

## **BILL ANALYSIS**

C.S.H.B. 20  
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Criminal Jurisprudence  
Committee Report (Substituted)

### **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. C.S.H.B. 20 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**

C.S.H.B. 20 revises the right to bail of certain criminal defendants, provides a statewide pretrial public safety assessment for criminal cases, and sets out procedures governing bail proceedings and training on duties regarding bail.

#### **Right to Bail**

C.S.H.B. 20 amends the Code of Criminal Procedure to authorize a judge or magistrate to deny bail to a person accused of a violent or sexual offense if the judge or magistrate determines that requiring bail and conditions of release is insufficient to reasonably ensure the person's appearance in court and the safety of the community, law enforcement, and the victim of the alleged offense. The bill requires a judge or magistrate to deny bail to a person charged with capital murder or a sexual offense involving a victim younger than 17 years of age unless the judge or magistrate determines by clear and convincing evidence that extraordinary circumstances allow the judge or magistrate to set bail and conditions of release sufficient to reasonably ensure the person's appearance in court and the safety of applicable persons. A judge or magistrate who denies bail as required by the bill must prepare a written order that includes findings of fact and a statement explaining the reason for the denial. The bill makes these provisions effective December 1, 2021, contingent on voter approval of a constitutional amendment proposed by the 87th Legislature, Regular Session, 2021, to authorize the denial of bail to an accused person if necessary to ensure the person's appearance in court and the safety of applicable persons and to require the denial of bail to a person accused of capital murder or a sexual offense involving children.

C.S.H.B. 20 removes the authority of the court before whom a case is pending to release on personal bond a defendant charged with the following offenses and instead prohibits the release on personal bond of such a defendant:

- capital murder;
- aggravated sexual assault;
- continuous sexual abuse of a young child or children; or
- continuous trafficking of persons.

The bill removes the authority of such a court to release on personal bond a defendant charged with deadly assault on law enforcement or corrections officer, member or employee of the Board of Pardons and Paroles, or court participant.

C.S.H.B. 20 prohibits the release on personal bond of a defendant charged with the following offenses:

- murder;
- trafficking of persons;
- indecency with a child;
- aggravated promotion of prostitution;
- compelling prostitution; or
- sexual performance by a child.

### **Pretrial Public Safety Assessment**

C.S.H.B. 20, effective September 1, 2021, requires the Office of Court Administration of the Texas Judicial System (OCA) to take the following actions:

- develop and maintain a validated pretrial public safety assessment that is standardized for statewide use and available for purposes of determining the amount of bail required in any case and that meets specified requirements related to the following:
  - its objectivity and use of empirical data analysis;
  - consideration of risk factors relevant to a defendant's flight risk and public safety, including the safety of the alleged victim, on a defendant's release;
  - nonconsideration of factors disproportionately affecting members of a racial or ethnic minority group or a person who is socioeconomically disadvantaged;
  - unbiased results and outcomes that are not disproportionate with respect to the race or ethnicity of defendants; and
  - transparency with respect to the public and each defendant to whom it is applied; and
- provide access to the assessment and related materials to the appropriate officials in each county at no cost as soon as practicable, but not later than December 1, 2021.

With respect to the requirement to provide access to the assessment, the bill establishes the following:

- the requirement may not be construed to require OCA to furnish a county official or magistrate with any equipment or support to access or use the tool; and
- if those items are made available before December 1, 2021, OCA must notify each county clerk, judge or other magistrate, and office of the state's attorney.

C.S.H.B. 20 also requires OCA to do the following:

- collect data relating to the use and efficiency of the assessment;
- consider that data and, not later than November 1 of each even-numbered year, make appropriate changes or updates to the assessment to ensure compliance with the bill's provisions;
- submit a report, not later than December 1 of each even-numbered year, containing the data collected and describing any changes or updates made to the assessment to certain recipients; and
- create and post on its public website a sample result that could occur through the use of the assessment and include an explanation of the data relied on by the assessment.

## Bail Proceedings

C.S.H.B. 20 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 validated pretrial public safety assessment to conduct a pretrial public safety assessment with respect to the defendant; and
  - the results of this assessment be provided to the magistrate within 48 hours of the defendant's arrest; and
- consider the results of the assessment before making a bail decision.

The bill prohibits a magistrate from ordering a sheriff or sheriff's department personnel to conduct the assessment without the consent of the sheriff but authorizes the magistrate to personally conduct the assessment.

C.S.H.B. 20 requires the magistrate performing statutory duties with respect to a defendant in custody, without unnecessary delay but not later than 48 hours after the defendant is arrested, to order, after considering all circumstances and the results of the pretrial public safety assessment, that the defendant be:

- released on personal bond with or without conditions;
- released on monetary bond with or without conditions; or
- denied bail.

The bill requires the magistrate, in making the bail decision, to impose the least restrictive conditions or minimum amount of bail 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 establishes that a court is not required to hold an evidentiary hearing for purposes of rebutting the presumption.

C.S.H.B. 20 revises the statutory rules for setting bail by including the following as factors required to be considered when setting bail:

- the defendant's criminal history, including acts of family violence;
- the future safety of law enforcement;
- the results of any pretrial public safety assessment conducted using the validated assessment required by the bill; and
- any other relevant facts or circumstances.

For purposes of these provisions, "family violence" is defined by reference to the Family Code. The bill prohibits the consideration of a misdemeanor offense or an offense under the Texas Controlled Substances Act that occurred more than 10 years before the current offense when setting bail, unless the previous offense involved the manufacture or delivery of a controlled substance or caused bodily injury to another, or unless good cause otherwise exists for considering that offense.

C.S.H.B. 20 prohibits a judge from adopting a bail schedule or entering a standing order that is inconsistent with the bill's provisions or that authorizes a magistrate to make a bail decision without considering the results of the defendant's pretrial public safety assessment. The bill's provisions expressly do not prohibit a sheriff or other peace officer or a licensed jailer from accepting bail in accordance with statutory provisions before a pretrial public safety assessment has been conducted or before a bail decision has been made by a magistrate.

C.S.H.B. 20 limits the authority to release on bail a defendant charged with an offense punishable as a Class B misdemeanor or any higher category of offense to a magistrate who is a resident of a Texas county in which the magistrate serves and is in compliance with certain

training requirements. 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.

C.S.H.B. 20 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 state's attorney; 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 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 this notice.

C.S.H.B. 20 requires the chief of police or sheriff who receives such a copy of the order, 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 Department of Public Safety database or to modify or remove information in the database, as appropriate.

## **Miscellaneous**

C.S.H.B. 20, effective September 1, 2021, requires OCA to develop or approve training courses regarding a magistrate's duties under the bill's provisions and with respect to setting bail in criminal cases and requires the courses to include the following:

- courses for a magistrate who is licensed to practice in Texas and a magistrate who is not licensed to practice in Texas; and
- a continuing education course for all magistrates.

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 a manner acceptable to OCA. The bill requires OCA to make the courses and certification method available as soon as practicable but not later than December 1, 2021, but if the courses and certification method are made available before that deadline, OCA must notify each court clerk, judge or other magistrate, and office of the state's attorney. The bill provides for the training requirements with which a magistrate must be in compliance and establishes a magistrate who is serving on the bill's effective date is presumed to be in compliance on completion of the applicable training course not later than June 1, 2022. The bill provides for the entities authorized to administer any such course developed or approved by OCA.

## **EFFECTIVE DATE**

Except as otherwise provided, December 1, 2021.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 20 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.

With respect to the revision of statutory rules for setting bail, the substitute includes a prohibition not in the original against considering a misdemeanor offense or an offense under the Texas Controlled Substances Act that occurred more than 10 years before the current offense, with certain exceptions.

The substitute does not include the prohibition in the original against the release on personal bond of a defendant who:

- is charged with aggravated kidnapping; assault committed against peace officer or judge; sexual assault; aggravated assault; injury to a child, elderly individual, or disabled individual; burglary or aggravated robbery; aggravated online promotion of prostitution; or engaging in organized criminal activity;
- is charged with a felony under the Texas Controlled Substances Act or inhalant paraphernalia, punishable by imprisonment for a minimum term or by a maximum fine that is more than a minimum term or maximum fine for a first degree felony;
- is charged with a felony committed while participating in a riot; or
- does not submit to testing for the presence of a controlled substance in the defendant's body as requested by the court or magistrate as a condition of bond or submits to testing and the test shows evidence of the presence of a controlled substance in the defendant's body.

The substitute changes the defendants who may be eligible for release on bail under the bill's provisions from a defendant who is charged with an offense that is punishable as a felony or a sexual or assaultive offense that is punishable as a Class B misdemeanor offense or any higher category of offense as in the original to a defendant who is charged with an offense that is punishable as a felony or a misdemeanor offense punishable by confinement.

The substitute includes a requirement for a judge or magistrate who denies bail to a person accused of a violent or sexual offense to prepare a written order that includes certain information.

The substitute does not include the requirement in the original that a magistrate have two years of experience in order to qualify to release a defendant under the bill's provisions. The substitute does not include the requirement in the original that a magistrate qualified under the bill complete a refresher course every state fiscal biennium after becoming qualified.

The substitute does not include an authorization in the original for a court to rely on the results of a defendant's assessment and other information as applicable for purposes of rebutting the presumption that bail, conditions of release, or both bail and conditions are sufficient to reasonably ensure the defendant's appearance in court and the safety of applicable persons.

With respect to the duties of OCA, the substitute:

- does not include the following requirements in the original:
  - the development and administration of examinations covering the contents of training courses for magistrates; and
  - the online availability of courses for magistrates at no cost; but
- does include the following requirements not in the original:
  - consideration of data collected relating to the pretrial public safety assessment;
  - making appropriate changes or updates to the assessment not later than November 1 of each even-numbered year to ensure compliance with the bill's provisions; and
  - posting on the OCA website a sample result that could occur through the use of the assessment, including an explanation.

The substitute includes a provision not in the original providing for the entities authorized to administer a course developed or approved by OCA for magistrates.

The substitute includes as a required condition for the pretrial public safety assessment that the assessment must not produce a disproportionate outcome, whereas this was not required in the original.