

**SUBJECT:** Authorizing denial of bail under certain circumstances

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 7 ayes — Moody, Cook, Bhojani, Bowers, Darby, Harrison, Schatzline  
0 nays  
2 absent — Leach, C. Morales

**SENATE VOTE:** On final passage (March 20) — 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; Jacquie Benestante, Autism Society of Texas; Eric Carcerano, Cheryl Lieck, Chambers County District Attorney's Office; Elmer Beckworth, Cherokee County District Attorney; Jennifer Szimanski, Combined Law Enforcement Associations of Texas; Erleigh Wiley, Criminal District Attorney; James Parnell, Dallas Police Association; Justin Keener, Doug Deason; Joshua Normand, Harris County Deputies' Organization Fraternal Order of Police Lodge #39; Jessica Anderson, Houston Police Department; Ray Hunt, Houston Police Officers' Union; 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, Allen Place, Texas Criminal Defense Lawyers Association; Dalila Reynoso (*Registered, but did not testify*: Bethany Carson, Grassroots Leadership; Akanksha Balekai, Texas Appleseed; Ashley Dorsaneo, The Texas Civil Rights Project)

On — Nick Hudson, American Civil Liberties Union of Texas; Micah Derry, Arnold Ventures; Jim Allison, County Judges and Commissioners Association of Texas; J.R. Woolley, Justices of the Peace and Constables Association of Texas; Aaron Johnson, Texas Association of Pretrial; Sarah Mae Jennings, Texas Fair Defense Project; Megan LaVoie, Texas Judicial Council and Office of Court Administration; Madeline Bailey, Vera Institute of Justice (*Registered, but did not testify*: Mike Byrd, PBT; John McCluskey, Scott Walstad, Professional Bondsman of Texas; Shannon Edmonds, Texas District and County Attorneys Association; Laquita Garcia, James Hamilton, Synnachie McQueen Jr, Texas Organizing Project; Nathaniel Walker, The Bail Project; Ken Good, The Professional Bondsmen of Texas)

**BACKGROUND:** Some have suggested that creating new, less burdensome processes by which bail can be denied could provide more effective protection against violent or high-level offenders.

**DIGEST:** CSSJR 44 would amend the Texas Constitution to authorize a judge or magistrate to deny bail to a person accused of committing a major offense if the judge or magistrate determined by clear and convincing evidence after a hearing that bail and conditions of release were insufficient to reasonably manage a specific risk to the safety of the community, law enforcement, or the victim of the alleged offense or of the person's willful nonappearance in court. A major offense would include:

- murder, if the person intentionally or knowingly caused the death of an individual;
- aggravated assault, if the person used or exhibited a deadly weapon and assaulted a public servant while the public servant was lawfully discharging an official duty or wearing a distinctive uniform or badge indicating the person's employment;
- aggravated assault, if the person used or exhibited a deadly weapon and assaulted a public servant in retaliation for or on account of an exercise of official power or performance of an official duty;
- aggravated sexual assault, if the person used or exhibited a deadly weapon;

- aggravated robbery, if the person used or exhibited a deadly weapon; or
- continuous trafficking of persons.

A judge or magistrate could not deny a person bail except after a hearing held within 72 hours after the person's arrest. The judge or magistrate would be required to appoint counsel to represent the person at the hearing if counsel did not enter an appearance to represent the person before the hearing. A hearing would not be required to release a person on bail.

The resolution would specify that, in determining whether clear and convincing evidence existed to deny a person bail, a judge or magistrate would be required to consider the factors a judge or magistrate would otherwise consider in setting bail under general law.

CSSJR 44 would require a judge or magistrate who denied a person bail to prepare a written order that included findings of fact and a statement explaining the reason for the denial.

The resolution could not be construed to limit any right a person had under other law to:

- contest a denial of bail or the amount of bail set by a judge or magistrate; or
- require the presentation of testimonial evidence before a judge or magistrate made a bail decision with respect to a person accused of committing a major offense.

CSSJR 44 also would require a judge or magistrate, in setting bail, to impose the least restrictive conditions, if any, that were necessary to reasonably ensure the accused person's appearance in court as required and the safety of the community, law enforcement, and the victim of the alleged offense.

The ballot proposal would be presented to voters at an election on November 7, 2023, and would read: "The constitutional amendment

authorizing the denial of bail under some circumstances to a person accused of certain violent or sexual offenses or of continuous trafficking of persons and requiring a judge or magistrate to impose the least restrictive conditions of bail that may be necessary to ensure the person's appearance in court as required and the safety of the community, law enforcement, and the victim of the alleged offense.”

**NOTES:**

According to the Legislative Budget Board, the cost to the state for publication of the resolution would be \$204,406.