

RESOLUTION ANALYSIS

C.S.S.J.R. 5
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law provides significant discretion to judges and magistrates in setting bail. However, there have been recent Texas cases in which defendants alleged to have committed serious crimes have been released on bail. For example, one of the men accused in the July 2024 killing of a Harris County Sheriff's deputy secured release on a one-million-dollar bond in early 2025, as reported by local Houston news outlets. C.S.S.J.R. 5 seeks to address this issue by requiring the denial of bail under certain circumstances to persons accused of certain offenses punishable as a felony.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this resolution does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this resolution does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.J.R. 5 proposes an amendment to the Texas Constitution to require a person to be denied bail pending trial under the following conditions:

- the state's attorney demonstrates by clear and convincing evidence after a hearing that the granting of bail is insufficient to reasonably:
 - prevent the person's wilful nonappearance in court; or
 - ensure the safety of the community, law enforcement, and the victim of the alleged offense; and
- the person is accused of committing one or more of the following offenses:
 - murder;
 - capital murder;
 - aggravated assault if the person caused serious bodily injury, as that term is defined by general law, to another or used a firearm, club, knife, or explosive weapon, as those terms are defined by general law, during the commission of the assault;
 - aggravated kidnapping;
 - aggravated robbery;
 - aggravated sexual assault;
 - indecency with a child;
 - trafficking of persons; or
 - continuous trafficking of persons.

C.S.S.J.R. 5 requires a judge or magistrate who grants a person bail in accordance with the resolution's provisions to do the following:

- 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 the resolution's provisions.

C.S.S.J.R. 5 requires a judge or magistrate, for purposes of determining whether clear and convincing evidence exists as described by the resolution's provisions, to consider the following:

- 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.

The resolution entitles a person to be represented by counsel at a hearing described by the resolution's provisions.

C.S.S.J.R. 5 establishes that the resolution's provisions may not be construed to do the following:

- 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 the resolution applies.

ELECTION DATE

The constitutional amendment proposed by this joint resolution will be submitted to the voters at an election to be held November 4, 2025.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.J.R. 5 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the resolution.

Whereas the engrossed authorized a person accused of committing a sexual offense punishable as a first degree felony, 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, the substitute instead requires a person to be denied bail pending trial under the following conditions:

- the state's attorney demonstrates by clear and convincing evidence after a hearing that the granting of bail is insufficient to reasonably prevent the person's wilful nonappearance in court or ensure the safety of the community, law enforcement, and the victim of the alleged offense; and
- the person is accused of committing one or more of the following offenses:
 - murder;
 - capital murder;
 - aggravated assault if the person caused serious bodily injury, as that term is defined by general law, to another or used a firearm, club, knife, or explosive weapon, as those terms are defined by general law, during the commission of the assault;
 - aggravated kidnapping;
 - aggravated robbery;

- aggravated sexual assault;
- indecency with a child;
- trafficking of persons; or
- continuous trafficking of persons.

The engrossed required a judge or magistrate who denies a person bail in accordance with the engrossed version's provisions to prepare a written order that includes findings of fact and a statement explaining the judge's or magistrate's reason for the denial. However, the substitute instead requires a judge or magistrate who grants a person bail in accordance with the substitute's provisions 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 to 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 the substitute's provisions.

Whereas the engrossed required a judge or magistrate, for purposes of determining whether clear and convincing evidence exists to deny a person bail as described by the engrossed version's provisions, 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, the substitute requires a judge or magistrate, for purposes of determining whether clear and convincing evidence exists as described by the substitute's provisions, to consider the following:

- 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.

The substitute includes a provision absent from the engrossed entitling a person to be represented by counsel at a hearing described by the substitute's provisions.

The substitute omits a provision that appeared in the engrossed that defined "violent offense" and "sexual offense" by reference to constitutional provisions relating to the denial of bail after multiple felonies.

The substitute revises the proposed ballot language as set out by the engrossed.