

## **BILL ANALYSIS**

C.S.H.B. 2020  
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Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

There have been calls to reform the system of setting bail in Texas in order to increase the safety of victims, law enforcement, and the community and to ensure fairness and consistency for defendants. C.S.H.B. 2020 seeks to address these calls by studying and establishing best practices for certain bail practices.

### **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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2020, in provisions that take effect September 1, 2019, amends the Code of Criminal Procedure to establish the Bail Advisory Commission to develop recommendations for the Texas Judicial Council (TJC) regarding a validated pretrial risk assessment tool that is standardized for statewide use and regarding best practices for personal bond offices. The bill requires the commission, in coordination with the Office of Court Administration of the Texas Judicial System (OCA):

- to develop the recommended validated pretrial risk assessment tool that is standardized for statewide use, meets specified criteria, and is available for consideration in setting the amount of bail for a defendant;
- to develop recommendations regarding best practices for personal bond offices to use for pretrial services;
- to collect and analyze information related to pretrial release practices and distribute the analyses and information as a resource to courts, personal bond offices, and other relevant organizations; and
- to collect information relating to defendants released on bail.

C.S.H.B. 2020 sets out the composition of the commission and provides for the appointment of its members, the designation of its presiding officer, meetings, and reimbursement of members for actual and necessary expenses incurred in performing commission duties. The bill requires OCA to provide administrative support for the commission. The bill requires funding for the administrative and operational expenses of the commission, including any contracts or other engagements necessary for the development of the pretrial risk assessment tool, to be provided through an appropriation to OCA for that purpose.

C.S.H.B. 2020 requires the commission, not later than March 1, 2020, to prepare a report containing the recommendations of the commission developed under the bill, including the commission's recommended validated pretrial risk assessment tool, and to deliver the report to the governor, the lieutenant governor, each member of the legislature, the chief justice of the Supreme Court of Texas, the presiding judge of the court of criminal appeals, and the TJC. The bill requires the TJC to review the report and authorizes the TJC to recommend changes to the tool consistent with the bill's requirements not later than June 1, 2020. If the TJC recommends changes, the commission is required to revise the tool in accordance with the recommendations, prepare a report containing the recommended tool as revised, and deliver the report to the applicable persons and entities not later than August 1, 2020.

C.S.H.B. 2020 requires the TJC, not later than August 31, 2020, to adopt either the risk assessment tool or the revised tool recommended by the commission, as applicable. The bill requires OCA to provide the adopted risk assessment tool to magistrates in Texas at no cost. The bill requires the commission to prepare a report regarding the implementation and use of the risk assessment tool and its effect on pretrial recidivism rates and the rates at which defendants failed to appear in court as required and to deliver the report to the governor, the lieutenant governor, each member of the legislature, the chief justice of the supreme court, the presiding judge of the court of criminal appeals, and the TJC not later than January 1, 2023. The commission is abolished effective September 1, 2023.

C.S.H.B. 2020 limits the authority to release on bail a defendant charged with a felony offense or a sexual or assaultive offense punishable as a Class B misdemeanor or higher category of offense to a magistrate who meets certain qualifications set out by the bill.

C.S.H.B. 2020 requires OCA to make the validated pretrial risk assessment tool adopted under the bill's provisions and any related forms and materials available on the OCA website not later than September 1, 2020. If those items are made available before that date, OCA is required to notify each court clerk, judge or other magistrate, and office of an attorney representing the state.

C.S.H.B. 2020 applies to a person who is arrested on or after the effective dates of the bill's applicable provisions.

C.S.H.B. 2020, in provisions that take effect September 1, 2020, provides for the name of the bill and 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 that:

- the personal bond office for the county in which the defendant is being detained or other suitably trained person use the validated pretrial risk assessment tool to conduct a pretrial risk assessment with respect to the defendant; and
- the results of the assessment be provided to the magistrate within 48 hours of the defendant's arrest.

C.S.H.B. 2020 prohibits the magistrate from ordering a sheriff or sheriff's department personnel to conduct a pretrial risk assessment without the consent of the sheriff. The bill authorizes the magistrate to personally conduct a pretrial risk assessment using the validated pretrial risk assessment tool and requires the magistrate to consider the results of the assessment before making a bail decision.

C.S.H.B. 2020 includes the following among the required considerations when setting the amount of bail for a defendant:

- the defendant's criminal history, including acts of family violence;
- the future safety of peace officers;
- the results of the defendant's pretrial risk assessment conducted using the standardized

risk assessment tool developed by the commission; and

- any other relevant facts or circumstances.

### **EFFECTIVE DATE**

Except as otherwise provided, September 1, 2020.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2020 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include provisions relating to the establishment of a bail advisory program within the criminal justice division of the governor's office but includes provisions relating to the establishment, operation, and abolition of the Bail Advisory Commission for purposes of developing recommendations for the TJC regarding a standardized validated pretrial risk assessment tool for statewide use and regarding best practices for personal bond offices, the adoption of the tool, and the dissemination of the tool.

The substitute specifies that acts of family violence are included in a defendant's criminal history for purposes of rules for setting bail and must be considered by a court, judge, or applicable officer when setting an amount of bail.

The substitute, with regard to the authority to release certain defendants on bail, makes the following changes:

- changes the applicability of the bill's limitation on that authority from applying to certain district court judges or associate judges to applying to a magistrate who meets specified qualifications;
- includes the circumstances under which a pretrial risk assessment may be conducted; and
- includes a requirement for a magistrate to consider the results of the assessment before making a bail decision.

The substitute delays the effective date of the bill from September 1, 2019, to September 1, 2020, with the exception of certain provisions that take effect September 1, 2019.