

BILL ANALYSIS

Senate Research Center
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S.J.R. 5
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Criminal Justice
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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 authorizing the denial of bail under limited circumstances to a person accused of certain violent or sexual offenses or of continuous trafficking of persons.

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 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 may 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:

- (1) the person's appearance in court as required; or
- (2) 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:

- (1) 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
- (2) require 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 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.