

SUBJECT: Revising certain provisions relating to the release of defendants on bail

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Moody, Cook, Bhojani, Darby, Harrison, Schatzline

2 nays — Bowers, C. Morales

1 absent — Leach

SENATE VOTE: On final passage (March 29) — 30 - 1

WITNESSES: For — Andy Kahan, Crime Stoppers Houston; Jennifer Keith, Harris County District Attorney's Office; Nikki Pressley, Texas Public Policy Foundation (*Registered, but did not testify*: Jennifer Bergman, 253rd District Attorney; Staley Heatly, 46th District Attorney's Office; Will Ramsay, 8th Judicial District Attorney's Office; Thomas Villarreal, Austin Police Association; Eric Carcerano, Cheryl Lieck, Chambers County District Attorney's Office; Sally Bakko, City of Galveston; Jennifer Szimanski, Combined Law Enforcement Associations of Texas; Erleigh Wiley, Criminal District Attorney; James Parnell, Dallas Police Association; Justin Keener, Doug Deason; Joe Morris, Game Warden Peace Officers Association; Joshua Normand, Harris County Deputies' Organization Faternal Order of Police Lodge #39; Ray Hunt, Houston Police Officers' Union; Mike Byrd, Ken Good, John McCluskey, Scott Walstad, Professional Bondsman of Texas; Carlos Ortiz, San Antonio Police Officers Association; Bill Waybourn, Sheriff Association of Texas and Chair Of Major County Sheriffs; Brian Hawthorne, Buddy Mills, Ray Scifres, Sheriffs' Association of Texas; John Chancellor, Texas Police Chiefs Association; AJ Louderback, Texas Sheriffs Regional Alliance; Thomas Parkinson)

Against — David Gonzalez, Texas Criminal Defense Lawyers Association; Dalila Reynoso (*Registered, but did not testify*: Akanksha Balekai, Texas Appleseed; Allen Place, Texas Criminal Defense Lawyers Association; Ashley Dorsaneo, The Texas Civil Rights Project)

On — Nick Hudson, American Civil Liberties Union of Texas; J.R. Woolley, Justices of the Peace and Constables Association of Texas; Megan LaVoie, Office of Court Administration; Aaron Johnson, Texas Association of Pretrial; Sarah Mae Jennings, Texas Fair Defense Project; Laquita Garcia, James Hamilton, Texas Organizing Project; Madeline Bailey, Vera Institute of Justice (*Registered, but did not testify*; Synnachie McQueen Jr., Texas Organizing Project; Nathaniel Walker, The Bail Project)

**BACKGROUND:** Some have suggested that revising release practices surrounding habitual and violent offenders would help to better protect the safety of victims, law enforcement, and communities.

**DIGEST:** CSSB 1318 would amend various provisions related to bail.

**Release on personal bond of certain defendants.** The bill would revise and add provisions related to the eligibility of certain defendants for release on personal bond.

CSSB 1318 would require a magistrate to release a defendant charged with a nonviolent misdemeanor on personal bond unless such release was otherwise prohibited by law or the magistrate entered a finding on the record that no conditions of release were sufficient to reasonably ensure the defendant's appearance in court and the safety of the community, law enforcement, and the victim of the alleged offense. This provision would apply only to defendants who had not been previously convicted of or placed on deferred adjudication community supervision for an offense other than a traffic offense punishable by fine only.

Notwithstanding certain exceptions under current law, the bill would establish additional offenses for which a defendant could not be released on personal bond, including:

- the manufacturing or delivery of a substance in Penalty Group 1-B;
- violation of certain court order or conditions of bond in a family

- violence, child abuse or neglect, sexual assault or abuse, indecent assault, stalking, or trafficking case; or
- unlawful possession of a firearm.

**Release on bail of defendant charged with a felony offense.** CSSB 1318 would revise provisions related to defendants charged with committing a felony offense while released on bail for another pending offense and the delivery of electronic notices of subsequent charges in such cases.

If a defendant was charged with committing a felony offense while released on bail in a pending case for another felony offense, the court in which the previous case was pending would be required to consider whether to revoke or modify the terms of the previous bond or to reevaluate the previous bail decision.

CSSB 1318 would prohibit certain criminal law hearing officers from making a bail decision regarding a defendant who:

- was charged with committing a felony offense while on parole, had previously been convicted of two or more felony offenses for which the defendant was imprisoned, or was subject to a federal immigration detainer; or
- was charged with committing murder, capital murder, aggravated kidnapping, aggravated assault, or aggravated sexual assault.

If a defendant was charged with committing a felony offense while released on bail for another pending felony offense and the subsequent offense was committed in a different county than the previous offense, the bill would specify that electronic notice of the charge would have to be given to the individual designated to receive such notices for the county in which the previous offense was committed for the purposes of the court in which the previous case was pending or another designated court to determine if any changes to bail conditions were necessary. The electronic notices would have to be given no later than the next business day after the date the defendant was charged.

CSSB 1318 would require the local administrative district judge for each county to designate an individual to receive electronic notices of subsequent charges. The county would be required to ensure that the name and contact information of the individual designated to receive notices was provided on all criminal history and warrant documents issued by the county and included in the public safety report system. An individual designated to receive electronic notices would be required to promptly provide the notice to the applicable court, the state's attorney, and the defendant's attorney in the pending case. Such a notice would not constitute an ex parte communication.

CSSB 1318 would add to the list of court orders the state was entitled to appeal in a criminal case an order that granted bail, in an amount considered insufficient by the prosecuting attorney, to a defendant who was charged with a felony offense and had been previously granted bail for a pending felony offense.

**Public safety report system.** The bill would revise various provisions on the use of the public safety report system developed and maintained by the Office of Court Administration (OCA) for the purposes of setting the amount and conditions of bail.

CSSB 1318 would require OCA to, without cost to the county, allow a county to integrate its jail records management system and county case management system with the public safety report system.

The bill would authorize a magistrate to order, prepare, or consider a public safety report in setting bail for a defendant who was not in custody at the time the report was ordered, prepared, or considered.

CSSB 1318 would prohibit a magistrate from releasing a defendant charged with a felony on bail unless the defendant had appeared before the magistrate and the magistrate had considered the public safety report prepared for the defendant.

**Other provisions.** The bill would revise various provisions related to the duties of magistrates, peace officers, arresting officers, and others.

Within 24 hours after the time the magistrate determined that no probable cause existed to believe that a person committed the offense for which the person was arrested, the magistrate would be required to make a oral or written finding of fact and conclusions of law to support that finding.

CSSB 1318 would add certain information related to bail to the notice a peace officer was required to give to a victim of family violence.

The bill would require a person who released a defendant on bail under the authority of a standing order related to bail to complete the bail form developed by OCA.

The bill would take effect September 1, 2023, and would apply only to a person arrested on or after that date.

**NOTES:**

According to estimates by the Legislative Budget Board, the bill would have a negative impact of \$2,858,452 to general revenue related funds through fiscal 2024-25.