STATE OF TEXAS

RESOLUTION

of the

TEXAS JUDICIAL COUNCIL

Criminal Justice Committee Enhancing Bail Recommendations

WHEREAS, the Texas Judicial Council is the policymaking body for the Texas Judicial Branch, created under Chapter 71, Texas Government Code; and

WHEREAS, the Council is charged with improving the administration of justice; and

WHEREAS, the Criminal Justice Committee is charged with studying ways to improve court efficiency and recommending any necessary reforms; and

WHEREAS, the Criminal Justice Committee is charged with continuing to evaluate and monitor Texas' pretrial bail system for improvement and recommending any needed statutory and non-statutory changes; and

WHEREAS, the Council has long recommended reforms to modernize Texas' pretrial and bail systems; and

WHEREAS, recommendations for change were included in the Criminal Justice Committee's 2016, 2018, 2020, and 2022 Reports; and

WHEREAS, efforts to change pretrial practices during the 87th Legislative Session produced Senate Bill 6, enacted during the 87th Legislature's Second Called Session; and

WHEREAS, at Senate Bill 6's direction, the Office of Court Administration developed for statewide use a Public Safety Report System (PSRS), which produces a public safety report required for use in the setting of bail for defendants charged with a Class B misdemeanor or higher category offense; and

WHEREAS, as of July 2024, the PSRS has 7,169 active users, and an average of 46,000 Bail Forms are completed every month; and

WHEREAS, the PSRS produces a Public Safety Report that summarizes the defendant's criminal history if available and alerts magistrates if the individual is ineligible for a personal bond;

and

WHEREAS, PSRS alerts should be sent to other justice system participants to ensure all pertinent information is circulated to relevant court case stakeholders; and

WHEREAS, enhanced notification to clerks would improve bail bond violation and revocation reporting; and

WHEREAS, information regarding protective orders and community supervision status (pretrial release, probation, parole) is often contained in separate databases and not necessarily readily available in summary form to a magistrate; and

WHEREAS, Bail Forms are an important source of information and allow for transparency but, in certain jurisdictions the PSRS may not be considered when the defendant is diverted from traditional magistration on a general order bond and as a result the defendant does not have a completed Bail Form; and

WHEREAS, Article 17.151(1), Code of Criminal Procedure, requires defendants detained in jail pending trial to be released on either personal bond or reduced bail if the state is not ready for trial within a certain number of days based on charge level (and potential sentence length for misdemeanors), and release under Article 17.151(1) is required without regard to public safety and PSRS indicators; and

WHEREAS, jurisdictions have raised concerns that data entry into the PSRS is burdensome, and integration between the PSRS and local case management and jail systems would eliminate duplication of data entry; and

WHEREAS, the Office of Court Administration has made a tool available for integration to occur, but local systems will charge jurisdictions to configure the tool; and

WHEREAS, at least 27 states and the District of Columbia, as well as the federal system, have statutes or constitutional provisions that authorize detention without bail in non-capital cases; and

WHEREAS, these preventive detention provisions are in recognition that there are some defendants for which there are no conditions of release which would reasonably assure the defendant's appearance at court and the safety of the community; and

WHEREAS, except for very limited circumstances, the current Texas Constitution and statutory framework does not provide magistrates with this preventive detention authority, even when the defendant before the magistrate poses the highest risk of flight or to public safety; and

WHEREAS, the Criminal Justice Committee believes that pretrial detention decisions should be made based upon risk of flight and to public safety; and

WHEREAS, Article 17.071, Code of Criminal Procedure, places certain registration and reporting requirements on "charitable bail organizations" (CBOs) that accept and use public donations to pay for defendant bail bonds; and

WHEREAS, CBOs must file an affidavit with the county clerk where the organization intends to pay bail bonds and must submit a monthly report to the sheriff of the county where the CBO is registered detailing certain information for each defendant for whom the CBO paid a bail bond; and

WHEREAS, Article 17.071(k) requires the Office of Court Administration to provide an annual report to the Legislature, the Governor, and the Lieutenant Governor on the monthly report information sent by CBOs to local sheriff's offices;

NOW THEREFORE, BE IT RESOLVED that the Texas Judicial Council recommends that the Legislature:

1. Amend Article 17.021(b), Code of Criminal Procedure, to make enhancements to the Public Safety Report System (PSRS) to expand report notifications to include prosecutors, clerks, and, if possible, defense counsel;

2. Amend Article 17.021(b), Code of Criminal Procedure, to allow for an enhancement to the PSRS to flag defendants with protective orders, probation, parole, and warrants;

3. Amend statutes to require a Bail Form be completed within the PSRS if a defendant is released in conjunction with a general order bond;

4. Amend Article 17.151(1), Code of Criminal Procedure, to create a tiered released timeline based on the severity of the offense;

5. Provide funding to counties to allow local case management and jail systems to integrate with the PSRS;

6. Amend the Texas Constitution and enact related statutes to provide that certain defendants charged with a violent crime and posing a high flight risk and/or high risk to community safety may be held in jail without bail pending trial after certain findings are made by a magistrate and a detention hearing is held; and

7. Amend Article 17.071, Code of Criminal Procedure, to require Charitable Bail Organizations to submit to the Office of Court Administration the annual affidavit and the monthly report required to be submitted to local government officials by Article 17.071; and

8. Amend Article 17.071, Code of Criminal Procedure, to require Charitable Bail Organizations to provide more detailed information about defendants in the monthly report submitted to local sheriffs regarding the defendants who have their bail paid by the Charitable Bail Organization.

Honorable Nathan L. Hecht
Chair, Texas Judicial Council