

The Austin Report

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E-Newsletter

What do you know and what do you think about bail reform?

By Senator Royce West

Perhaps you're like the majority of law-abiding Texans who have little to no personal involvement in the bail system. But anyone who watches television, since the days of Perry Mason, to the current Law & Order franchise, CSI or NCIS, can't help but know a little about the process for a person who was arrested, their arraignment before a judge and posting of bond for his or her release.

What is a bail bond?

When we think about bail, most likely we're talking about the cash bail system that's easily been in place for a hundred years. Under a cash bail system, a person pays a bail bondsman a fee, usually 10 percent of the full bond amount set by the court to be released from custody, pending trial. We won't get into the full-blown debate about the cash bail system not being affordable for some defendants. That's for another time. There are also other forms of bail, such as a personal recognizance or "PR" bond, where a person perceive to be low-risk can be released



without posting bond. For the record bail, under Texas law, can only be denied for cases involving violence or when a defendant poses an extreme flight risk.

What changed? Why is this a problem now?

In Texas, the bail system, or bail reform, became an issue early on during the pandemic, when courts, due to over-crowding concerns, were harshly-criticized for releasing violent and sometimes repeat criminals from custody, on bonds called too low; some of whom would go on to commit violent, assaultive crimes, including murder and sexual assault. As a result, SB6 was introduced during the 2021 Legislative Session. While many welcomed it and the accompanying constitutional amendments, critics said they over-reached, were too broad, and in some cases unconstitutional. SB6 would implement a system that with the passage of a Constitutional Amendment, would deny bail to some defendants accused

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of committing violent crimes. It would create a public safety report system that would collect criminal history and other information on defendants from the Department of Public Safety to be reviewed by magistrates and judges to help determine conditions of bail. It would require the records of a person charged with a new felony, to be sent to the judge with jurisdiction over a previous offense before bail could be set for the new offense.

SB6 would deny a PR bond to a defendant charged with a violent offense or who is under supervision for any felony offense and singles-out bonds posted by certain charitable bond organizations by denying their ability to post bond for persons who would be eligible to be bonded out by commercial bail bondsmen. The bill also contains a provision that requires citizenship to be considered when determining conditions of bail and bail amounts.

This session, SB9 and two constitutional amendments SJR1 and SJR5, have been filed to finish or revise SB6 and its failed constitutional amendment predecessors. All have passed the Senate. SB9 includes language that strips the ability of magistrates to release a defendant on bail who is charged with a new felony while on parole or probation. Critics say this will lead to jail

overcrowding and overwhelm district court judges. SB9 would deny bail to a person who has been previously convicted of violent offenses, but does not limit or identify the type of felony related to the new charge.

SJR1 proposes a constitutional amendment that would deny bail to a person who accused of committing a felony offense who is determined not to be a legal immigrant. SJR5 would give judges the ability to deny bail to a person accused of committing a violent, sexual offense or of continuous human trafficking. Both constitutional amendments that would deny bail if approved by the Legislature, would also have to be approved by voters in November. All three measures due to opposition, have yet to clear House committee.

What do you think of the bills discussed that would further deny bail? Scan the QR code or copy the link to take this quick survey.

<https://forms.gle/ysSPvB5PADErzAFZ9>

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