

## **BILL ANALYSIS**

Senate Research Center  
88R9216 MCF-D

S.J.R. 44  
By: Huffman; Hinojosa  
Criminal Justice  
2/23/2023  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Interested parties contend that a judge or magistrate's goal in setting bail should be to protect public safety and to ensure a defendant's appearance in court. Often, violent offenders can make bail while low-level offenders who pose little to no threat to public safety are not able to make bail. Unfortunately, current options for denying bail pending trial effectively require a full trial on the merits at the time bail is denied and are rarely utilized.

S.J.R. 44 protects Texans by providing a process for a judge or magistrate to deny bail to defendants charged with sexual offenses punishable as a first-degree felony, violent offenses, or offenses of continuous human trafficking if determined necessary to protect public safety and ensure a defendant's appearance in court. Additionally, S.J.R. 44 improves fairness by requiring a judge or magistrate who sets bail to impose the least restrictive conditions that will still ensure public safety and ensure a defendant's appearance in court.

S.J.R. 44 proposes a constitutional amendment authorizing the denial of bail under some circumstances to a person accused of a violent or sexual offense or of continuing trafficking of persons, and requiring a judge or magistrate to impose the least restrictive conditions of bail that may be necessary to ensure the person's appearance in court as required, the safety of the community, law enforcement, and the victim of the alleged 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 Section 11, Article I, Texas Constitution, as follows:

Sec. 11. (a) Creates this subsection from existing text and makes a nonsubstantive change.

(b) Requires a judge or magistrate, in setting bail, to impose the least restrictive conditions, if any, that are necessary to reasonably ensure the accused person's appearance in court as required and the safety of the community, law enforcement, and the victim of the alleged offense.

SECTION 2. Amends Article I, Texas Constitution, by adding Section 11d, as follows:

Sec. 11d. (a) Authorizes a person accused of committing a sexual offense punishable as a felony of the first degree, of committing a violent offense, or of committing continuous trafficking of persons to be denied bail pending trial if a judge or magistrate determines by clear and convincing evidence after a hearing that requiring bail and conditions of release is insufficient to reasonably ensure the person's appearance in court as required or the safety of the community, law enforcement, or the victim of the alleged offense.

(b) Requires a judge or magistrate who denies a person bail in accordance with this section to prepare a written order that includes findings of fact and a statement explaining the judge's or magistrate's reason for the denial.

(c) Prohibits this section from being construed to limit any right a person has under other law to contest a denial of bail or to contest the amount of bail set by a judge or magistrate, or from requiring any testimonial evidence before a judge or magistrate makes a bail decision with respect to a person to whom this section applies.

(d) Requires a judge or magistrate, for purposes of determining whether clear and convincing evidence exists to deny a person bail as described by this section, to consider the factors required to be considered by a judge or magistrate in setting bail under general law, including statutory law governing criminal procedure.

(e) Defines "violent offense" and "sexual offense."

SECTION 3. Requires that the proposed constitutional amendment be submitted to the voters at an election to be held November 7, 2023. Sets forth the required language of the ballot.