

By: Huffman, et al.
(Smith)

S.J.R. No. 44

Substitute the following for S.J.R. No. 44:

By: Moody

C.S.S.J.R. No. 44

A JOINT RESOLUTION

1 proposing a constitutional amendment authorizing the denial of bail
2 under some circumstances to a person accused of certain violent or
3 sexual offenses or of continuous trafficking of persons and
4 requiring a judge or magistrate to impose the least restrictive
5 conditions of bail that may be necessary to ensure the person's
6 appearance in court as required and the safety of the community, law
7 enforcement, and the victim of the alleged offense.

8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

9 SECTION 1. Section 11, Article I, Texas Constitution, is
10 amended to read as follows:

11 Sec. 11. (a) All prisoners shall be bailable by sufficient
12 sureties, unless for capital offenses [~~offences~~], when the proof is
13 evident; but this provision shall not be so construed as to prevent
14 bail after indictment found upon examination of the evidence, in
15 such manner as may be prescribed by law.

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

21 SECTION 2. Article I, Texas Constitution, is amended by
22 adding Section 11d to read as follows:

23 Sec. 11d. (a) A person accused of committing a major
24 offense may be denied bail pending trial if a judge or magistrate

1 determines by clear and convincing evidence after a hearing that
2 bail and conditions of release are insufficient to reasonably
3 manage a specific risk:

4 (1) of the person's wilful nonappearance in court in
5 violation of a requirement; or

6 (2) to the safety of the community, law enforcement,
7 or the victim of the alleged offense.

8 (b) A judge or magistrate may not deny a person bail under
9 this section except after a hearing held not later than 72 hours
10 after the person's arrest. The judge or magistrate shall appoint
11 counsel to represent the person at the hearing if counsel does not
12 enter an appearance to represent the person before the hearing. A
13 hearing is not required under this subsection to release a person on
14 bail.

15 (c) A judge or magistrate who denies a person bail in
16 accordance with this section shall prepare a written order that
17 includes findings of fact and a statement explaining the judge's or
18 magistrate's reason for the denial.

19 (d) This section may not be construed to:

20 (1) limit any right a person has under other law to
21 contest a denial of bail or to contest the amount of bail set by a
22 judge or magistrate; or

23 (2) require the presentation of testimonial evidence
24 before a judge or magistrate makes a bail decision with respect to a
25 person to whom this section applies.

26 (e) For purposes of determining whether clear and
27 convincing evidence exists to deny a person bail as described by

1 this section, a judge or magistrate shall consider the factors
2 required to be considered by a judge or magistrate in setting bail
3 under general law, including statutory law governing criminal
4 procedure, and apply those factors to the particularized facts and
5 circumstances of the offense and any criminal episode during which
6 the offense occurred.

7 (f) In this section, "major offense" means:

8 (1) murder, if the person intentionally or knowingly
9 caused the death of an individual;

10 (2) aggravated assault, if the person:

11 (A) used or exhibited a deadly weapon during the
12 commission of the assault; and

13 (B) assaults an individual the person knows is a
14 public servant:

15 (i) while the public servant is:

16 (a) lawfully discharging an official
17 duty; or

18 (b) wearing a distinctive uniform or
19 badge indicating the person's employment as a public servant; or

20 (ii) in retaliation for or on account of an
21 exercise of official power or performance of an official duty as a
22 public servant;

23 (3) aggravated sexual assault, if the person used or
24 exhibited a deadly weapon during the commission of the assault;

25 (4) aggravated robbery, if the person used or
26 exhibited a deadly weapon during the commission of the robbery; or

27 (5) continuous trafficking of persons.

1 SECTION 3. This proposed constitutional amendment shall be
2 submitted to the voters at an election to be held November 7, 2023.
3 The ballot shall be printed to permit voting for or against the
4 proposition: "The constitutional amendment authorizing the denial
5 of bail under some circumstances to a person accused of certain
6 violent or sexual offenses or of continuous trafficking of persons
7 and requiring a judge or magistrate to impose the least restrictive
8 conditions of bail that may be necessary to ensure the person's
9 appearance in court as required and the safety of the community, law
10 enforcement, and the victim of the alleged offense."