

BILL ANALYSIS

Senate Research Center
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S.B. 1318
By: Huffman
Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2021, the legislature passed S.B. 6 overhauling Texas' bail system and drastically increasing the amount of information available to judges when setting bail, along with the amount of statewide data tracked on bail outcomes.

To clarify certain ambiguities and further enhance public safety, S.B. 1318 seeks to address the release practices surrounding habitual and violent offenders and aims to better protect the safety of victims, law enforcement, and our communities. The bill amends the list of offenses that a defendant may not be released on a personal bond, including the creation of an offense for the violation of bond conditions. To assist prosecutors in obtaining appropriate bonds, the bill also creates an additional appeals process and provides access to written findings of fact when "no probable cause" findings are made. Additionally, the bill clarifies which magistrates and judges can set bail for certain defendants. In these cases, notification requirements are clarified to ensure timely movement of cases through the pre-trial process. Lastly, S.B. 1318 creates additional transparency for certain bail boards.

As proposed, S.B. 1318 amends current law relating to the release of defendants on bail, the duties of a magistrate in certain criminal proceedings, and the appointment of certain criminal law hearing officers and creates a criminal offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Articles 14.03(a) and (b), Code of Criminal Procedures, as follows:

(a) Authorizes any peace officer to arrest, without warrant, certain persons, including persons who the peace officer has probable cause to believe have committed an offense defined by Section 38.112, Penal Code, if the offense is not committed in the presence of the peace officer.

(b) Makes a conforming change to this subsection.

SECTION 2. Amends Article 15.17, Code of Criminal Procedure, by adding Subsection (h), as follows:

(h) Requires a magistrate, if the magistrate determines that no probable cause exists to believe that the person committed the offense for which the person was arrested, to make oral or written findings of fact and conclusions of law on the record to support that finding.

SECTION 3. Amends Article 17.021, Code of Criminal Procedure, by adding Subsection (h), as follows:

(h) Requires the Office of the Court Administration of the Texas Judicial System, without cost to the county, to allow a county to integrate with the public safety report system the jail records management system and case management system used by the county.

SECTION 4. Amends Article 17.022, Code of Criminal Procedure, by adding Subsection (g), as follows:

(g) Authorizes a magistrate, in the manner described by Article 17.022 (Public Safety Report), to order, prepare, or consider a public safety report in setting bail for a defendant who is not in custody at the time the report is ordered, prepared, or considered.

SECTION 5. Amends the heading to Article 17.027, Code of Criminal Procedure, to read as follows:

Art. 17.027. RELEASE ON BAIL OF DEFENDANT CHARGED WITH FELONY OFFENSE.

SECTION 6. Amends Article 17.027, Code of Criminal Procedure, by amending Subsection (a) and adding Subsections (a-1), (c), and (d), as follows:

(a) Provides that, notwithstanding any other law:

(1) makes no changes to this subdivision; and

(2) if a defendant is charged with committing an offense punishable as a felony while released on bail for another pending offense punishable as a felony and the subsequent offense was committed in a different county than the previous offense, electronic notice of the charge is required to be given to the individual designated to receive electronic notices for the county in which the previous offense was committed, not later than the next business day after the date the defendant is charged, for purposes of the court specified by Subdivision (1) (relating to providing that a defendant who is charged with committing another felony offense while released on bail in a pending case for a felony offense in the same county as the previous offense is authorized to be released on bail only by certain courts) reevaluating the bail decision, rather than promptly given to the court specified in Subdivision (1) for purposes of reevaluating the bail decision, determining whether any bail conditions were violated, or taking any other applicable action.

(a-1) Prohibits a criminal law hearing officer appointed under Chapter 54 (Masters; Magistrates; Referees; Associate Judges), Government Code, from releasing on bail a defendant who meets certain criteria.

(c) Requires each county to designate an individual to receive electronic notices under Subsection (a)(2). Requires the county to ensure that the name and contact information of the individual designated to receive notices under this subsection is provided on all criminal history and warrant documents issued by the county.

(d) Requires an individual designated under Subsection (c) who receives an electronic notice under Subsection (a) to promptly provide the notice to the court specified by Subsection (a)(1) and to the attorney representing the state in the pending case for the offense for which the defendant was initially released on bail. Provides that a notice provided under this subsection does not constitute an ex parte communication.

SECTION 7. Amends Article 17.03(b-2), Code of Criminal Procedure, as follows:

(b-2) Prohibits a defendant, except as provided by Articles 15.21 (Release on Personal Bond if Not Timely Demanded), 17.033 (Release on Bond of Certain Persons Arrested Without a Warrant), and 17.151 (Release Because of Delay), from being released on personal bond if the defendant:

(1) is charged with:

(A) creates this paragraph from existing text; or

(B) an offense under:

(i) Section 481.1123, Health and Safety Code (manufacture or delivery of substance in Penalty Group 1-B);

(ii) Section 22.07, Penal Code (terroristic threat);

(iii) Section 25.07, Penal Code (violation of certain court orders in family violence and certain other cases);

(iv) Section 38.112, Penal Code (violation of bond condition); or

(v) Section 46.04(a), Penal Code (unlawful possession of firearm);
or

(2) deletes existing text prohibiting a defendant from being released on personal bond if the defendant, while released on bail or community supervision for an offense involving violence, is charged with committing and offense under Section 22.07, Penal Code, and makes a nonsubstantive change.

SECTION 8. Amends Article 17.03(b-3)(2), Code of Criminal Procedure, to make conforming changes.

SECTION 9. Amends Articles 17.152(b), (c), (d), and (f), Code of Criminal Procedure, as follows:

(b) Authorizes a person who commits an offense under Section 38.112, Penal Code, rather than under Section 25.07, Penal Code, related to a violation of a condition of bond set in a family violence case and whose bail in the case under Section 38.112, Penal Code, rather than under Section 25.07, Penal Code, or in the family violence case is revoked or forfeited for a violation of a condition of bond to be taken into custody and, pending trial or other court proceedings, denied release on bail if following a hearing a judge or magistrate determines by a preponderance of the evidence that the person violated a condition of bond related to:

(1) makes a conforming change to this subdivision; or

(2) makes no changes to this subdivision.

Deletes existing text creating an exception under Subsection (d).

(c) Authorizes a person who commits an offense under Section 25.07, Penal Code, or an offense under 38.112, Penal Code, other than an offense related to a violation of a condition of bond set in a family violence case, except as otherwise provided by Subsection (d), to be taken into custody and, pending trial or other court proceedings, denied release on bail if following a hearing a judge or magistrate determines by a preponderance of the evidence that the person committed the offense.

(d) Deletes existing text authorizing a person who commits an offense under Section 25.07(a)(3), Penal Code, to be held without bail under Subsection (b) only if following a hearing the judge or magistrate determines by a preponderance of the evidence that the person went to or near the place described in the order or condition of bond with the intent to commit or threaten to commit certain offenses. Makes a nonsubstantive change.

(f) Requires a person arrested for committing an offense under Section 25.07 or 38.112, Penal Code, without unnecessary delay and after reasonable notice is given to the

attorney representing the state, but not later than 48 hours after the person is arrested, to be taken before a magistrate in accordance with Article 15.17 (Duties of Arresting Officer and Magistrate).

SECTION 10. Amends Article 17.21, Code of Criminal Procedure, as follows:

Art. 17.21. BAIL IN FELONY. (a) Creates this subsection from existing text.

(b) Prohibits a magistrate, notwithstanding Subsection (a) (relating to requiring the court, in a felony case when the accused is in custody of the sheriff or other officer and the court before which the prosecution is pending is in session in the county where the accused is in custody, to fix the amount of bail, if it is a bailable case and determine if the accused is eligible for a personal bond) from releasing on bail a defendant charged with an offense punishable as a felony unless certain criteria are met.

SECTION 11. Amends Articles 44.01(a) and (g), Code of Criminal Procedure, as follows:

(a) Provides that the state is entitled to appeal an order of a court in a criminal case if the order meets certain criteria, including if the order grants bail, in an amount considered insufficient by the attorney representing the state, to a defendant who is charged with an offense punishable as a felony and has previously been granted bail for an offense punishable as a felony. Makes nonsubstantive changes.

(g) Provides that the defendant, if the defendant is in custody, is entitled to reasonable bail, as provided by law, unless the appeal is from an order which would:

(1) creates this subdivision from existing text; or

(2) grant bail in an amount considered insufficient by the attorney representing the state, in which event the defendant is required to be held in custody during the pendency of the appeal.

Makes nonsubstantive changes.

SECTION 12. Amends Section 25.0172(c-1), Government Code, as follows:

(c-1) Requires the County Courts at Law Nos. 7 and 13 of Bexar County, Texas, to give preference to cases prosecuted under:

(1)-(2) makes nonsubstantive changes to these subdivisions; and

(3) Section 38.112, Penal Code, if the person violated a condition of bond set in a case involving family violence, as defined by Section 71.004 (Family Violence), Family Code, or involving an offense under certain sections of the Penal Code.

SECTION 13. Amends Section 25.0732(z), Government Code, to make conforming changes.

SECTION 14. Amends Section 25.2223(1), Government Code, to make conforming changes.

SECTION 15. Amends Section 54.852, Government Code, by amending Subsections (a), (b), and (c) and adding Subsections (a-1) and (b-1), as follows:

(a) Authorizes a board composed of three judges of the district courts of Harris County trying criminal cases, three judges of the county criminal courts at law, and three justices of the peace in Harris County to appoint criminal law hearing officers, rather than to appoint criminal law hearing officers with the consent and approval of the commissioners court, to perform the duties authorized by Subchapter L (Criminal Law Hearing Officers in Certain Counties) if:

(1) the presiding judge of the administrative judicial region that includes Harris County approves the appointment; and

(2) the county auditor certifies that the expenses incurred by the appointment will not exceed the applicable budget appropriation.

(a-1) Creates this subsection from existing text.

(b) Requires the board to ensure that the criminal law hearing officers appointed under this subchapter are:

(1) representative of the race, sex, national origin, and ethnicity of the population of Harris County; and

(2) certified in criminal law by the Texas Board of Legal Specialization.

(b-1) Provides that the board is subject to Chapter 551 (Open Meetings), Government Code.

(c) Provides that a criminal law hearing officer serves a one-year term and is authorized to be reappointed at the end of a term, rather than serves a one-year term and continues to serve until a successor is appointed.

SECTION 16. Amends Section 72.038, Government Code, by adding Subsection (b-1), to require a person who releases a defendant on bail under the authority of a standing order related to bail to complete the form required under Section 72.038 (Bail Form).

SECTION 17. Amends Section 411.074(b), Government Code, as follows:

(b) Prohibits a person from being granted an order of nondisclosure of criminal history record information under Subchapter E-1 (Order of Nondisclosure of Criminal History Record Information) and provides that the person is not entitled to petition the court for an order of nondisclosure under this subchapter if:

(1) the person requests the order of nondisclosure for, or the person has been previously convicted of or placed on deferred adjudication community supervision for certain offenses, including an offense under Section 38.112, Penal Code; or

(2) makes no changes to this subdivision.

SECTION 18. Amends Section 411.1711, Government Code, as follows:

Sec. 411.1711. CERTAIN EXEMPTIONS FROM CONVICTIONS. Provides that a person is not convicted, as that term is defined by Section 411.171 (Definitions), if an order of deferred adjudication was entered against the person on a date not less than 10 years preceding the date of the person's application for a license under Subchapter H (License to Carry a Handgun) unless the order of deferred adjudication was entered against the person for certain offenses, including a felony offense under Section 38.112, Penal Code.

SECTION 19. Amends Section 164.057(a), Occupations Code, to require the Texas Medical Board to suspend a physician's license on proof that the physician has been initially convicted of certain offenses, including a misdemeanor under Section 38.112, Penal Code. Makes a nonsubstantive change.

SECTION 20. Amends Section 201.5065(a), Occupations Code, to require the Texas Board of Chiropractic Examiners to suspend a chiropractor's license on proof that the chiropractor has been convicted of certain offenses, including a misdemeanor under Section 38.112, Penal Code. Makes a nonsubstantive change.

SECTION 21. Amends Section 263.006(a), Occupations Code, to require the State Board of Dental Examiners to suspend a license holder's license issued under Subtitle D (Dentistry) on proof that the person has been convicted of certain offenses, including a misdemeanor under Section 38.112, Penal Code. Makes a nonsubstantive change.

SECTION 22. Amends Section 301.4535(a), Occupations Code, to require the Texas Board of Nursing to suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of certain offenses, including an offense involving a violation of certain court orders or conditions of bond under Section 38.112, Penal Code, punished as a felony.

SECTION 23. Amends the heading to Section 25.07, Penal Code, to read as follows:

Sec. 25.07. VIOLATION OF CERTAIN COURT ORDERS IN FAMILY VIOLENCE AND CERTAIN OTHER CASES.

SECTION 24. Amends Sections 25.07(a) and (g), Penal Code, as follows:

(a) Provides that a person commits an offense if, in violation of certain orders, rather than in violation of a condition of bond set in a family violence, sexual assault or abuse, indecent assault, stalking, or trafficking case and related to the safety of a victim or the safety of the community or of certain orders, the person knowingly or intentionally:

(1) makes no changes to this subdivision;

(2) communicates:

(A)-(B) makes no changes to these paragraphs; or

(C) in any manner with the protected individual or a member of the family or household except through the person's attorney or a person appointed by the court, if the applicable order prohibits any communication with a protected individual or a member of the family or household, rather than if the violation is of an order described by this subsection and the order prohibits any communication with a protected individual or a member of the family or household;

(3) goes to or near certain places as specifically described in the order, rather than described in the order or condition of bond. Makes a conforming change;

(4) makes no changes to this subdivision;

(5) makes a conforming change to this subdivision; or

(6) makes no changes to this subdivision.

(g) Makes a conforming change to this subsection.

SECTION 25. Amends the heading to Section 25.072, Penal Code, to read as follows:

Sec. 25.072. REPEATED VIOLATION OF CERTAIN COURT ORDERS IN FAMILY VIOLENCE AND CERTAIN OTHER CASES.

SECTION 26. Amends Section 25.072(d), Penal Code, to make a conforming change.

SECTION 27. Amends Chapter 38, Penal Code, by adding Section 38.112, as follows:

Sec. 38.112. VIOLATION OF BOND CONDITION. (a) Provides that a person commits an offense if the person knowingly violates a condition of bond.

(b) Provides that an offense under this section, except as provided by Subsection (c), is:

(1) if the person is released on bond for a misdemeanor offense, a Class A misdemeanor; or

(2) if the person is released on bond for a felony offense, a felony of the same category as the offense for which the person is released on bond.

(c) Provides that an offense under this section, if it is shown at the trial of the offense that the person violated the condition of bond by possessing a firearm, is:

(1) a state jail felony if the person is released on bond for a misdemeanor offense; or

(2) a felony of the second degree if the person is released on bond for a state jail felony or a felony of the third degree.

SECTION 28. Repealers: Sections 25.07(b)(4) (relating to the definition of "sexual abuse") and (5) (relating to the definition of "sexual assault"), Penal Code.

Repealers: Sections 25.07(b)(7) (relating to the definition of "trafficking") and (8) (relating to the definition of "indecent assault"), Penal Code.

SECTION 29. Makes application of this Act prospective.

SECTION 30. Effective date: September 1, 2023.