

LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE, 87th LEGISLATURE 1st CALLED SESSION 2021

July 9, 2021

**TO:** Honorable Trent Ashby, Chair, House Committee on Constitutional Rights & Remedies, Select

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB2** by Smith (Relating to rules for setting the amount of bail, to the release of certain defendants on a monetary bond or personal bond, to related duties of certain officers taking bail bonds and of a magistrate in a criminal case, to charitable bail organizations, and to the reporting of information pertaining to bail bonds.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2, As Introduced : a negative impact of (\$4,275,517) through the biennium ending August 31, 2023.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five- Year Impact:

<i>Fiscal Year</i>	<i>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</i>
2022	(\$2,927,218)
2023	(\$1,348,299)
2024	(\$1,373,365)
2025	(\$1,420,767)
2026	(\$1,425,209)

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	<i>Probable (Cost) from General Revenue Fund 1</i>	<i>Change in Number of State Employees from FY 2021</i>
2022	(\$2,927,218)	6.0
2023	(\$1,348,299)	6.0
2024	(\$1,373,365)	6.0
2025	(\$1,420,767)	6.0
2026	(\$1,425,209)	6.0

Fiscal Analysis

The bill would amend the Code of Criminal Procedure to provide that any person shall be eligible for bail unless denial of bail is expressly permitted by the Texas Constitution or by another law.

The bill would require the Office of Court Administration (OCA) to develop a public safety report system that is standardized for statewide use and meets certain specifications. Under the bill's provisions, OCA would have to provide access to the system to the appropriate officials in each county at no cost. The bill would require a

magistrate setting bail to consider the public safety report for a defendant charged with a Class B misdemeanor or higher category of offense.

The bill would require OCA, in consultation with the Court of Criminal Appeals, to develop a training course regarding a magistrate's duties with respect to the public safety reports and setting bail.

The bill would require a magistrate to grant or deny bail within 48 hours of the defendant's arrest. The magistrate would be required to set bail at the least restrictive and minimum amount of bail necessary to ensure the defendant's appearance in court and the safety of the community, law enforcement, and the victim of the offense. Under the bill's provisions, certain defendants would be ineligible for release on personal bond.

The bill would require the Department of Public Safety (DPS) to provide certain training with respect to criminal history records to magistrates, judges, sheriffs, peace officers, and jailers.

The bill would amend the Code of Criminal Procedure to regulate charitable organizations that solicit donations from the public for the purpose of posting bail bonds for defendants. The bill would impose certain filing and reporting requirements on such organizations. Under the bill's provisions, a charitable organization would not be able to post the bail for misdemeanor or felony offenders who are charged with or have been previously convicted of certain violent offenses. A sheriff would be able to suspend an organization's ability to post bail bonds if the organization violates a reporting requirement or other mandate of the bill.

The bill would amend Code of Criminal Procedure to expand the rules for fixing the amount of bail. Under the provisions of the bill, a magistrate or court would have to consider a defendant's criminal history and immigration status before setting bail.

The bill would require OCA to promulgate a form for use by a magistrate or their designee in providing written notice to the defendant of their conditions of release and penalties for violating those conditions.

The bill would require a chief of police, sheriff, or their designees who receives a bail order to enter information relating to the conditions of release into the appropriate database of the statewide law enforcement information system maintained by DPS within 10 days of receiving the order.

The bill would require OCA to develop statewide procedures and forms to be used by courts to facilitate the refund of any cash paid toward a monetary bail and the application of those funds to the defendant's outstanding court costs, fines, and fees.

The bill would amend the Government Code to require the clerk of each court setting bail in criminal cases to include certain information in its monthly report to OCA. OCA would be required to post the information on its website without disclosing any personal information of any defendant, judge, or magistrate. OCA would also be required to submit a report containing the data collected under this section of the bill to the governor, lieutenant governor, speaker of the house, and the standing committees of each house of the legislature with jurisdiction over the judiciary by December 1 of each year.

Under the bill's provisions, OCA would be required to promulgate a bail form to be completed by magistrates, judges, sheriffs, peace officers, and jailers each time bail is set. The bail form promulgated would have to state the cause number of the case, the defendant's name and date of birth, and the offense for which the defendant was arrested; the name and office or position of the person setting bail; state the requirements for setting bail under Article 17.15; require the person setting bail to include certain information; certify that the person setting bail considered all of the information required under the article; and require the signature of the person setting bail. The bill would require the forms to be electronically returned to OCA for inclusion in a database that is publicly accessible on OCA's website.

The bill would limit the amounts that a clerk may deduct from a defendant's cash bond or cash bail bond.

The bill would take effect December 1, 2021. Article 17.15(b), Code of Criminal Procedure, would take effect December 1, 2021, only if the constitutional amendment proposed by the Eighty Seventh Legislature, 1st Called Session, 2021, identified in the bill is approved by voters. If that amendment is not approved by the voters, Article 17.15(b), Code of Criminal Procedure, has no effect. Articles 17.021 and 17.024, Code of

Criminal Procedure, and Sections 3, 15, 17, 18, and 19 of the bill would take effect on the 91st day after the last day of the legislative session.

This analysis assumes implementing the provisions of the bill would not result in a significant impact on state correctional populations or on the demand for state correctional resources.

**Methodology**

Costs reflected in the table above are based on the analysis provided by OCA.

This analysis assumes funding would be needed for development and licensing costs totaling \$2,927,218 in fiscal year 2022 and \$1,348,299 in fiscal year 2023 and 6.0 FTEs for the public safety report system, the bail reform system, and to modify the court activity system. This total includes a one-time cost of \$650,000 in fiscal year 2022 for the development and licensing of the public safety report system, a one-time cost of \$850,000 in fiscal year 2022 to modify the court activity reporting database and to develop an electronic capture system, \$462,500 for ongoing maintenance and storage costs in fiscal year 2023, \$1,074,012 for salaries and wages for 6.0 FTEs, a one-time cost of \$500,000 for professional procurement services, \$365,379 for employee benefits, and \$373,625 for other operating expenses.

Based on information provided by DPS, it is assumed that duties and responsibilities with implementing the provisions of the bill could be accomplished utilizing exiting resources.

**Technology**

Funding in fiscal year 2022 totaling \$650,000 would be needed for development and licensing costs for the public safety report system with \$462,500 each subsequent year for continued licensing and support for the system and \$850,000 in fiscal year 2022 to modify the court activity reporting database and to develop an electronic capture system.

**Local Government Impact**

The fiscal impact to counties cannot be determined at this time.

**Source Agencies:** 212 Office of Court Admin, 300 Trusteed Programs - Gov, 405 Department of Public Safety

**LBB Staff:** JMc, LBO, SD, BH, DA, SLE, MW, CMA, DKN, AF