

BILL ANALYSIS

H.B. 2
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Constitutional Rights & Remedies, Select
Committee Report (Unamended)

BACKGROUND AND PURPOSE

It has been suggested that despite the presumption of innocence, many criminal defendants in Texas are detained in jail before and during trial because they cannot post monetary bail. There have been calls for revisions to bail practices in Texas with the goal of increasing public safety, decreasing costs of caring for pretrial detention populations, and minimizing the adverse impacts of extended pretrial detention for those who are a low risk to society. H.B. 2 seeks to address these issues by implementing various reforms regarding a person's right to bail.

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

H.B. 2 revises the right to bail of criminal defendants, provides for a public safety report system, and sets out procedures for bail proceedings and requirements relating to certain training courses and charitable bail organizations, among other provisions.

Right to Bail

H.B. 2 amends the Code of Criminal Procedure to revise the right to bail by replacing language providing that a person is eligible for bail unless charged with a capital offense when the proof is evident with language providing that a person is eligible for bail unless denial of bail is expressly permitted by the Texas Constitution or by other law.

H.B. 2 prohibits the release on personal bond of the following defendants:

- a defendant who is charged with an offense involving violence, defined by the bill as the following:
 - murder or capital murder;
 - kidnapping or aggravated kidnapping;
 - trafficking of persons or continuous trafficking of persons;
 - continuous sexual abuse of a young child or disabled individual;
 - indecency with a child;
 - assault that causes bodily injury to another and either involved family violence or is punishable as a second degree felony because of the victim's status as a peace officer or judge;
 - aggravated assault;

- sexual assault or aggravated sexual assault;
- injury to a child, elderly individual, or disabled individual;
- repeated violation of certain court orders or conditions of bond in a family violence, child abuse or neglect, sexual assault or abuse, indecent assault, stalking, or trafficking case;
- continuous violence against the family;
- aggravated robbery;
- taking or attempting to take a weapon from a peace officer, federal special investigator, employee or official of a correctional facility, parole officer, community supervision and corrections department officer, or commissioned security officer;
- aggravated promotion of prostitution;
- compelling prostitution; or
- sexual performance by a child; or
- a defendant who, while released on bail or community supervision for an offense involving violence, is charged with committing:
 - any offense punishable as a felony;
 - assault that causes bodily injury to another;
 - deadly conduct;
 - terroristic threat; or
 - certain disorderly conduct involving a firearm.

Accordingly, the bill removes certain offenses for which release on personal bond is now prohibited from the list of offenses for which a defendant may be released on personal bond only by the court before whom the case is pending.

Public Safety Report System

H.B. 2 requires the Office of Court Administration of the Texas Judicial System (OCA) to develop and maintain a public safety report system that is available for use for purposes of setting bail. The public safety report system must do the following:

- state the statutory rules for setting bail;
- provide identifying information regarding the defendant, the case filed against the defendant, and the offense with which the defendant is charged;
- provide information on the eligibility of the defendant for a personal bond;
- provide information regarding the applicability of any required or discretionary bond conditions; and
- provide, in summary form, the criminal history of the defendant, including information regarding pending charges or previous convictions generally and for offenses involving violence in particular, previous sentences imposing a term of confinement, and previous failures to appear in court following release on bail.

The bill requires OCA, as soon as practicable but not later than December 1, 2021, to create the public safety report system and any related forms and materials and to provide access to the system, forms, and materials to the appropriate officials in each county at no cost. The requirement to provide system access may not be construed to require OCA to provide a county official or magistrate with any equipment or support related to accessing or using the system. If the public safety report system and any relevant forms and materials are made available before December 1, 2021, OCA must notify each court clerk, judge or other magistrate, and office of an attorney representing the state.

H.B. 2 prohibits the public safety report system from doing the following:

- including a score, rating, or assessment of a defendant's risk;
- making any recommendation regarding the appropriate bail for the defendant; or
- including any information other than the information specified by the bill.

The public safety report system may not be the only item relied on by a judge or magistrate in making a bail decision. The bill's provisions relating to the public safety report system take effect on the 91st day after the last day of the legislative session.

Bail Proceedings

Rules for Setting Bail

H.B. 2 subjects the imposition of conditions of bail to the statutory rules for setting bail and revises the rules by including the following as factors required to be considered when setting bail:

- whether the offense committed by the defendant is an offense involving violence as defined by the bill or involves violence directed against a peace officer;
- the future safety of law enforcement;
- the defendant's criminal history record information, including information obtained through the statewide telecommunications system maintained by the Department of Public Safety (DPS) and through the public safety report system, acts of family violence, other pending criminal charges, and any instances in which the defendant failed to appear in court following release on bail; and
- the citizenship status of the defendant.

For purposes of these provisions, "family violence" is defined by reference to the Family Code.

H.B. 2 requires a magistrate to consider all information relevant to the factors listed under the statutory rules for setting bail for purposes of determining whether clear and convincing evidence exists to deny bail to a person accused of committing a violent or sexual offense or of continuous trafficking of persons, but this requirement is contingent on voter approval of the corresponding constitutional amendment that, among other provisions, authorizes the denial of bail under some circumstances to such a person.

Public Safety Report

H.B. 2 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 do the following:

- order that:
 - the personal bond office for the county in which the defendant is being detained, or other suitably trained person, use the public safety report system to prepare a public safety report with respect to the defendant; and
 - the public safety report be provided to the magistrate as soon as practicable but not later than 48 hours after the defendant's arrest; and
- consider the public safety report before setting bail.

The bill prohibits a magistrate from ordering a sheriff or sheriff's department personnel to prepare the public safety report without the consent of the sheriff but authorizes the magistrate to personally prepare the public safety report before or while making a bail decision.

Limit on Authority to Release on Bail in Certain Cases

H.B. 2 limits the authority to release on bail a defendant charged with an offense that is punishable as a felony or that is a misdemeanor punishable by confinement to a magistrate who is in compliance with certain training requirements and is either a resident of a Texas county in which the magistrate serves or a justice of the peace who has exchanged benches or is serving as special or temporary justice. The bill makes a magistrate ineligible to release such a defendant on bail if the magistrate:

- has been removed from office by impeachment, by the Texas Supreme Court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct (SCJC), or by the legislature's abolition of the magistrate's court; or
- has resigned from office after having received notice that formal proceedings by SCJC have been instituted and before final disposition of the proceedings.

Release on Bail of Defendant Charged With Offense Committed While on Bail

H.B. 2 provides the following with respect to a defendant who is charged with committing an offense while released on bail for another offense:

- if the subsequent offense was committed in the same county as the previous offense, only the court before whom the case for the previous offense is pending may release the defendant on bail; and
- if the subsequent offense was committed in a different county, electronic notice of the charge must be promptly given to the court before whom the case for the previous offense is pending for purposes of reevaluating the bail decision, determining whether any bail conditions were violated, or taking any other applicable action.

These provisions may not be construed to extend any deadline provided by applicable law relating to the duties of an arresting officer and magistrate.

Bail Decisions

H.B. 2 requires a magistrate, without unnecessary delay but not later than 48 hours after a defendant is arrested, to order, after individualized consideration of all circumstances and of the factors listed under the statutory rules for setting bail, that the defendant be:

- granted personal bond with or without conditions;
- granted monetary bond with or without conditions; or
- denied bail in accordance with the Texas Constitution and other law.

The bill requires the magistrate, in setting bail, to impose the least restrictive conditions, if any, and the personal bond or monetary bond necessary to reasonably ensure the defendant's appearance in court and the safety of applicable persons. The bill establishes that there is a rebuttable presumption that bail, conditions of release, or both bail and conditions of release are sufficient to reasonably ensure such requirements are met and prohibits a court from considering testimonial evidence for purposes of setting bail or rebutting the presumption.

H.B. 2 prohibits a judge from adopting a bail schedule or entering a standing order related to bail that is inconsistent with the bill's provisions or that authorizes a magistrate to make a bail decision without considering each factor listed under the statutory rules for setting bail.

H.B. 2 requires that a defendant who is denied bail or unable to give bail in the amount required by any bail schedule or standing order related to bail be provided with certain statutorily prescribed warnings. A defendant who claims to be unable to give bail in the required amount may file with the applicable magistrate a sworn affidavit in a specified form attesting to that fact and requesting that the court set an appropriate bail. The bill requires a defendant filing an affidavit to complete a form to allow a magistrate to assess information relevant to the defendant's financial situation. That form must be either the form used to request appointment of counsel or a form promulgated by OCA that collects financial information specified by the bill relating to income, assets, employment history, certain expenses and debt, and dependents of the defendant and the defendant's spouse, as applicable. The bill entitles a defendant who files an affidavit to a hearing before the magistrate on the bail amount and requires the hearing to be held not later than 48 hours after the defendant is arrested. The bill provides for the defendant's right to present and respond to evidence and for the magistrate's duties in setting bail after the hearing, including issuing written findings of fact supporting the bail decision when applicable.

H.B. 2 requires the judges of the courts trying criminal cases in a county to report to OCA each defendant for whom such a hearing was not held within 48 hours of the defendant's arrest. If a delay occurs that will cause the hearing to be held later than 48 hours after the defendant's arrest, the magistrate or an employee of the court or of the county in which the defendant is confined must notify the defendant's counsel of the delay. The bill authorizes the magistrate to take certain actions with respect to a defendant who does not appear competent to execute an affidavit.

H.B. 2 establishes that the bill's provisions may not be construed to require the filing of an affidavit before a magistrate considers the defendant's ability to make bail under the statutory rules for setting bail. The bill limits the use of a written or oral statement obtained under the bill's provisions relating to bail decisions or evidence derived from the statement to determining whether the defendant is indigent, impeaching the direct testimony of the defendant, or prosecuting the defendant for a perjury or other falsification offense.

Taking of Bail by Sheriffs, Peace Officers, or Jailers

H.B. 2 requires a sheriff, peace officer, or jailer, before taking bail in a misdemeanor or felony case, to obtain the defendant's criminal history record information through the statewide telecommunications system maintained by DPS and through the public safety report system. If the defendant is charged with or has previously been convicted of an offense involving violence as defined by the bill, the sheriff, officer, or jailer may not set the amount of the defendant's bail but may take the bail in the amount set by the court. The bill revises the authorization for a sheriff, peace officer, or jailer to take bail in certain circumstances for a defendant in a felony case for whom no bail amount has been set by a court or magistrate by requiring the amount to be in compliance with the statutory rules for setting bail.

Training Course Requirements

H.B. 2 requires OCA to develop or approve training courses in consultation with the Texas Court of Criminal Appeals regarding a magistrate's duties, including duties with respect to setting bail in criminal cases. The bill requires the courses to include the following:

- an eight-hour initial training course to be completed by a magistrate not later than the 90th day after the date the magistrate takes office; and
- a two-hour continuing education course to be completed in each subsequent state fiscal biennium in which the magistrate serves.

To be considered in compliance with the training requirements, a magistrate must demonstrate competency in a manner acceptable to OCA. The bill requires OCA to provide for a method of certifying that a magistrate has successfully completed a training course and has demonstrated competency of the course content in an acceptable manner. The bill establishes that a magistrate who is serving on December 1, 2021, is considered to be in compliance with the initial training requirement on completion of the applicable training course not later than July 1, 2022. The bill provides for the entities authorized to administer any such course developed or approved by OCA. These provisions take effect on the 91st day after the last day of the legislative session.

H.B. 2 requires DPS to develop training courses that relate to the use of the statewide telecommunications system maintained by DPS and that are directed to each magistrate, judge, sheriff, peace officer, or jailer required to obtain criminal history record information under provisions governing bail, as necessary to enable the person to fulfill those requirements.

H.B. 2 amends the Government Code to require a justice of the peace to complete the training courses relating to a magistrate's duties developed or approved by OCA and to the use of the statewide telecommunications system maintained by DPS as follows:

- the eight-hour initial training course and the statewide telecommunications system course must be completed within one year after the date the justice is first elected; and
- the two-hour continuing education course must be completed each following state fiscal biennium.

Charitable Bail Organizations

H.B. 2 amends the Code of Criminal Procedure to establish requirements and restrictions for a charitable bail organization, defined by the bill as a person who solicits donations from the public for the purpose of depositing money with a court in the amount of a defendant's bail bond, not including a person soliciting donations with respect to a defendant who is a member of the

person's family or a nonprofit corporation organized for the purpose of religious worship. The bill exempts a charitable bail organization that pays a bail bond for not more than three defendants in any 180-day period from these requirements and restrictions.

H.B. 2 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. The bill establishes that a charitable bail organization may only pay bail bonds for indigent defendants who are not charged with an offense involving violence, as defined by the bill, and who have not previously been convicted of such an offense.

H.B. 2 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 the affidavit a report that includes, for each defendant for whom the organization paid a bail bond in the preceding calendar month, the defendant's name, the cause number of the case, the county in which the applicable charge is pending, if different from the county in which the bond was paid, and any dates on which the defendant has failed to appear in court as required for the charge for which the bond was paid.

H.B. 2 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 and 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 the bill's provisions. The bill establishes that statutory provisions governing bail forfeiture apply to a bail bond paid by a charitable bail organization and prohibits such an organization from accepting a premium or compensation for paying a bail bond for a defendant.

Miscellaneous

H.B. 2 requires a court clerk, not later than the next business day after the date a magistrate issues an order imposing a condition of release on bond for a defendant or modifying or removing a previously imposed condition, to send a copy of the order to the following persons:

- the appropriate attorney representing the state; and
- the chief of police in the municipality where the defendant resides or the sheriff of the county where the defendant resides, as applicable.

The bill establishes that a court clerk may delay sending a copy of the order only if the clerk lacks information necessary to ensure service and enforcement and provides for the delivery of the copy of the order. If the order prohibits the defendant from going to or near a child care facility or school, the bill requires the court clerk to send a copy of the order to the child care facility or school. The copy of the order and any related information may be sent electronically or in another manner that can be accessed by the recipient. The bill requires a magistrate or a magistrate's designee to provide written notice to the defendant of the conditions of release and the penalties for violating a condition and requires the magistrate to make a separate record of the notice. The bill requires OCA to promulgate a form for use by a magistrate or a magistrate's designee in providing such notice and requires the form to include the relevant language from statutes under which a condition of release on bond may be imposed on a defendant.

H.B. 2 requires a police chief or sheriff who receives a copy of a magistrate's order regarding a condition of release, or a designee of the chief or sheriff, not later than the 10th day after the date the copy is received, either to enter information relating to the condition of release into the appropriate DPS database or to modify or remove information in the database, as appropriate.

H.B. 2 requires OCA to develop statewide procedures and prescribe forms to be used by a court to facilitate the following:

- the refund of any cash funds paid toward a monetary bond, with an emphasis on refunding those funds to the person in whose name the receipt was issued; and

- the application of those cash funds to the defendant's outstanding court costs, fines, and fees.

H.B. 2 requires information in the computerized criminal history system relating to an arrest to include whether a warrant was issued for any subsequent failure to appear in court for any offender released on bail.

H.B. 2 amends the Government Code to require the clerk of each court setting bail in criminal cases to report the following information as a component of the official monthly report submitted to OCA:

- the number of defendants for whom bail was set, including the number for each category of offense, the number of personal bonds, and the number of monetary bonds;
- the number of defendants released on bail who subsequently failed to appear;
- the number of defendants released on bail who subsequently violated a condition of release; and
- the number of defendants who committed an offense while released on bail or community supervision.

The bill requires OCA to post the information in a publicly accessible place on the OCA website without disclosing any personal information of any defendant, judge, or magistrate. The bill requires OCA, not later than December 1 of each year, to submit a report containing the data collected during the previous state fiscal year to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committees of each house of the legislature with jurisdiction over the judiciary.

H.B. 2 requires OCA to promulgate a form to be completed by a magistrate, judge, sheriff, peace officer, or jailer who sets a defendant's bail. The form must be signed by the person setting the bail and must do the following:

- state specified information regarding the defendant and the person setting bail;
- state the statutory rules for setting bail and list each factor that must be considered under those rules; and
- require the person setting bail to certify that the person considered each of the required factors, to certify that the person considered the information provided by the public safety report system, and to identify the bail type, the amount of the bail, and any conditions of bail.

On completion of the form, the person setting bail, an employee of the court that set the defendant's bail, or an employee of the county in which the defendant's bail was set must promptly and electronically provide the form to OCA. The bill requires OCA to publish each submitted form in a database that is publicly accessible on the OCA website.

H.B. 2 amends the Local Government Code to revise a county or district clerk's authority to deduct a fee when funds are withdrawn from a court registry for purposes of compensating the county for certain accounting and administrative expenses. The bill prohibits a clerk from deducting such an administrative fee from a withdrawal of funds generated by the collection of a cash bond or cash bail bond if in the case for which the bond was taken the defendant was found not guilty after a trial or appeal or the complaint, information, or indictment was dismissed without a plea of guilty or nolo contendere being entered. The bill requires a clerk, on the request of a person to whom withdrawn funds generated by the collection of a cash bond or bail bond were disbursed, to refund to the person the amount of the administrative fee deducted if, subsequent to the deduction, a court makes or enters an order or ruling in the applicable case and, had the court made or entered the order or ruling before the withdrawal of funds occurred, the fee deduction would have been prohibited under these bill provisions. The bill's provisions relating to this administrative fee take effect on the 91st day after the last day of the legislative session and apply only to a withdrawal of funds made on or after that effective date.

H.B. 2 requires OCA to take the following actions as soon as practicable but not later than December 1, 2021:

- promulgate the following forms:
 - the form for use by magistrates in assessing a defendant's claim of inability to give bail in the amount required by a bail schedule or standing order;
 - the form for use by a magistrate or a magistrate's designee in providing a defendant notice regarding conditions of release on bond; and
 - the form to be completed by a magistrate, judge, sheriff, peace officer, or jailer who sets a defendant's bail;
- develop or approve and make available the training courses regarding a magistrate's duties and the related certification method; and
- develop the procedures and prescribe the forms related to monetary bond.

If those items are made available before December 1, 2021, OCA must notify each court clerk, judge or other magistrate, and office of an attorney representing the state. These requirements take effect on the 91st day after the last day of the legislative session.

H.B. 2 repeals Article 17.03(f), Code of Criminal Procedure.

EFFECTIVE DATE

Except as otherwise provided, December 1, 2021.