**BILL ANALYSIS**

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| Senate Research Center | S.J.R. 5 |
|  | By: Huffman |
|  | Criminal Justice |
|  | 6/9/2025 |
|  | Enrolled |

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

BACKGROUND:

The current options for denying bail pending trial effectively require a full trial on the merits at the time bail is denied, or shortly thereafter. This leads to rare utilization, even in the most appropriate situations to ensure public safety.

This resolution is similar to the H.J.R. 4 Conference Committee Report (87-R), S.J.R. 3 (87-1), S.J.R. 3 (87-2), S.J.R. 1 (87-3), and S.J.R. 44 (88-R), which all passed out of the Senate with bipartisan support, including a vote of 30-1 on S.J.R. 44 (88-R). Unfortunately, the failure to pass this important resolution has only delayed the ability of judges and magistrates to hold defendants without bail to protect our communities from repeat violent criminals.

SUMMARY

S.J.R. 5, if approved by the Texas voters, would amend Article I, Section 11, of our state constitution to expand the options available to officials setting bail to include the option to deny bail under certain extraordinary circumstances.

Currently, magistrates may only deny bail under very limited circumstances. This means defendants accused of most crimes, including murder, must be released if they have the money to post bond, even if there is clear and convincing evidence that the individual may commit future violent crimes.

Specifically, the joint resolution would give magistrates the ability to deny bail to individuals accused of committing: (1) a sexual offense punishable as a felony of the first degree; (2) a violent offense as defined by the Texas Constitution; or (3) continuous trafficking of persons. For bail to be denied for one of these offenses, a judge or magistrate must determine by clear and convincing evidence that the denial of bail is necessary to ensure either:

• the person's appearance in court; or

• the safety of the community, law enforcement, or the victim of the alleged offense.

A judge or magistrate who denies bail would be required to issue a written order laying out their findings of fact and explaining why the denial of bail is necessary.

This proposed constitutional amendment would be submitted to the voters at an election to be held on November 4, 2025.

S.J.R. 5 proposes a constitutional amendment requiring the denial of bail under certain circumstances to persons accused of certain offenses punishable as a felony.

**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 Article I, Texas Constitution, by adding Section 11d, as follows:

Sec. 11d. (a) Provides that this section applies only to a person accused of committing one or more of certain offenses.

(b) Requires the person to whom this section applies to be denied bail pending trial if the attorney representing the state demonstrates by a preponderance of the evidence after a hearing that the granting of bail is insufficient to reasonably prevent the person's wilful nonappearance in court or by clear and convincing evidence after a hearing that the granting of bail is insufficient to reasonably ensure the safety of the community, law enforcement, and the victim of the alleged offense.

(c) Requires a judge or magistrate who grants a person bail in accordance with this section to set bail and impose conditions of release necessary only to reasonably prevent the person's wilful nonappearance in court and ensure the safety of the community, law enforcement, and the victim of the alleged offense and prepare a written order that includes findings of fact and a statement explaining the judge's or magistrate's justification for the grant and the determinations required by this section.

(d) 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 require any testimonial evidence before a judge or magistrate makes a bail decision with respect to a person to whom this section applies.

(e) Requires a judge or magistrate, for purposes of determining whether a preponderance of the evidence or clear and convincing evidence, as applicable, exists as described by this section, to consider the likelihood of the person's wilful nonappearance in court, the nature and circumstances of the alleged offense, the safety of the community, law enforcement, and the victim of the alleged offense, and the criminal history of the person.

(f) Provides that, at a hearing described by this section, a person is entitled to be represented by counsel.

SECTION 2. Requires that the proposed constitutional amendment be submitted to the voters at an election to be held November 4, 2025. Sets forth the required language of the ballot.