



May 23, 2025

Re: Oppose SJR 87 to Protect the Due Process Safeguards Secured in SJR 5

Dear Representatives:

We write to raise urgent concern about Senate Joint Resolution 87, related to automatic denial of bail, and to urge you to do everything you can to stop it.

On Monday, May 19th, the Texas House overwhelmingly passed SJR 5—a joint resolution that, while very far from perfect, includes several bare minimum due process protections missing from previous proposals to expand denial of bail. SJR 5 required an individualized finding of risk before denying bail and jailing individuals for certain serious charges. It required meaningful access to counsel. And it preserved judicial discretion to release a person unless there is clear and convincing evidence that they pose a risk to public safety, or a preponderance of the evidence that they will willfully fail to appear in court.

SJR 87 walks back the due process safeguards the House secured in SJR 5.

SJR 87 mandates detention of presumptively innocent people in certain serious cases based only on a probable cause finding—the same low standard used to justify an arrest—and strips judges of any discretion to consider the facts of a case. It includes no requirement that the state show a person is a flight risk or danger to anyone, and no mechanism for defense counsel to advocate for release if there is probable cause. This makes the right to counsel in SJR 87 a hollow one. SJR 87 replaces the House’s deliberate, narrowed framework with automatic detention.

Stripping judges of discretion to release people will inevitably lead to tragic miscarriages of justice—where legally innocent people, facing flimsy evidence based on nothing more than an accusation, are jailed for months or even years while they await trial. Without individualized hearings, and without requiring the state to prove actual risk, our system will detain people not because they are dangerous or a flight risk, but because the presumption of innocence gets sidelined.

We have grave constitutional concerns about SJR 87, because it is missing core protections included in SJR 5. SJR 87 contains: (1) no individualized risk finding; (2) no clear and convincing evidence standard; (3) no meaningful role for defense counsel; and (4) no judicial discretion

Passing SJR 87 after SJR 5 would undermine the hard work and constitutional principles the House just voted to uphold. It may also give the Senate cover to walk away from the SJR 5 framework entirely, eliminating the constitutional protections it includes.

We urge your office to defend the progress made in SJR 5 and do everything you can to stop SJR 87. Please don’t hesitate to reach out if you’d like to discuss the implications of SJR 87 further. Thank you.

Kind Regards,

Act4SA
Act4SA Action Fund
American Civil Liberties Union of Texas
The Bail Project
Pure Justice Action Fund

Texas Civil Rights Project
Texas Jail Project
Texas Organizing Project
Vera Institute of Justice
Wren Action Group