in session in the county where the defendant is in custody, to make a bail decision in accordance with Article 17.028. Authorizes the officer, unless it be the police of a city, or jailer, after approving the bail, to take the bail of the defendant as ordered by the court under Article 17.028 and requires the officer or jailer, on taking the bail, to discharge the defendant from custody. Deletes existing text requiring the court to fix the amount of bail, if it is a bailable case and determine if the accused is eligible for a personal bond, authorizing the sheriff or other peace officer or a jailer licensed under Chapter 1701, Occupations Code, to take a bail bond of the accused in the amount as

fixed by the court, to be approved by such officer taking the same, and will thereupon discharge the accused from custody. Makes conforming and nonsubstantive changes.

(b) Creates this subsection from existing text and makes no further changes to this subsection.

SECTION 5. Amends Article 17.22, Code of Criminal Procedure, as follows:

Art. 17.22. MAY TAKE BAIL IN FELONY. Authorizes the sheriff or other peace officer or a jailer licensed under Chapter 1701, Occupations Code, who has the defendant in custody, if, in a felony case, the court before which the case is pending is not in session in the county where the defendant is in custody, to take the defendant's bail as ordered by the court or magistrate under Article 17.028 or, if bail has not been ordered, as the officer or jailer may consider reasonable. Deletes existing text authorizing the sheriff or other peace officer, or a jailer licensed under Chapter 1701, Occupations Code, who has the defendant in custody, if, in a felony case, the court before which the same is pending is not in session in the county where the defendant is in custody, to take the defendant's bail bond in such amount as may have been fixed by the court or magistrate, or if no amount has been fixed, then in such amount as such officer may consider reasonable. Makes nonsubstantive changes.

SECTION 6. Amends Chapter 17, Code of Criminal Procedure, by adding Article 17.251, as follows:

Art. 17.251. NOTIFICATION OF CONDITIONS OF RELEASE. (a) Requires a magistrate authorizing a defendant's release on bail to, if applicable, provide 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.

(b) Requires the notice under Subsection (a) to be provided in a manner that is sufficiently clear and specific to serve as a guide for the defendant's conduct while released.

SECTION 7. Amends Section 4, Article 17.42, Code of Criminal Procedure, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires a court, if the court releases a defendant, rather than releases an accused, on personal bond on a PBO's recommendation, to assess a personal bond fee of a certain amount. Authorizes the court to waive a certain fee or assess a lesser fee if the court determines that the defendant is indigent or demonstrates an inability to pay or if other good cause is shown. Authorizes the court to require that any fee assessed under this subsection be paid before the defendant is released, as a condition of release, or as court costs. Makes conforming changes.

(a-1) Prohibits the court or jailer, notwithstanding Subsection (a), from refusing to release a defendant based solely on the defendant's failure to pay a personal bond fee if the defendant is indigent or demonstrates an inability to pay the fee.

SECTION 8. Amends Article 17.43(a), Code of Criminal Procedure, to authorize a magistrate to require as a condition of release, rather than as a condition of release on personal bond, that the defendant submit to home curfew and electronic monitoring under the supervision of an agency designated by the magistrate.

SECTION 9. Amends Article 17.44(e), Code of Criminal Procedure, to authorize a magistrate to reduce or waive a cost of electronic monitoring or testing for controlled substances if the magistrate determines that the defendant is indigent or demonstrates an inability to pay.

SECTION 10. Amends Section 54.737(c), Government Code, to require the rules to provide that a criminal law magistrate judge is authorized to only release a defendant under Article 17.028(b),

rather than under Article 17.031 (Release on Personal Bond), Code of Criminal Procedure, under guidelines established by the council of judges.

SECTION 11. Amends Section 56.003, Government Code, by adding Subsection (b-1), as follows:

> (b-1) Authorizes funds appropriated for any fiscal year, in addition to the uses described by Subsection (b) (relating to requiring that no more than one-third of certain funds be used for the continuing legal education of certain judicial officials), to be used to provide continuing legal education regarding bail practices to any master, magistrate, referee, or associate judge appointed pursuant to Chapter 54 (Masters; Magistrates; Referees; Associate Judges) or 54A (Associate Judges) as required by the court of criminal appeals under Section 74.025 (Education Programs).

SECTION 12. Amends Subchapter C, Chapter 72, Government Code, by adding Section 72.032, as follows:

> Sec. 72.032. AUTOMATED PRETRIAL RISK ASSESSMENT SYSTEM; PRETRAIL RISK ASSESSMENT INSTRUMENTS. Requires the Office of Court Administration of the Texas Judicial System (OCA), for purposes of Article 17.027, Code of Criminal Procedure, to develop an automated pretrial risk assessment system and make the system available to judges and other magistrates in this state at no cost to a county, municipality, or magistrate. Requires OCA to also make available nonautomated pretrial risk assessment instruments to judges and other magistrates in this state at no cost to a county, municipality, or magistrate.

SECTION 13. Repealers: Articles 17.03(g) (relating to authorizing the court to order that certain actions be taken relating to a certain personal bond fee), 17.031 (Release on Personal Bond), and Sections 5(c) (relating to the applicability of this section) and 6(c) (relating to the applicability of this section), Article 17.42 (Personal Bond Office), Code of Criminal Procedure.

SECTION 14. Requires OCA, not later than January 1, 2019, to develop the automated pretrial risk assessment system and make available automated or nonautomated pretrial risk assessment instruments as required by Section 72.032, Government Code, as added by this Act.

SECTION 15. Requires the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county to adopt a pretrial risk assessment instrument as required by Article 17.027, Code of Criminal Procedure, as added by this Act, not later than January 1, 2019.

SECTION 16. Makes application of this Act prospective to January 1, 2019.

SECTION 17. Effective date: September 1, 2017.