

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

May 2, 2021

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

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB2077 by Reynolds (Relating to bail proceedings and related duties of a magistrate in a criminal case.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2077, 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>	<i>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</i>
2022	\$0
2023	\$0
2024	\$0
2025	\$0
2026	\$0

All Funds, Five-Year Impact:

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

Fiscal Analysis

The bill would amend the Code of Criminal Procedure to provide judges and magistrates with discretionary authority to deny bail to defendants charged with certain felonies if the judge or 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. Currently, all persons, except

those charged with a capital offense when the proof is evident, have the right to bail except in limited circumstances permitted by the Texas Constitution.

The bill would require a magistrate considering the bail for a defendant charged with a Class B misdemeanor or higher category of offense to use a pretrial risk assessment instrument to assess the risk of the defendant before making a bail decision in the case. The criminal judges of the county would have to adopt an instrument that satisfies the requirements of the bill for the magistrate to use, or they may adopt the automated pretrial risk assessment system developed by the Office of Court Administration (OCA). The bill would require OCA to develop an automated pretrial risk assessment system and to make that system available to judges and magistrates throughout the state at no cost. OCA would have to make a nonautomated pretrial risk assessment instrument available also.

The bill would require an initial bail hearing before a magistrate within 48 hours of arrest. The hearing would have to be open to the public. At the conclusion of the hearing, a magistrate would have to release the defendant on personal or monetary bond, with or without conditions, or deny bail in accordance with the bill and other applicable laws. A magistrate would have to impose the least restrictive conditions and minimum amount of bail necessary to reasonably ensure the defendant's appearance in court and the safety of the community and victim.

If a defendant is released on bail, a magistrate would have to provide written notice of the conditions of release and the penalties for violating a condition. Absent a finding of indigency or inability to pay, a magistrate would have to assess any costs related to a condition of release as court costs or order the costs paid directly by the defendant as a condition of release.

The bill would require a bail review hearing by the court assigned the case if a defendant has been denied bail or remains in custody for more than 48 hours after a magistrate has issued an order setting a monetary bail. The court would have to conduct an open hearing no later than the third day after the magistrate issues an order setting or denying bail.

The bill would prohibit a judge from entering a standing order or bail schedule that is inconsistent with the provisions of the bill or that authorizes a bail decision without considering the results of a defendant's pretrial risk assessment or a defendant's ability to pay bail. A judge could enter a standing order that releases defendants on personal bond for specified offenses before a pretrial risk assessment is conducted.

The bill would require a justice of the peace to complete certain educational training with respect to the justice's duties and setting bail.

Certain provisions of the bill would take effect September 1, 2021. The bill would require the approval of a constitutional amendment to the Texas Constitution by the voters for the provisions in the bill related to denial of bail to take effect. If the voters do not approve the constitutional amendment, magistrates would not be able to deny bail except for in the limited circumstances where that is already authorized.

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.

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

According to the Texas District and County Attorneys Association, there would be a high cost to counties in that it requires new bond review hearings, which prosecutors and appointed defense counsels would also be required to attend.

The Justices of the Peace and Constables Association of Texas state the bill's provisions would impact Texas justices of the peace, who serve as county magistrates but are unable to determine the fiscal impact of the bill.

According to Galveston County, the bill's provisions would increase the number of those charged with felony offenses in custody and awaiting indictment, thereby increasing jail costs but by an amount the county cannot estimate.

Source Agencies: 212 Office of Court Admin

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