

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 2, 2017

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1338 by Whitmire (Relating to the pretrial release of a defendant and to funding for judicial continuing legal education.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for SB1338, As Introduced: an impact of \$0 through the biennium ending August 31, 2019.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	\$0
2019	\$0
2020	\$0
2021	\$0
2022	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from Statewide Electronic Filing System 5157
2018	(\$950,000)
2019	(\$190,000)
2020	(\$190,000)
2021	(\$190,000)
2022	(\$190,000)

Fiscal Analysis

The bill would modify the Code of Criminal Procedure and Government Code to reform the bail system by requiring magistrates to use and consider the results of a validated pretrial risk assessment based on a defendant's risk status and other relevant factors before making a pretrial release decision.

The bill would require the Office of Court Administration to develop an automated pretrial risk assessment tool that would measure a defendant's risk status by determining their likelihood to appear in court when required, to commit crimes while out on bail, and to pose a threat to the community or victim. The bill would require the agency to develop this tool and for each judicial district to adopt the pretrial risk assessment instrument no later than November 1, 2018.

The bill would permit judges to deny pre-trial release for high risk defendants contingent on the enactment by voters of a constitutional amendment that would authorize the denial of pretrial release of a person accused of a noncapital offense if necessary to ensure the person's appearance in court and the safety of the community or victim.

The bill would require magistrates that issue a written order of denial to list the findings of fact and reasons for denying pretrial release within 24 hours of that decision and defendants that are denied pretrial release would be entitled to a pretrial detention hearing within 10 days after the issuance of the order of denial. The bill would allow all magistrates to receive continuing legal education through funds appropriated for such purpose to the Court of Criminal Appeals.

The bill would take effect September 1, 2017, except for section 1 of the bill which would take effect December 1, 2017, contingent on the enactment by voters of a constitutional amendment to authorize the pretrial release of a person accused of a noncapital offense if necessary to ensure the person's appearance in court and the safety of the community and the victim of the alleged offense. If the constitutional amendment is not approved by the voters, section 1 of the bill has no effect.

Methodology

The Office of Court Administration (OCA) anticipates one-time costs of \$950,000 in fiscal year 2018 for development of the pretrial risk assessment tool and continuing costs of \$190,000 each subsequent year for maintenance and operation. The agency anticipates using General Revenue-Dedicated Statewide Electronic Filing Fund No. 5157 funds for this purpose due to this account's eligible usage including support of court technology projects that have a statewide impact.

Based on the analysis of the Health and Human Services Commission, Department of State Health Services, and Department of Public Safety, duties and responsibilities associated with implementing the remaining provisions of the bill could be accomplished by utilizing existing resources.

Technology

This estimate includes technology costs of \$950,000 in one-time start-up expenses in fiscal year 2018 and continuing costs of \$190,000 each subsequent year for maintenance and operations.

Local Government Impact

According to the OCA, while the bill may increase a county's pretrial processing and supervision costs, such costs are anticipated to be offset by reduction in jail costs, bail failure processing costs due to bond forfeitures and new charges. A recent study compared Travis County's risk-informed release system with Tarrant County's monetary based release system and found that total costs are 30% lower where risk informed release is used. Travis County's total pretrial costs was \$2,134, whereas Tarrant County's costs \$3,083. Smaller counties, however, might not realize enough reduced costs to fully cover increased costs.

Counties may also see a reduction in the cost of court-appointed attorneys, as defendants who are released are likely to use funds previously used for posting monetary bail to hire counsel, rather than needing appointment of counsel at county expense. OCA does not anticipate a significant number of pretrial detention hearings since these hearings would be limited to cases where the magistrate denied pretrial release, i.e., cases involving high risk defendants. It is anticipated that the pretrial detention hearings can be handled with existing resources.

OCA does not anticipate a significant increase in the number of attorneys needed, as indigent defendants are already entitled to a court-appointed attorney to represent them in their underlying case, the number of pretrial detention hearings are anticipated to be few, and the timeframes under this bill will enable that appointment to be made prior to the detention hearing, if applicable. Hence, the pretrial detention hearing would be an additional task for the attorney. OCA estimates an average of 5 hours to prepare and defend a person at a pretrial detention hearing.

Since attorney rates are set locally, the increase in legal costs due to the additional task cannot be determined. However, if an hourly rate of \$75 is assumed, a county's indigent defense costs could increase by \$425 per pretrial detention hearing needed. This amount would be considerably less if a defendant waives the hearing.

Although counties may develop their own risk assessment tool, counties would be able to control costs by using the automated system that will be developed and made available by OCA. Presumably, counties choosing an alternate risk assessment tool would only do so if there are resources available to support that assessment tool.

According to the Texas Association of Counties, Galveston County reported costs associated with equipment and supplies for County pretrial employees; however, the fiscal impact is not anticipated to be significant.

Midland County reported significant costs associated with the development and implementation of the automated pretrial risk assessment system, training costs, as well as increased costs for court appointed indigent counsel.

Chambers County reported an estimated \$250,000 per year to implement the provisions of the bill.

Kerr County reported costs associated with the creation, personnel and operation of a bond office, added personnel in the three Prosecutor Offices, County and District Court Offices, and the Sheriff's Department.

Lubbock County reported costs associated with hiring two additional pretrial office screeners at an estimated \$80,000-\$100,000 per year, as well as hiring an additional magistrate at an estimated cost of \$50,000-\$70,000 per year.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 405 Department of Public Safety, 529 Health and Human Services Commission, 537 State Health Services, Department of

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