

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 14, 2021

TO: Honorable Nicole Collier, Chair, House Committee on Criminal Jurisprudence

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB20 by Murr (Relating to the release of defendants on bail.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB20, Committee Report 1st House, Substituted : an impact of \$0 through the biennium ending August 31, 2023.

The bill would have a negative impact of (\$1,112,500) to General Revenue-Dedicated Statewide Electronic Filing System Account 5157 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>	Probable Net Positive/(Negative) Impact to <i>General Revenue Related Funds</i>
2022	\$0
2023	\$0
2024	\$0
2025	\$0
2026	\$0

All Funds, Five-Year Impact:

<i>Fiscal Year</i>	Probable Savings/(Cost) from <i>Statewide Electronic Filing System</i> 5157
2022	(\$650,000)
2023	(\$462,500)
2024	(\$462,500)
2025	(\$462,500)
2026	(\$462,500)

Fiscal Analysis

This bill would amend the Code of Criminal Procedure to limit the right to bail that currently exists for most arrestees. The bill would provide judges and magistrates with authority to deny bail to a defendant accused of a violent or sexual offense if the magistrate determines by clear and convincing evidence that requiring bail and

conditions of relief is insufficient to reasonably ensure the defendant's appearance in court or the safety of the community or any person.

If a defendant is charged with capital murder or a sexual offense involving a victim younger than 17 years of age, a judge or magistrate could deny bail unless extraordinary circumstances support setting bail and conditions of release. Currently, all persons, except those charged with a capital offense when the proof is evident and certain other circumstances permitted by the Texas Constitution, have the right to bail. The bill would require a judge who denies bail to enter a written order that includes findings of fact and the judge's rationale for the denial.

The bill would require the Office of Court Administration (OCA) to develop a validated pretrial risk assessment tool that is standardized for statewide use, which OCA would have to provide at no cost to counties. The bill would require that OCA adopt or develop a tool that has been proven not to produce disproportionate outcomes with respect to the race or ethnicity of defendants. The bill would require a magistrate setting bail to consider the pretrial risk assessment information for a defendant charged with a Class B misdemeanor or higher category of offense.

The bill would require OCA to make biennial changes or updates to the tool, as needed, to ensure compliance with the provisions of the bill and to post on its website, along with an explanation of the data, a sample result that would occur upon using the tool. Under the bill's provisions, OCA would also be required to collect data regarding the use and efficiency of the tool and submit a biannual report regarding the data and recommended changes to certain legislative officials and the governor.

The bill would require the clerk of a court to send a copy of the magistrate's order imposing a condition of release on bond or modifying or removing a condition previously imposed to the attorney for the state, the chief of police or sheriff of the county where the defendant resides, and if applicable, to the childcare facility or school that the defendant must avoid.

The bill would require OCA to develop a training course, recertification course, and examination regarding a magistrate's duties and duties with respect to setting bail. Magistrates would be required to complete the courses and pass an examination, and OCA would have to provide a method of certifying a magistrate's completion of the courses. The bill would allow magistrates to take training courses required by the bill and approved by OCA at the Texas Justice Court Training Center, the Texas Municipal Courts Education Center, the Texas Association of Counties, the Texas Center for the Judiciary, or other similar entity.

Except as otherwise provided by the bill, the bill would take effect December 1, 2021. Certain provisions would take effect September 1, 2021. Section 2 of the bill would take effect December 1, 2021, only if the constitutional amendment proposed by the Eighty-Seventh Legislature, Regular Session, 2021 identified in the bill is approved by voters.

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 in fiscal year 2022 totaling \$650,000 for the risk assessment tool. This total includes costs for professional services developing software and costs for licenses for 1,050 magistrates. This analysis also assumes annual costs of \$462,500 each subsequent year would be necessary for continued licensing and support for those magistrates.

This project would be eligible for funding from the General Revenue-Dedicated Statewide Electronic Filing Fund No. 5157. Based on information provided in the Comptroller's Biennial Revenue Estimate, this analysis assumes there would be sufficient funding available in the account in the 2022-23 biennium to cover funding necessary to implement the provisions of the bill.

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

Based on the analysis of the OCA, it is assumed that duties and responsibilities associated with developing the

training course and examination could be accomplished utilizing existing resources.

Technology

Funding in fiscal year 2022 totaling \$650,000 would be needed for development and licensing costs for the risk assessment tool with \$462,500 each subsequent year for continued licensing and support for the system.

Local Government Impact

OCA assumes that the use of the pretrial risk assessment information and the requirement to impose the least amount and least restrictive conditions of bond necessary will result in fewer detained inmates. OCA assumes that fewer defendants will be denied bail than will be released under the provisions of this bill. While the bill may increase a county's pretrial processing and supervision costs, such costs are anticipated to be offset by reduction in jail costs and bail failure processing costs due to bond forfeitures and new charges. Counties may also see a reduction in the cost of court-appointed attorneys, as defendants who are released are likely to use funds previously used for posting monetary bail to hire counsel, rather than needing appointment of counsel at county expense.

According to the Brazos County Justice of the Peace Precinct 3: The primary fiscal impact to counties in Texas from this bill is the training requirement piece. The bill's provisions relating to a course for non-attorney magistrates could significantly impact county budgets. Depending upon the method of delivery, there could be an expense for the training, for travel, etc. The continuing education requirement will result in a fiscal impact but it should not be significant.

According to the Montgomery County Justice Courts, there may be a fiscal impact to county courts due to increased reporting requirements, but the extent the impact cannot be determined at this time.

Source Agencies: 212 Office of Court Admin, 300 Trusteed Programs - Gov

LBB Staff: JMc, DKN, MW, BH, AF