

BILL ANALYSIS

C.S.H.B. 1323
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been suggested that despite the presumption of innocence, many criminal defendants in Texas are detained in jail before and during trial because they cannot post monetary bail. There have been calls for revisions to bail practices in Texas with the goal of increasing public safety, decreasing costs of caring for pretrial detention populations, and minimizing the adverse impacts of extended pretrial detention for those who are a low risk to society. C.S.H.B. 1323 seeks to address these issues by implementing recommendations of the Texas Judicial Council regarding a person's right to bail.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill 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 rulemaking authority is expressly granted to the court of criminal appeals in SECTION 2 of this bill.

ANALYSIS

C.S.H.B. 1323 amends the Code of Criminal Procedure to authorize a judge or magistrate to deny bail pending trial to a person charged with an offense ineligible for judge-ordered community supervision if the judge or magistrate determines by clear and convincing evidence that requiring bail and conditions of release is insufficient to reasonably ensure the person's required court appearance or the safety of the community or the victim of the alleged offense. This authorization takes effect December 1, 2019, but only if the constitutional amendment authorizing the denial of bail to an accused person if necessary to ensure the person's court appearance and the safety of the community and the victim of the alleged offense is approved by the voters.

C.S.H.B. 1323 requires a magistrate who denies such a defendant's bail to inform the defendant of the defendant's entitlement to a bail review hearing under the bill's provisions and, as soon as practicable but not later than 24 hours after denying bail, to issue a written order of denial that includes findings of fact and a statement of the magistrate's reasons for the denial. The bill prohibits a judge from adopting a bail schedule or entering a standing order related to bail that is inconsistent with state law.

C.S.H.B. 1323 requires the court in which a defendant's case is pending, as soon as practicable after a defendant's bail is denied under the bill's provisions but not later than the 10th day after the date the magistrate issues the written order denying bail, to conduct a hearing regarding whether to detain the defendant pending the trial of the offense. The bill provides for the waiver by the defendant of the defendant's right to a bail review hearing and the withdrawal of such a

waiver by the defendant. The bill entitles a defendant to representation by counsel at a bail review hearing and entitles an indigent defendant to have counsel appointed for that purpose. The bill authorizes a defendant to present any relevant information at the bail review hearing. The bill makes the rules of evidence applicable to criminal trials inapplicable to a bail review hearing and authorizes the defendant or the attorney representing the state to request a proffer of a witness's testimony before a witness is presented. The bill prohibits a defendant from using a bail review hearing to seek discovery or conduct an examining trial or to harass a victim of or witness to the alleged offense. The bill provides for the reopening of a bail review hearing by the court at any time during the period occurring after the bail review hearing concludes and before the trial of the offense commences.

C.S.H.B. 1323 sets out the required considerations of a court in a bail review hearing and requires a judge, after the hearing, to authorize the defendant's release on bail unless the judge finds by clear and convincing evidence that requiring bail and conditions of release is insufficient to reasonably ensure the defendant's required court appearance or the safety of the community or the victim of the alleged offense. The bill requires a judge, if the judge makes such a finding, to deny the defendant's bail and to issue a written order of denial that includes findings of fact and a statement of the judge's reasons for the denial.

C.S.H.B. 1323 prohibits the court, except for good cause shown, from authorizing a continuance for more than five days, excluding weekends and legal holidays. The bill entitles the defendant to appeal a denial of bail and requires the defendant to be detained in jail pending the appeal. The bill requires the court of criminal appeals to adopt rules accelerating the disposition by the appellate court and the court of criminal appeals of such an appeal. The bill's provisions relating to bail review hearings take effect December 1, 2019, but only if the constitutional amendment authorizing the denial of bail to an accused person if necessary to ensure the person's court appearance and the safety of the community and the victim of the alleged offense is approved by the voters.

C.S.H.B. 1323 requires a magistrate authorizing a defendant's release on bail to provide, if applicable, written notice to the defendant of the conditions of the defendant's release and the penalties of violating a condition of release, including the defendant's arrest, and requires the notice to be provided in a manner that is sufficiently clear and specific to serve as a guide for the defendant's conduct while released.

C.S.H.B. 1323 applies only to a person who is arrested on or after September 1, 2020. A person arrested before that date is governed by the law in effect immediately before the bill's effective date, and the former law is continued in effect for that purpose.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1323 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include:

- provisions relating to the adoption of an instrument to be used in conducting a pretrial risk assessment of a defendant charged with an offense;
- a requirement for a magistrate to make a bail decision after considering all circumstances and the results of the pretrial risk assessment;
- a prohibition against a magistrate requiring a defendant to provide a monetary bail bond for the sole purpose of preventing the defendant's release on bail;

- a requirement for a magistrate, if the magistrate determines that a defendant is not indigent and is able to pay any costs related to a condition of the defendant's bail, to assess the costs as court costs or order the costs to be paid directly by the defendant as a condition of release;
- a prohibition against a judge or magistrate in whose court criminal action is pending ordering the accused to be rearrested or requiring the accused to give another bond in a higher amount because the accused is formally charged with the same offense for which the accused was initially arrested and bond was given;
- an authorization for a court to waive a personal bond fee or assess a lesser fee if the court determines that the defendant is indigent or demonstrates an inability to pay the fee;
- an expansion of the conditions under which a justice of the peace may be removed from office for incompetence;
- a repeal of statutory provisions exempting a personal bond pretrial release office that was operated by a community corrections and supervision department on January 1, 1995, from the applicability of statutory provisions requiring a personal bond pretrial release office to prepare, update, and file with certain district or county clerks a record about any accused person who is released on personal bond before sentencing in a pending case; and
- a repeal of statutory provisions exempting a personal bond pretrial release office that was operated by a community corrections and supervision department on January 1, 1995, from the applicability of statutory provisions requiring a personal bond pretrial release office to submit to the commissioners court or district and county judges that established the office an annual report containing certain information about the operations of the office during the preceding year.

The substitute revises the bail schedules and standing orders that a judge is prohibited from adopting or entering.

The substitute revises the required considerations of a court in a bail review hearing. The substitute changes the effective date of the bill's provisions relating to information given to a defendant after denial of bail, a required written order of denial, adoption of a bail schedule, and the required bail review hearings.