

By: Murr, et al.

H.B. No. 20

A BILL TO BE ENTITLED

AN ACT

relating to the release of defendants on bail.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This Act may be cited as the Damon Allen Act.

SECTION 2. Article 1.07, Code of Criminal Procedure, is amended to read as follows:

Art. 1.07. RIGHT TO BAIL. Except as provided by this article or by Chapter 17, any person ~~[All prisoners]~~ shall be eligible for bail ~~[bailable]~~ unless denial of bail is expressly permitted by the Texas Constitution ~~[for capital offenses when the proof is evident]~~. This provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

SECTION 3. Chapter 17, Code of Criminal Procedure, is amended by adding Articles 17.021, 17.022, 17.023, 17.024, and 17.028 to read as follows:

Art. 17.021. PUBLIC SAFETY REPORT SYSTEM. (a) The Office of Court Administration of the Texas Judicial System shall develop and maintain a validated public safety report system that is standardized for statewide use, that is available for use for purposes of Article 17.15, and that:

(1) is objective, validated for its intended use, and standardized;

(2) is based on an analysis of empirical data and

1 factors relevant to:

2 (A) the likelihood of a defendant intentionally
3 failing to appear in court as required; and

4 (B) the safety of the community, law enforcement,
5 and the victim of the alleged offense if the defendant is released;

6 (3) does not consider factors that disproportionately
7 affect persons who are members of racial or ethnic minority groups
8 or who are socioeconomically disadvantaged;

9 (4) has been demonstrated to produce results that are
10 unbiased with respect to the race or ethnicity of defendants and
11 does not produce a disproportionate outcome; and

12 (5) is designed to function in a transparent manner
13 with respect to the public and each defendant with respect to whom a
14 public safety report is prepared.

15 (b) The office shall provide access to the public safety
16 report system to the appropriate officials in each county at no
17 cost. This subsection may not be construed to require the office to
18 provide a county official or magistrate with any equipment or
19 support related to accessing or using the public safety report
20 system.

21 (c) The office shall collect data relating to the use and
22 efficiency of the public safety report system. The office shall
23 consider that data, along with other relevant information, and
24 shall, not later than November 1 of each even-numbered year, make
25 appropriate changes or updates to the public safety report system
26 to ensure compliance with this article. Not later than December 1
27 of each even-numbered year, the office shall submit a report

1 containing the data collected and describing any changes or updates
2 made to the public safety report system to the governor, the
3 lieutenant governor, the speaker of the house of representatives,
4 and the presiding officers of the standing committees of each house
5 of the legislature with jurisdiction over the judiciary.

6 (d) The office shall create and post on the office's public
7 Internet website a sample result that could occur through the use of
8 the public safety report system and shall include an explanation of
9 the data used for preparing a public safety report.

10 Art. 17.022. PUBLIC SAFETY REPORT. (a) A magistrate
11 considering the release on bail of a defendant charged with an
12 offense punishable as a Class B misdemeanor or any higher category
13 of offense shall order that:

14 (1) the personal bond office established under Article
15 17.42 for the county in which the defendant is being detained, or
16 other suitably trained person, use the validated public safety
17 report system developed under Article 17.021 to prepare a public
18 safety report, or another public safety report approved by the
19 Office of Court Administration of the Texas Judicial System, with
20 respect to the defendant; and

21 (2) the public safety report prepared under
22 Subdivision (1) be provided to the magistrate as soon as
23 practicable but not later than 48 hours after the defendant's
24 arrest.

25 (b) A magistrate may not, without the consent of the
26 sheriff, order a sheriff or sheriff's department personnel to
27 prepare a public safety report under Subsection (a).

1 (c) Notwithstanding Subsection (a), a magistrate may
2 personally prepare a public safety report before or while making a
3 bail decision using the validated public safety report system
4 developed under Article 17.021.

5 (d) The magistrate shall consider the public safety report
6 before making a bail decision.

7 Art. 17.023. AUTHORITY TO RELEASE ON BAIL IN CERTAIN CASES.

8 (a) This article applies only to a defendant charged with an
9 offense that is:

10 (1) punishable as a felony; or

11 (2) a misdemeanor punishable by confinement.

12 (b) Notwithstanding any other law, a defendant to whom this
13 article applies may be released on bail only by a magistrate who is:

14 (1) a resident of this state and one of the counties
15 served by the magistrate; and

16 (2) in compliance with the training requirements of
17 Article 17.024.

18 (c) A magistrate is not eligible to release on bail a
19 defendant described by Subsection (a) if the magistrate:

20 (1) has been removed from office by impeachment, by
21 the supreme court, by the governor on address to the legislature, by
22 a tribunal reviewing a recommendation of the State Commission on
23 Judicial Conduct, or by the legislature's abolition of the
24 magistrate's court; or

25 (2) has resigned from office after having received
26 notice that formal proceedings by the State Commission on Judicial
27 Conduct have been instituted as provided by Section [33.022](#),

1 Government Code, and before final disposition of the proceedings.

2 Art. 17.024. TRAINING ON DUTIES REGARDING BAIL. (a) The
3 Office of Court Administration of the Texas Judicial System shall,
4 in consultation with the court of criminal appeals, develop or
5 approve training courses regarding a magistrate's duties,
6 including duties under Article 17.022 and duties with respect to
7 setting bail in criminal cases. The courses developed must
8 include:

9 (1) a 16-hour initial training course; and

10 (2) a four-hour continuing education course.

11 (b) The office shall provide for a method of certifying that
12 a magistrate has successfully completed a training course required
13 under this article and has demonstrated competency of the course
14 content in a manner acceptable to the office.

15 (c) A magistrate is in compliance with the training
16 requirements of this article if:

17 (1) not later than the 90th day after the date the
18 magistrate takes office, the magistrate successfully completes the
19 course described by Subsection (a)(1);

20 (2) the magistrate successfully completes the course
21 described by Subsection (a)(2) in each subsequent state fiscal
22 biennium in which the magistrate serves; and

23 (3) the magistrate demonstrates competency in a manner
24 acceptable to the office.

25 (c-1) Notwithstanding Subsection (c), a magistrate who is
26 serving on December 1, 2021, is considered to be in compliance with
27 Subsection (c)(1) if the magistrate successfully completes the

1 training course not later than June 1, 2022. This subsection
2 expires January 1, 2023.

3 (d) Any course developed or approved by the office under
4 this article may be administered by the Texas Justice Court
5 Training Center, the Texas Municipal Courts Education Center, the
6 Texas Association of Counties, the Texas Center for the Judiciary,
7 or a similar entity.

8 Art. 17.028. BAIL DECISION. (a) Without unnecessary delay
9 but not later than 48 hours after a defendant is arrested, a
10 magistrate shall order, after individualized consideration of all
11 circumstances and of the factors required by Article 17.15, that
12 the defendant be:

- 13 (1) granted personal bond with or without conditions;
14 (2) granted monetary bond with or without conditions;
15 or
16 (3) denied bail in accordance with the Texas
17 Constitution and other law.

18 (b) In making a bail decision under this article, the
19 magistrate shall impose, as applicable, the least restrictive
20 conditions, if any, and minimum amount of bail, if any, whether
21 personal bond or monetary bond, necessary to reasonably ensure the
22 defendant's appearance in court as required and the safety of the
23 community, law enforcement, and the victim of the alleged offense.

24 (c) In each criminal case, unless specifically provided by
25 other law, there is a rebuttable presumption that bail, conditions
26 of release, or both bail and conditions of release are sufficient to
27 reasonably ensure the defendant's appearance in court as required

1 and the safety of the community, law enforcement, and the victim of
2 the alleged offense. For purposes of setting bail or rebutting the
3 presumption, the court is not required to hold an evidentiary
4 hearing.

5 (d) A judge may not adopt a bail schedule or enter a standing
6 order related to bail that:

7 (1) is inconsistent with this article; or

8 (2) authorizes a magistrate to make a bail decision
9 for a defendant without considering the factors in Article 17.15.

10 (e) A defendant who is denied bail or who is unable to give
11 bail in the amount required by any bail schedule or standing order
12 related to bail shall be provided with the warnings described by
13 Article 15.17.

14 (f) A defendant who is unable to give bail in an amount
15 required by any bail schedule or standing order related to bail may
16 file with the applicable magistrate a sworn affidavit declaring the
17 maximum amount that the defendant would be able to pay or provide as
18 security within 24 hours of arrest for purposes of obtaining a bail
19 bond. The affidavit must set out sufficient facts to clearly
20 establish that amount, given the totality of the defendant's
21 circumstances.

22 (g) A defendant who files an affidavit under Subsection (f)
23 is entitled to a hearing before the magistrate on the bail amount.
24 At the hearing or a review, the magistrate shall consider the facts
25 stated in the affidavit and the rules established by Article 17.15
26 and set the defendant's bail. The magistrate may deviate from any
27 bail schedule or standing order related to bail in setting a

1 defendant's bail under this subsection. The magistrate shall issue
2 oral or written findings of fact supporting the decision.

3 (h) This article does not prohibit a sheriff or other peace
4 officer, or a jailer licensed under Chapter 1701, Occupations Code,
5 from accepting bail under Article 17.20 or 17.22 before a public
6 safety report has been prepared with respect to the defendant or
7 before a bail decision has been made by a magistrate under this
8 article.

9 (i) In making a bail decision under this article, a
10 magistrate may direct either of the following to monitor the
11 defendant's compliance with a condition of bond set by the
12 magistrate:

13 (1) the personal bond office established under Article
14 17.42 for the county in which the defendant is being detained; or

15 (2) the community supervision and corrections
16 department established under Section 76.002, Government Code, for
17 the county in which the defendant is being detained.

18 SECTION 4. Article 17.03, Code of Criminal Procedure, is
19 amended by amending Subsection (b) and adding Subsection (b-2) to
20 read as follows:

21 (b) Only the court before whom the case is pending may
22 release on personal bond a defendant who:

23 (1) is charged with an offense under the following
24 sections of the Penal Code:

25 (A) [~~Section 19.03 (Capital Murder),~~

26 [~~(B)~~] Section 20.04 (Aggravated Kidnapping);

27 (B) [~~(C) Section 22.021 (Aggravated Sexual~~

1 ~~Assault);~~
2 ~~[(D) Section 22.03 (Deadly Assault on Law~~
3 ~~Enforcement or Corrections Officer, Member or Employee of Board of~~
4 ~~Pardons and Paroles, or Court Participant);~~
5 ~~[(E)]~~ Section 22.04 (Injury to a Child, Elderly
6 Individual, or Disabled Individual);
7 (C) ~~[(F)]~~ Section 29.03 (Aggravated Robbery);
8 (D) ~~[(G)]~~ Section 30.02 (Burglary); or
9 (E) ~~[(H)]~~ Section 71.02 (Engaging in Organized
10 Criminal Activity);
11 ~~[(I) Section 21.02 (Continuous Sexual Abuse of~~
12 ~~Young Child or Children); or~~
13 ~~[(J) Section 20A.03 (Continuous Trafficking of~~
14 ~~Persons);]~~
15 (2) is charged with a felony under Chapter 481, Health
16 and Safety Code, or Section 485.033, Health and Safety Code,
17 punishable by imprisonment for a minimum term or by a maximum fine
18 that is more than a minimum term or maximum fine for a first degree
19 felony; or
20 (3) does not submit to testing for the presence of a
21 controlled substance in the defendant's body as requested by the
22 court or magistrate under Subsection (c) of this article or submits
23 to testing and the test shows evidence of the presence of a
24 controlled substance in the defendant's body.
25 (b-2) Notwithstanding any other law, a defendant may not be
26 released on personal bond if the defendant is charged with an
27 offense under the following provisions of the Penal Code:

- 1 (1) Section 19.02 (Murder);
- 2 (2) Section 19.03 (Capital Murder);
- 3 (3) Section 20A.02 (Trafficking of Persons);
- 4 (4) Section 20A.03 (Continuous Trafficking of
5 Persons);
- 6 (5) Section 21.02 (Continuous Sexual Abuse of Young
7 Child or Children);
- 8 (6) Section 21.11 (Indecency with a Child);
- 9 (7) Section 22.021 (Aggravated Sexual Assault);
- 10 (8) Section 43.04 (Aggravated Promotion of
11 Prostitution), if the defendant is not alleged to have engaged in
12 conduct constituting an offense under Section 43.02(a);
- 13 (9) Section 43.05 (Compelling Prostitution); or
- 14 (10) Section 43.25 (Sexual Performance by a Child).

15 SECTION 5. Article 17.15, Code of Criminal Procedure, is
16 amended to read as follows:

17 Art. 17.15. RULES FOR SETTING [~~FIXING~~] AMOUNT OF BAIL. (a)
18 The amount of bail and the associated conditions of bail to be
19 required in any case are [~~is~~] to be regulated by the court, judge,
20 magistrate, or officer taking the bail in accordance with Articles
21 17.20, 17.21, and 17.22 and [~~they~~] are [~~to be~~] governed [~~in the~~
22 ~~exercise of this discretion~~] by the Constitution and [~~by~~] the
23 following rules:

- 24 (1) [1.] The amount of bail, if any, and associated
25 conditions of bail, if any, shall be sufficient [~~sufficiently high~~]
26 to give reasonable assurance that the undertaking will be complied
27 with.

1 (2) [~~2.~~] The power to require bail is not to be so
2 used as to make it an instrument of oppression.

3 (3) [~~3.~~] The nature of the offense, [~~and~~] the
4 circumstances under which the offense [~~it~~] was committed, and the
5 defendant's criminal history, including acts of family violence,
6 shall [~~are to~~] be considered, except that a misdemeanor or an
7 offense under Chapter 481, Health and Safety Code, that occurred
8 more than 10 years before the current offense may not be considered
9 unless the previous offense involved the manufacture or delivery of
10 a controlled substance or caused bodily injury, as defined by
11 Section 1.07, Penal Code, to another, or unless good cause
12 otherwise exists for considering that offense.

13 (4) [~~4.~~] The ability to make bail shall [~~is to~~] be
14 considered [~~regarded~~], and proof may be taken upon this point.

15 (5) [~~5.~~] The future safety of a victim of the alleged
16 offense, law enforcement, and the community shall be considered.

17 (6) Any public safety report prepared using the
18 validated public safety report system developed under Article
19 17.021 shall be considered.

20 (7) Any other relevant facts or circumstances may be
21 considered.

22 (b) In this article, "family violence" has the meaning
23 assigned by Section 71.004, Family Code.

24 SECTION 6. Chapter 17, Code of Criminal Procedure, is
25 amended by adding Articles 17.50, 17.51, and 17.52 to read as
26 follows:

27 Art. 17.50. NOTICE OF CONDITIONS. (a) As soon as

1 practicable but not later than the next business day after the date
2 a magistrate issues an order imposing a condition of release on bond
3 for a defendant or modifying or removing a condition previously
4 imposed, the clerk of the court shall send a copy of the order to:

5 (1) the appropriate attorney representing the state;

6 and

7 (2) either:

8 (A) the chief of police in the municipality where
9 the defendant resides, if the defendant resides in a municipality;

10 or

11 (B) the sheriff of the county where the defendant
12 resides, if the defendant does not reside in a municipality.

13 (b) A clerk of the court may delay sending a copy of the
14 order under Subsection (a) only if the clerk lacks information
15 necessary to ensure service and enforcement.

16 (c) If an order described by Subsection (a) prohibits a
17 defendant from going to or near a child care facility or school, the
18 clerk of the court shall send a copy of the order to the child care
19 facility or school.

20 (d) The copy of the order and any related information may be
21 sent electronically or in another manner that can be accessed by the
22 recipient.

23 (e) The magistrate or the magistrate's designee shall
24 provide written notice to the defendant of:

25 (1) the conditions of release on bond; and

26 (2) the penalties for violating a condition of
27 release.

1 (f) The magistrate shall make a separate record of the
2 notice provided to the defendant under Subsection (e).

3 (g) The Office of Court Administration of the Texas Judicial
4 System shall promulgate a form for use by a magistrate in providing
5 notice to the defendant under Subsection (e). The form must include
6 the relevant statutory language from the provisions of this chapter
7 under which a condition of release on bond may be imposed on a
8 defendant.

9 Art. 17.51. REPORTING OF CONDITIONS. A chief of police or
10 sheriff who receives a copy of an order under Article 17.50(a), or
11 the chief's or sheriff's designee, shall, as soon as practicable but
12 not later than the 10th day after the date the copy is received,
13 enter information relating to the condition of release into the
14 appropriate database of the statewide law enforcement information
15 system maintained by the Department of Public Safety or modify or
16 remove information, as appropriate.

17 Art. 17.52. PROCEDURES AND FORMS RELATED TO CASH BAIL BOND.
18 The Office of Court Administration of the Texas Judicial System
19 shall develop statewide procedures and prescribe forms to be used
20 by a court to facilitate:

21 (1) the refund of a cash bail bond, with an emphasis on
22 refunding the bail bond to the person in whose name the receipt
23 described by Article 17.02 was issued; and

24 (2) the application of a cash bail bond paid by a
25 person other than a defendant to the defendant's outstanding court
26 costs and fees.

27 SECTION 7. (a) Article 17.02, Code of Criminal Procedure,

1 is amended to read as follows:

2 Art. 17.02. DEFINITION OF "BAIL BOND". A "bail bond" is a
3 written undertaking entered into by the defendant and the
4 defendant's sureties for the appearance of the principal therein
5 before a court or magistrate to answer a criminal accusation;
6 provided, however, that the defendant on execution of the bail bond
7 may deposit with the custodian of funds of the court in which the
8 prosecution is pending current money of the United States in the
9 amount of the bond in lieu of having sureties signing the same. Any
10 cash funds deposited under this article shall be receipted for by
11 the officer receiving the funds and, on order of the court, be
12 refunded in the amount shown on the face of the receipt less the
13 administrative fee authorized by Section 117.055, Local Government
14 Code, if applicable, after the defendant complies with the
15 conditions of the defendant's bond, to:

16 (1) any person in the name of whom a receipt was
17 issued, including the defendant if a receipt was issued to the
18 defendant; or

19 (2) the defendant, if no other person is able to
20 produce a receipt for the funds.

21 (b) Section 117.055, Local Government Code, is amended by
22 amending Subsection (a) and adding Subsections (a-1) and (a-2) to
23 read as follows:

24 (a) Except as provided by Subsection (a-1), to [~~To~~]
25 compensate the county for the accounting and administrative
26 expenses incurred in handling the registry funds that have not
27 earned interest, including funds in a special or separate account,

1 the clerk shall, at the time of withdrawal, deduct from the amount
2 of the withdrawal a fee in an amount equal to five percent of the
3 withdrawal but that may not exceed \$50. Withdrawal of funds
4 generated from a case arising under the Family Code is exempt from
5 the fee deduction provided by this section.

6 (a-1) A clerk may not deduct a fee under Subsection (a) from
7 a withdrawal of funds generated by the collection of a cash bond or
8 cash bail bond if in the case for which the bond was taken:

9 (1) the defendant was found not guilty after a trial or
10 appeal; or

11 (2) the complaint, information, or indictment was
12 dismissed without a plea of guilty or nolo contendere being
13 entered.

14 (a-2) On the request of a person to whom withdrawn funds
15 generated by the collection of a cash bond or cash bail bond were
16 disbursed, the clerk shall refund to the person the amount of the
17 fee deducted under Subsection (a) if:

18 (1) subsequent to the deduction, a court makes or
19 enters an order or ruling in the case for which the bond was taken;
20 and

21 (2) had the court made or entered the order or ruling
22 before the withdrawal of funds occurred, the deduction under
23 Subsection (a) would have been prohibited under Subsection (a-1).

24 (c) Section 117.055, Local Government Code, as amended by
25 this section, applies only to a withdrawal of funds from a court
26 registry under Section 117.055, Local Government Code, made on or
27 after September 1, 2021. A withdrawal of funds from a court

1 registry made before September 1, 2021, is governed by the law in
2 effect on the date the withdrawal was made, and the former law is
3 continued in effect for that purpose.

4 (d) This section takes effect September 1, 2021.

5 SECTION 8. As soon as practicable but not later than
6 December 1, 2021, the Office of Court Administration of the Texas
7 Judicial System shall create and provide access to the appropriate
8 officials in each county the validated public safety report system
9 developed under Article 17.021, Code of Criminal Procedure, as
10 added by this Act, and any related forms and materials, at no cost.
11 If those items are made available before December 1, 2021, the
12 office shall notify each court clerk, judge or other magistrate,
13 and office of an attorney representing the state.

14 SECTION 9. (a) As soon as practicable but not later than
15 December 1, 2021, the Office of Court Administration of the Texas
16 Judicial System shall:

17 (1) promulgate the form required by Article 17.50(g),
18 Code of Criminal Procedure, as added by this Act; and

19 (2) develop or approve and make available the training
20 courses and certification method as described by Article 17.024,
21 Code of Criminal Procedure, as added by this Act, and develop the
22 procedures and prescribe the forms required by Article 17.52, Code
23 of Criminal Procedure, as added by this Act.

24 (b) If the items described by Subsection (a) of this section
25 are made available before December 1, 2021, the office shall notify
26 each court clerk, judge or other magistrate, and office of an
27 attorney representing the state.

1 SECTION 10. The changes in law made by this Act apply only
2 to a person who is arrested on or after the effective date of this
3 Act. A person arrested before the effective date of this Act is
4 governed by the law in effect on the date the person was arrested,
5 and the former law is continued in effect for that purpose.

6 SECTION 11. (a) Except as provided by Subsection (b) of
7 this section, this Act takes effect December 1, 2021.

8 (b) Articles 17.021 and 17.024, Code of Criminal Procedure,
9 as added by this Act, and Sections 8 and 9 of this Act take effect
10 September 1, 2021.