

RESOLUTION ANALYSIS

C.S.H.J.R. 4
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been suggested that the most violent offenders should not be released on bail if they are deemed a danger to their community or if they are considered a flight risk. There have been calls to allow magistrates to deny pretrial release to defendants accused of violent offenses, sexual offenses, or an offense of continuous trafficking of persons. Furthermore, there have been calls to ensure magistrates deny bail to a person accused of capital murder or a sexual offense involving a victim younger than 17 years. C.S.H.J.R. 4 seeks to address this issue by providing for the denial of bail under certain circumstances.

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.H.J.R. 4 proposes an amendment to the Texas Constitution to authorize a judge or magistrate to deny bail pending trial to a person accused of committing a violent or sexual offense or of committing a continuous trafficking of persons offense, if the judge or magistrate determines that requiring bail and conditions of release is insufficient to reasonably ensure the following:

- the person's appearance in court as required; or
- the safety of the community, law enforcement, or the victim of the alleged offense.

C.S.H.J.R. 4 requires a judge or magistrate to deny bail to a person accused of capital murder or a sexual offense involving a victim younger than 17 years of age pending trial unless the judge or magistrate determines by clear and convincing evidence that, based on the existence of extraordinary circumstances, the judge or magistrate is able to set bail and conditions of release sufficient to reasonably ensure the following:

- the person's appearance in court as required; and
- the safety of the community, law enforcement, and the victim of the alleged offense.

C.S.H.J.R. 4 requires a judge or magistrate who denies a person bail under the resolution's provisions to prepare a written order that includes findings of fact and a statement explaining the judge or magistrate's reason for the denial. The denial of bail may not be 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 hearing or procedure, not otherwise required by the resolution or general law, 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 2, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.J.R. 4 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 resolution.

The original authorized a judge or magistrate to deny bail under certain conditions for a person accused of a violent or sexual offense or other offenses as authorized by the legislature by law, whereas the substitute restricts the offenses for which a judge or magistrate may deny bail to a violent or sexual offense or a continuous trafficking of persons offense.

The substitute includes requirements absent from the original for a judge or magistrate who denies a person bail under the resolution's provisions to prepare a written order that includes findings of fact and a statement explaining the judge or magistrate's reason for the denial.

Whereas the original prohibited the authorization to deny bail from being construed to require certain additional hearings or procedures before the person may be denied bail, the substitute prohibits any denial of bail under the resolution's provisions from being 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 hearing or procedure, not otherwise required by the resolution or general law, before a judge or magistrate makes a bail decision with respect to a person to whom the resolution applies.