

By: Reynolds

H.B. No. 4379

A BILL TO BE ENTITLED

AN ACT

relating to citations and arrests for criminal offenses and pretrial detention and release.

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

SECTION 1. Title 1, Code of Criminal Procedure, is amended by adding Chapter 17B to read as follows:

CHAPTER 17B. PRETRIAL RELEASE AND DETENTION ACT

SUBCHAPTER A. GENERAL PROVISIONS

Art. 17B.001. SHORT TITLE. This chapter may be cited as the Texas Pretrial Release and Detention Act.

Art. 17B.002. DEFINITIONS. In this chapter:

(1) "Abscond" means to fail to appear in court as required with the intent to avoid or delay adjudication.

(2) "Charge" means an allegation of an offense in a complaint, information, indictment, citation, or similar record.

(3) "Citation" means a record issued by a peace officer alleging an offense.

(4) "Covered offense" means:

(A) a violent offense or sexual offense as those terms are defined by Section 11a(b), Article I, Texas Constitution;

or

(B) an offense under Section 20A.03, Penal Code (Continuous Trafficking of Persons).

(5) "Detention hearing" means a hearing under Article

1 17B.151.

2 (6) "Homeless person" means a person who at any time in
3 the preceding six months had a primary address at:

4 (A) a shelter operated and supervised by a
5 governmental entity or a private charitable organization for the
6 purpose of providing temporary living accommodations, including
7 welfare hotels, congregate shelters, or transitional housing for
8 persons with behavioral or mental health disorders; or

9 (B) a public or private place not designed for or
10 regularly used as a regular sleeping accommodation for human
11 beings, including an automobile, a park, an abandoned building, a
12 bus or train station, or a similar setting.

13 (7) "Obstruct justice" means interfere with the
14 criminal process with the intent to influence or impede the
15 administration of justice. The term includes tampering with a
16 witness or evidence.

17 (8) "Offense" means conduct prohibited by law and
18 subject to a criminal penalty.

19 (9) "Record" means information that is inscribed on a
20 tangible medium or that is stored in an electronic or other medium
21 and is retrievable in perceivable form.

22 (10) "Release hearing" means a hearing under Article
23 17B.101.

24 (11) "Release on recognizance" means pretrial release
25 of an individual with no condition other than to appear in court as
26 required and to abide by generally applicable laws.

27 (12) "Secured appearance bond" means a person's

1 promise, secured by sufficient surety, deposit, lien, or proof of
2 access to collateral, to forfeit a specified sum if the individual
3 whose appearance is the subject of the bond absconds or does not
4 appear.

5 (13) "Undue hardship" means a burden that causes a
6 person or the person's dependents to sacrifice to some extent the
7 basic necessities of life, including food, medical care, clothing,
8 shelter, transportation, or hygiene products.

9 (14) "Unsecured appearance bond" means a person's
10 promise other than through secured appearance bond to forfeit a
11 specified sum if the individual whose appearance is the subject of
12 the bond absconds or does not appear.

13 Art. 17B.003. SCOPE. This chapter governs a determination
14 to arrest, release, or detain an individual before trial. This
15 chapter does not affect the law of this state other than this
16 chapter regarding related matters, including:

17 (1) forfeiture, release, or collection of a secured
18 appearance bond or an unsecured appearance bond;

19 (2) involuntary commitment;

20 (3) a right of a crime victim, including a right of
21 notification;

22 (4) appellate review; or

23 (5) release pending appeal.

24 Art. 17B.004. CONFLICT OF LAWS. To the extent of any
25 conflict between this chapter and another law, this chapter
26 prevails.

SUBCHAPTER B. CITATION AND ARREST

Art. 17B.051. AUTHORITY FOR CITATION OR ARREST. (a) If a peace officer has probable cause to believe an individual is committing or has committed an offense, the peace officer may issue the individual a citation or take other action authorized by law.

(b) Except as otherwise provided by law of this state other than this chapter, a peace officer, including a person acting at the direction of the peace officer, may arrest an individual only if:

(1) the individual is subject to an order of detention from any jurisdiction, including an arrest warrant or order of revocation of community supervision, parole, mandatory supervision, or release; or

(2) subject to Subsection (c), the peace officer has probable cause to believe the individual is committing or has committed an offense.

(c) If an offense under Subsection (b)(2) is a misdemeanor, a peace officer, including a person acting at the direction of a peace officer, may not arrest an individual unless:

(1) after the person has used all reasonably available means to confirm the identification of the individual, the individual fails to provide adequate identification, orally or through documentation, as lawfully requested by the person; or

(2) the peace officer reasonably believes arrest is necessary to:

(A) protect a reasonably identifiable individual from significant imminent harm; or

(B) prevent the individual from fleeing the

1 jurisdiction.

2 (d) For each arrest a peace officer makes under this
3 article, the peace officer shall report to the law enforcement
4 agency that employs the officer the reason the officer did not issue
5 a citation in lieu of arrest under Subsection (a).

6 Art. 17B.052. FORM OF CITATION. A citation must state:

7 (1) the circumstances of the alleged offense and the
8 provision of law violated;

9 (2) if a court appearance is required:

10 (A) the time and place the individual must appear
11 before a magistrate; and

12 (B) the process for requesting a change in the
13 appearance date; and

14 (3) the possible consequences of failing to appear as
15 required by the citation or committing an offense before the
16 individual's first court appearance.

17 Art. 17B.0525. DUTIES AFTER CITATION. After issuing a
18 citation under Article 17B.051 to an individual, a peace officer
19 shall offer the following services to the individual:

20 (1) phone calls and text messages to the individual
21 for the purpose of reminding the individual of the date the
22 individual is required to appear in court;

23 (2) information on how the individual may:

24 (A) contact the court for further information;

25 (B) report to the court a change in
26 circumstances, including difficulties in attending a scheduled
27 court appearance; or

1 (C) reschedule the date and time the individual
2 is required to appear in court; and

3 (3) if available in the jurisdiction, transportation
4 to the court for the scheduled appearance, transitional housing as
5 needed, and child care for the purpose of assisting the individual
6 in attending the scheduled court appearance.

7 Art. 17B.053. RELEASE AFTER ARREST. A peace officer may
8 release an individual after arrest and without a release hearing by
9 issuing a citation under Article 17B.051(a). The peace officer may
10 require the individual to execute an unsecured appearance bond as a
11 condition of release.

12 Art. 17B.054. APPEARANCE ON CITATION. (a) If an individual
13 appears as required by a citation, the court shall issue an order of
14 pretrial release on recognizance in the case for which the citation
15 was issued. The order must include the information under Article
16 17B.104(a).

17 (b) If an individual absconds or does not appear as required
18 by a citation, the court may issue an arrest warrant.

19 SUBCHAPTER C. RELEASE HEARING

20 Art. 17B.101. RIGHT TO HEARING; TIMING. (a) Unless an
21 arrested individual is released under Article 17B.053 after arrest,
22 the individual is entitled to a hearing to determine release
23 pending trial. Except as otherwise provided in Subsection (b), the
24 court shall hold the hearing not later than 24 hours after the
25 arrest.

26 (b) The court may continue a release hearing:

27 (1) on motion of the arrested individual; or

1 (2) in extraordinary circumstances, to a time that is
2 not later than 48 hours after arrest, on its own motion.

3 Art. 17B.102. RIGHTS OF ARRESTED INDIVIDUAL. (a) An
4 arrested individual has a right to be heard at a release hearing.

5 (b) An arrested individual has a right to counsel at a
6 release hearing. If the individual is unable to obtain counsel for
7 the hearing, the court shall appoint counsel. The scope of
8 representation under this article may be limited to the subject
9 matter of the hearing.

10 Art. 17B.103. JUDICIAL DETERMINATION OF RELEVANT RISK. At
11 a release hearing, the court shall determine whether the arrested
12 individual poses a risk that is relevant to pretrial release. The
13 individual poses a relevant risk only if the court determines by
14 clear and convincing evidence that the individual is significantly
15 likely to abscond, obstruct justice, violate a protective order, or
16 cause significant harm to a reasonably identifiable individual. The
17 court shall consider:

18 (1) available information concerning:

19 (A) the nature, seriousness, and circumstances
20 of the alleged offense;

21 (B) the weight of the evidence against the
22 individual;

23 (C) the individual's adult criminal history,
24 history of absconding, and community ties;

25 (D) whether the individual has a pending charge
26 in another matter or is on community supervision, parole, or
27 mandatory supervision; and

1 (E) only as factors supporting release, the
2 defendant's:

3 (i) place of residence and the period for
4 which the defendant has resided there;

5 (ii) community ties; and

6 (iii) employment and education
7 commitments;

8 (2) any relevant information in a pretrial risk
9 assessment; and

10 (3) other relevant information that weighs in favor of
11 release, including information provided by the individual or the
12 attorney representing the state.

13 Art. 17B.104. PRETRIAL RELEASE. (a) Except as otherwise
14 provided in Subsection (b) and Article 17B.108, at a release
15 hearing the court shall issue an order of pretrial release on
16 recognizance. The order must state:

17 (1) the time and place the individual must appear
18 before a magistrate; and

19 (2) the possible consequences of failing to appear as
20 required by the order of committing an offense while the charge is
21 pending.

22 (b) If the court determines under Article 17B.103 that an
23 arrested individual poses a relevant risk, the court shall
24 determine under Articles 17B.105, 17B.106, and 17B.107 whether
25 pretrial release of the individual is appropriate.

26 (c) If the court determines under Articles 17B.105,
27 17B.106, and 17B.107 that pretrial release is appropriate, the

1 court shall issue an order of pretrial release. The order must
2 include the information required under Subsection (a) and any
3 restrictive condition imposed by the court.

4 Art. 17B.105. PRACTICAL ASSISTANCE; VOLUNTARY SUPPORTIVE
5 SERVICES. (a) If the court determines under Article 17B.103 that an
6 arrested individual poses a relevant risk, the court shall
7 determine whether practical assistance or a voluntary supportive
8 service, or both, are available and sufficient to address
9 satisfactorily the risk.

10 (b) If the court determines the practical assistance or a
11 voluntary supportive service is available and sufficient to address
12 satisfactorily a relevant risk the court identifies under Article
13 17B.103, the court shall refer the individual to the practical
14 assistance or voluntary supportive service and issue an order of
15 pretrial release under Article 17B.104(c).

16 (c) For purposes of this article, "voluntary supportive
17 service" includes transportation assistance, child care
18 assistance, and referrals to community-based mental health
19 services.

20 Art. 17B.106. RESTRICTIVE CONDITION OF RELEASE. (a) If the
21 court determines under Article 17B.105 that practical assistance or
22 a voluntary supportive service is not sufficient to address
23 satisfactorily a relevant risk the court identifies under Article
24 17B.103, the court shall impose the least restrictive condition or
25 conditions reasonably necessary to address satisfactorily the risk
26 and issue an order of pretrial release under Article 17B.104(c).

27 (b) A restrictive condition under Subsection (a) may

1 include:

2 (1) mandatory therapeutic treatment or social
3 services;

4 (2) a requirement to seek to obtain or maintain
5 employment or maintain an education commitment;

6 (3) a restriction on possession or use of a weapon;

7 (4) a restriction on travel;

8 (5) a restriction on contact with a specified person;

9 (6) a restriction on a specified activity;

10 (7) supervision by a community supervision and
11 corrections department or an individual;

12 (8) active or passive electronic monitoring;

13 (9) house arrest;

14 (10) subject to Article 17B.107, a secured appearance
15 bond or unsecured appearance bond;

16 (11) a condition proposed by the arrested individual,
17 the attorney representing the state, or an alleged victim;

18 (12) any other nonfinancial condition required by law
19 of this state other than this chapter; or

20 (13) another condition to address satisfactorily the
21 relevant risk the court identifies under Article 17B.103.

22 (c) The court shall state in a record the reasons the
23 restrictive condition or conditions imposed under Subsection (a)
24 are the least restrictive reasonably necessary to address
25 satisfactorily the relevant risk the court identifies under Article
26 17B.103.

27 Art. 17B.107. FINANCIAL CONDITION OF RELEASE. (a) Subject

1 to Articles 17B.108 and 17B.153, the court may not impose a
2 restrictive condition under Article 17B.106 that requires initial
3 payment of a fee in a sum greater than the arrested individual is
4 able to pay without causing undue hardship from personal financial
5 resources not later than 24 hours after the condition is imposed. If
6 the individual is unable to pay the initial fee, the court shall
7 waive or modify the fee, or waive or modify the restrictive
8 condition that requires payment of the fee, to the extent necessary
9 to release the individual. If the individual is unable to pay a
10 recurring fee, the court shall waive or modify the recurring fee or
11 the restrictive condition that requires payment of the fee.

12 (b) Before imposing a secured appearance bond or unsecured
13 appearance bond under Article 17B.106, the court shall consider the
14 arrested individual's personal financial resources and
15 obligations, including income, assets, expenses, liabilities, and
16 dependents.

17 (c) Subject to Articles 17B.108 and 17B.153, the court may
18 not impose a secured appearance bond as a restrictive condition
19 under Article 17B.106 unless the court determines by clear and
20 convincing evidence that the arrested individual is significantly
21 likely to abscond, obstruct justice, or violate a protective order.

22 (d) Subject to Articles 17B.108 and 17B.153, the court may
23 not impose a secured appearance bond as a restrictive condition
24 under Article 17B.106:

- 25 (1) to keep an arrested individual detained;
26 (2) for a charge that is not a felony, unless the
27 individual has been previously convicted of an offense under

1 Section 38.10, Penal Code, within the preceding five years; or

2 (3) the cost of which is an amount greater than the
3 individual is able to pay without causing undue hardship from
4 personal financial resources not later than 24 hours after the
5 condition is imposed.

6 (e) The court shall presume that a restrictive condition
7 requiring the payment of a fee or imposing a secured appearance bond
8 causes undue hardship under Subsection (a) or (d) on the arrested
9 individual if the individual:

10 (1) is eligible for the appointment of counsel in a
11 criminal proceeding under Article 26.04 or other law;

12 (2) is, or has been at any time within the preceding
13 six months, a homeless person;

14 (3) regularly earns income at or below 200% of the
15 federal poverty level;

16 (4) is a full-time student enrolled at a college or an
17 institution of higher education;

18 (5) has been at any time in the preceding six months
19 confined in a correctional facility, as defined by Section 1.07,
20 Penal Code;

21 (6) has resided at any time in the preceding six months
22 in a facility primarily engaged in providing mental health
23 services; or

24 (7) qualifies for or has dependents who qualify for
25 any state or federal assistance program, including:

26 (A) the medical assistance program operated
27 under Chapter 32, Human Resources Code;

1 (B) the supplemental nutrition assistance
2 program (SNAP) operated under Chapter 33, Human Resources Code;

3 (C) the Temporary Assistance for Needy Families
4 (TANF) program;

5 (D) Supplemental Security Income (SSI) benefits
6 under 42 U.S.C. Section 1381 et seq.;

7 (E) Social Security Disability Insurance (SSDI)
8 benefits under 42 U.S.C. Section 401 et seq.; or

9 (F) housing assistance payments under any
10 federal law described by Section 2306.6702(5)(A)(i), Government
11 Code.

12 (f) A restrictive condition imposed under Article 17B.106
13 that requires the payment of a fee or imposes a secured appearance
14 bond may never be in an amount that exceeds two percent of the
15 arrested individual's annual income.

16 Art. 17B.108. TEMPORARY PRETRIAL DETENTION. (a) At the
17 conclusion of a release hearing, the court may issue an order to
18 detain the arrested individual temporarily until a detention
19 hearing, or may impose a financial condition of release in an amount
20 greater than the individual is able to pay from personal financial
21 resources not later than 24 hours after the condition is imposed,
22 only if the individual is charged with a covered offense and the
23 court determines by clear and convincing evidence that:

24 (1) it is likely that the individual will abscond,
25 obstruct justice, violate a protective order, or cause significant
26 harm to a reasonably identifiable individual and that no less
27 restrictive condition is sufficient to address satisfactorily the

1 relevant risk the court identifies under Article 17B.103; or

2 (2) the individual has violated a condition of an
3 order of pretrial release for a pending criminal charge.

4 (b) If the court issues an order under Subsection (a) to
5 detain the arrested individual temporarily or that imposes a
6 financial condition of release in an amount greater than the
7 individual is able to pay from personal financial resources not
8 later than 24 hours after the condition is imposed, the court shall
9 state its reasons in a record, including why no less restrictive
10 condition or combination of conditions is sufficient.

11 SUBCHAPTER D. DETENTION HEARING

12 Art. 17B.151. DUTY TO HOLD HEARING; TIMING. (a) If the court
13 issues an order of temporary pretrial detention of an arrested
14 individual under Article 17B.108, or pretrial release of an
15 arrested individual under Article 17B.104 subject to a restrictive
16 condition that results in continued detention of the individual,
17 the court shall hold a hearing to consider continued detention of
18 the individual pending trial. The hearing must be held not later
19 than 48 hours after issuance of the order.

20 (b) The court on its own motion may continue a detention
21 hearing for good cause for not more than 48 hours.

22 (c) The court shall continue a detention hearing on motion
23 of the detained individual for not more than 48 hours.

24 (d) At the conclusion of a detention hearing, the court
25 shall issue an order of pretrial release or detention.

26 Art. 17B.152. RIGHTS OF DETAINED INDIVIDUAL. (a) At a
27 detention hearing, the detained individual has a right to counsel.

1 If the individual is indigent, the court shall appoint counsel. The
2 scope of representation under this article may be limited to the
3 subject matter of the hearing.

4 (b) At a detention hearing, the detained individual has a
5 right to:

6 (1) review evidence to be introduced by the attorney
7 representing the state before it is introduced at the hearing;

8 (2) present evidence, call witnesses, and provide
9 information;

10 (3) testify; and

11 (4) cross-examine witnesses.

12 Art. 17B.153. PRETRIAL DETENTION. (a) At a detention
13 hearing, the court shall consider the criteria in Articles 17B.103,
14 17B.104, 17B.105, 17B.106, and 17B.107 to determine whether to
15 issue an order of pretrial detention or continue, amend, or
16 eliminate a restrictive condition that has resulted in continued
17 detention of the detained individual. If failure to satisfy a
18 secured appearance bond or pay a fee is the only reason the
19 individual continues to be detained, the fact of detention is prima
20 facie evidence that the individual is unable to satisfy the bond or
21 pay the fee.

22 (b) The court at a detention hearing may issue an order of
23 pretrial detention or continue a restrictive condition of release
24 that results in detention only if the detained individual is
25 charged with a covered offense and the court determines by clear and
26 convincing evidence that it is likely that the individual will
27 abscond, obstruct justice, violate a protective order, or cause

1 significant harm to a reasonably identifiable individual and no
2 less restrictive condition is sufficient to address satisfactorily
3 the relevant risk the court identifies under Article 17B.103.

4 (c) If under Subsection (b) the court issues an order of
5 pretrial detention or continues a restrictive condition of release
6 that results in detention, the court shall state its reasons in a
7 record, including why no less restrictive condition or combination
8 of conditions is sufficient.

9 SUBCHAPTER E. MODIFYING OR VACATING ORDER

10 Art. 17B.201. MODIFYING OR VACATING BY AGREEMENT. By
11 agreement of the attorney representing the state and an individual
12 subject to an order under Subchapter C or D, the court may:

13 (1) modify an order of pretrial release;

14 (2) vacate an order of pretrial detention and issue an
15 order of pretrial release; or

16 (3) issue an order of pretrial detention.

17 Art. 17B.202. MOTION TO MODIFY. On its own or on motion of a
18 party, the court may modify an order of pretrial release or
19 detention using the procedures and standards in Subchapters C and
20 D. The court may consider new information relevant to the order,
21 including information that the individual subject to the order has
22 violated a condition of release or has demonstrated a history of
23 compliance with the conditions of release.

24 SECTION 2. This Act applies to an arrest made, a citation
25 issued, or a release or detention hearing held on or after the
26 effective date of this Act, including a hearing to enforce, modify,
27 or vacate a release or detention order issued before the effective

1 date of this Act.

2 SECTION 3. This Act takes effect September 1, 2023.