

BILL ANALYSIS

Senate Research Center
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S.B. 1338
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Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1338 is a major bail reform bill that will change the way that Texas courts decide who is released after arrest and who will continue to be detained throughout their case. It tracks the Texas Judicial Council Recommendations, which came from a nearly two-year process that included stakeholders at every level—judges, justices of the peace, clerks, prosecutors, defense lawyers, law enforcement, and elected officials. This legislation will help Texas continue to be a national leader in criminal justice reform.

A committee substitute for S.B. 1338 will address minor concerns with the filed version and provide clarification of a judge's right to deny pre-trial release in specific violent cases where a release could prove dangerous to the public or an individual victim. To authorize this section of S.B. 1338, S.J.R. 50 has been filed.

The primary features of this legislation are:

- Risk-based pretrial system—expands use of validated risk assessments and authorizes judges to decide who gets released based on likelihood to come back to court or commit new crimes.
- Preventive detention—allows judges to detain high-risk defendants charged with violent offenses before trial, no matter how much money they have.
- Least-restrictive release conditions—instructs judges that defendants who can be safely released before trial should have the minimal conditions necessary to make sure they come back to court and that the community remains safe.
- Data collection and reporting—increases statewide collection of data on pretrial release decisions and outcomes.

This bill requires a magistrate within the first 48 hours of detention to make one of three decisions concerning pre-trial release or continued detention of a defendant all based on the risk of failure to appear in court or presence of danger to the public or victim:

1. Release on a personal bond, with or without conditions.
2. Release on a surety, monetary, bond with or without conditions.
3. Deny release until the trial court conducts a pre-trial hearing during the next 10 days.

This bill does not do away with surety or monetary bonds and they are one of the previously listed judge's decisions; this is not the New Jersey law. Opponents of the bill, mostly if not all are bondsmen who feel this will have a negative impact on their earnings. Defendants who may receive pre-trial release by personal bond are not bonding out through surety bonds now.

As proposed, S.B. 1338 amends current law relating to the pretrial release of a defendant and to funding for judicial continuing legal education.

[**Note:** While the statutory reference in this bill is to the Texas Department of Mental Health and Mental Retardation (TMHMR), the following amendments affect the Department of Aging and Disability Services and the Department of Assistive and Rehabilitative Services, as successor agencies to TMHMR.]

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Court of Criminal Appeals in SECTION 4 (Article 17.038, Code of Criminal Procedure) and SECTION 25 (Section 22.113, Government Code) of this bill.

Rulemaking authority previously granted to the El Paso Council of Judges is modified in SECTION 26 (Section 54.737, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 1.07, Code of Criminal Procedure, as follows:

Art. 1.07. New heading: RIGHT TO PRETRIAL RELEASE. (a) Creates this subsection from existing text. Requires that any person, except as provided by Subsection (b) or Chapter 17 (Bail), be eligible for pretrial release, whether on a bail bond or a personal bond, unless the person is accused of a capital offense for which the proof is evident, rather than requires that all prisoners be bailable unless for capital offenses when the proof is evident. Requires that this provision not be construed to prevent pretrial release after indictment found upon examination of the evidence, rather than 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.

(b) Authorizes a person to be denied pretrial release if a judge or magistrate determines by clear and convincing evidence that requiring bail and conditions of pretrial release are insufficient to reasonably ensure the person's required appearance in court or the safety of the community or the victim of the alleged offense.

SECTION 2. Amends Chapter 17, Code of Criminal Procedure, by adding Articles 17.021, 17.027, 17.028, and 17.029, as follows:

Art. 17.021. DEFINITION OF "PERSONAL BOND OFFICE." (a) Defines "personal bond office."

(b) Provides that the term "personal bond office" (PBO) includes a pretrial services office or a pretrial release office.

Art. 17.027. PRETRIAL RISK ASSESSMENT. (a) Requires the district judges with criminal jurisdiction in each judicial district to adopt an instrument to be used in conducting a pretrial risk assessment of a defendant charged with an offense in that district. Requires the instrument adopted to be the automated pretrial risk assessment system developed under Section 72.032 (Study to Repeal Certain Court Fees and Costs), Government Code, or another instrument that fulfills certain criteria.

(b) Requires a magistrate considering the release on bail of a defendant charged with an offense punishable as a Class B misdemeanor or any higher category of offense to order certain actions to be taken.

(c) Requires the magistrate to consider the results of the pretrial risk assessment before making a pretrial release decision under Article 17.028.

Art. 17.028. PRETRIAL RELEASE DECISION. (a) Requires a magistrate, without unnecessary delay but not later than 48 hours after a defendant is arrested, to order, after considering all circumstances, the results of the pretrial risk assessment conducted under

Article 17.027, and any credible information provided by the defendant or the state's attorney, that the defendant be released on certain bonds with or without certain conditions or be denied pretrial release in accordance with this chapter.

(b) Authorizes a magistrate to release a defendant arrested pursuant to a warrant that was issued in a county other than the county in which the defendant was arrested if the magistrate would have had jurisdiction over the matter had the warrant been issued in the county of arrest. Requires the magistrate, if applicable, to forward a copy of the pretrial release order to a PBO in the county in which the arrest warrant was issued.

(c) Requires the magistrate, in making a decision under this article, to impose, as applicable, the least restrictive conditions and the minimum amount or type of bail necessary to reasonably ensure the defendant's required appearance in court and the safety of the community and the victim of the alleged offense.

(d) Prohibits a magistrate from requiring a defendant to provide a monetary bail bond for the sole purpose of preventing the defendant's pretrial release.

(e) Requires a magistrate who denies a defendant's pretrial release to inform the defendant that the defendant is entitled to a pretrial detention hearing under Article 17.035 and, as soon as practicable but not later than 24 hours after denying the release, issue a written order of denial that includes findings of fact and a statement of the magistrate's reasons for denying the release.

(f) Requires any costs related to a condition of a defendant's pretrial release to be assessed as court costs or ordered paid directly by a defendant as a condition of release, unless the magistrate determines that the defendant is indigent or demonstrates an inability to pay.

(g) Prohibits a judge from adopting a bail schedule or entering a standing order related to a certain bail.

Art. 17.029. DEFENDANT APPEARING IN RESPONSE TO CITATION. Prohibits a defendant who appears before a magistrate as ordered by citation from being temporarily detained for purposes of conducting a pretrial risk assessment or for a magistrate to issue a pretrial release decision. Requires the magistrate, after performing the duties imposed by Article 15.17 (Duties of Arresting Officer and Magistrate), to release the defendant on personal bond, unless the defendant is lawfully detained on another matter.

SECTION 3. Amends Articles 17.032(a), (b), (c), and (d), Code of Criminal Procedure, as follows:

(a) Redefines "violent offense."

(b) Makes nonsubstantive changes. Requires a magistrate, notwithstanding a bail schedule or any standing order entered by a judge, to release a defendant on personal bond unless good cause is shown otherwise if:

(1) the defendant is not charged with and has not been previously convicted of a violent offense;

(2) the defendant is examined by the local mental health authority, local intellectual and developmental disability authority, or another mental health or intellectual disability expert under Article 16.22 (Early Identification of Defendant Suspected of Having Mental Illness or Mental Retardation), rather than is examined by the local mental health or mental retardation authority or another mental health expert under Article 16.22 of this code;

(3) the applicable expert, in a written assessment submitted to the magistrate under Article 16.22, concludes that the defendant:

(A) has a mental illness or is a person with an intellectual disability, rather than concludes that the defendant has a mental illness or is a person with mental retardation and is nonetheless competent to stand trial; and

(B) requires treatment that is not available in the jail, rather than recommends mental health treatment for the defendant;

(4) the magistrate determines, in consultation with the local mental health authority or local intellectual and developmental disability authority, that appropriate community-based mental health or intellectual disability services for the defendant are available in accordance with Section 534.053 (Required Community-Based Mental Health Services) or 534.103 (Required Community-Based Intellectual Disability Services), Health and Safety Code, or through a mental health or intellectual disability services provider as otherwise permitted by law, rather than a magistrate determines, in consultation with the local mental health or mental retardation authority, that appropriate community-based mental health or mental retardation services for the defendant are available through the Texas Department of Mental Health and Mental Retardation under Section 534.053, Health and Safety Code, or through another mental health or mental retardation services provider; and

(5) the magistrate finds, after considering all the circumstances, the results of the pretrial risk assessment conducted under Article 17.027, and any other credible information provided by the defendant or the state's attorney, that release on personal bond would reasonably ensure the defendant's required appearance in court and the safety of the community and the victim of the alleged offense.

(c) Requires the magistrate, unless good cause is shown for not requiring treatment, to require as a condition of release under this article (Release on Personal Bond of Certain Mentally Ill Defendants), rather than as a condition of release on personal bond under this article, that the defendant submit to outpatient or inpatient mental health or intellectual disability treatment as recommended by certain experts if the defendant's mental illness or intellectual disability is chronic in nature or ability to function independently will continue to deteriorate if the defendant is not treated. Makes conforming changes.

(d) Authorizes the magistrate, in addition to a condition of release imposed under Subsection (c), to require the defendant to comply with other conditions that are reasonably necessary to ensure the defendant's required appearance in court and the safety of the community and the victim of the alleged offense, rather than to require the defendant to comply with other conditions that are reasonably necessary to protect the community.

SECTION 4. Amends Chapter 17, Code of Criminal Procedure, by adding Articles 17.034, 17.035, 17.036, 17.037, and 17.038, as follows:

Art. 17.034. RELEASE OF DEFENDANT ARRESTED FOR FAILURE TO APPEAR. Requires a magistrate to release on personal bond a defendant arrested on a warrant issued for the defendant's failure to appear as ordered if the defendant shows good cause for the failure to appear. Authorizes a magistrate, if good cause is not shown, to release the defendant in accordance with Article 17.028. Requires the magistrate, if the magistrate releases the defendant on a monetary bail bond, to set the amount of bail at the minimum amount that the magistrate determines is necessary to reasonably ensure the defendant's required appearance in court and the safety of the community and the victim of the alleged offense.

Art. 17.035. PRETRIAL DETENTION HEARING REQUIRED. (a) Requires the court in which the defendant's case is pending, as soon as practicable after a defendant's

pretrial release is denied under Article 17.028, but not later than the 10th day after the date the magistrate issues the written order denying the release, to conduct a hearing regarding whether to detain the defendant pending the trial of the offense.

(b) Authorizes a defendant to voluntarily and intelligently waive in writing the defendant's right to a pretrial detention hearing. Prohibits the court or the state's attorney from directing or encouraging the defendant to waive the defendant's right to a pretrial detention hearing. Requires a waiver under this subsection to be filed with and become part of the record of the proceedings. Provides that a waiver obtained in violation of this subsection is presumed invalid. Authorizes a defendant to withdraw a waiver at any time.

(c) Requires an attorney representing the state to establish probable cause that the defendant committed the offense for which the defendant is being detained and authorizes the attorney to satisfy this requirement by providing to the court an information or indictment for the offense.

(d) Provides that, in each criminal case, there is a rebuttable presumption that monetary bail, conditions of release, or both monetary bail and conditions of release are sufficient to reasonably ensure the defendant's required appearance in court and the safety of the community and the victim of the alleged offense. Authorizes the court, for purposes of rebutting the presumption, to consider the results of the defendant's pretrial risk assessment and any other information presented during the hearing.

(e) Provides that a defendant is entitled to be represented by counsel at a pretrial detention hearing, and an indigent defendant is entitled to have counsel appointed to represent the defendant for that purpose.

(f) Authorizes the defendant to present any relevant information at the pretrial detention hearing, including by taking certain actions.

(g) Provides that the rules of evidence applicable to criminal trials do not apply to a pretrial detention hearing. Authorizes the defendant or the state's attorney to request a proffer of a witness's testimony before the witness is presented.

(h) Prohibits a defendant from using a pretrial detention hearing to seek discovery or conduct an examining trial or to harass a victim of or witness to the alleged offense.

(i) Authorizes the court, at any time during the period occurring after the pretrial detention hearing concludes and before the trial of the offense commences, and regardless of whether the defendant was released or confined as a result of that hearing, to reopen the pretrial detention hearing based on new information that the court determines is material to the issue of whether monetary bail or conditions of release will reasonably ensure the defendant's required appearance in court and the safety of the community and the victim of the alleged offense.

Art. 17.036. PRETRIAL DETENTION HEARING: FINDING AND ORDER. (a) Requires the court, in a pretrial detention hearing, to consider certain information.

(b) Requires the judge to order the defendant to be released in accordance with Article 17.028 unless the judge finds by clear and convincing evidence that monetary bail and conditions of release are insufficient to reasonably ensure the defendant's required appearance in court or the safety of the community or the victim of the alleged offense. Requires the judge, if the judge makes the finding described by this subsection, to order that the defendant be detained in jail pending trial and issue a written order that includes findings of fact and a statement of the judge's reasons for ordering the pretrial detention.

Art. 17.037. PRETRIAL DETENTION HEARING: CONTINUANCE. Authorizes a defendant to request a continuance of a pretrial detention hearing. Prohibits the court, except for good cause shown, from authorizing a continuance, based on a defendant's request, for more than five days, excluding weekends and legal holidays. Prohibits the state's attorney from requesting a continuance of a pretrial detention hearing.

Art. 17.038. PRETRIAL DETENTION HEARING: APPEAL. Provides that a defendant is entitled to appeal an order requiring that the defendant be detained in jail pending trial and requires the defendant to be detained in jail pending the appeal. Requires the Texas Court of Criminal Appeals (CCA) to adopt rules accelerating the disposition by the appellate court and CCA of an appeal under this article.

SECTION 5. Amends Section 3, Article 17.09, Code of Criminal Procedure, as follows:

Sec. 3. (a) Creates this subsection from existing text. Authorizes certain judges or magistrates, for certain good and sufficient causes during the course of action, to order the defendant, either in term-time or in vacation, to be rearrested, and require the defendant to give another bond in accordance with this chapter in an amount or under any conditions the judge or magistrate considers proper, rather than to order the accused to be rearrested, and require the accused to give another bond in such amount as the judge or magistrate may deem proper. Requires the defendant, when the bond is given and approved, to be released from custody. Authorizes the state's attorney, at any time before the trial of the offense for which the defendant is released on bail, to file a motion, for any good and sufficient cause, to declare the bond defective or insufficient. Makes nonsubstantive changes.

(b) Authorizes the judge or magistrate to order the defendant to be rearrested and require the defendant to give another bond in a higher amount only after providing notice to each party to the action and, on request of a party, an opportunity for a hearing.

SECTION 6. Amends Chapter 17, Code of Criminal Procedure, by adding Articles 17.142 and 17.1511, as follows:

Art. 17.142. APPLICATION FOR BAIL REDUCTION. Authorizes a defendant who is unable to give bail in the amount ordered under this chapter to submit an application for a bail reduction to the judge in whose court the action is pending or a judge of a court in the county with jurisdiction over the action. Requires the judge to promptly hold a hearing regarding the application.

Art. 17.1511. RELEASE OF DEFENDANT DETAINED LONGER THAN POTENTIAL PUNISHMENT. Prohibits a defendant, notwithstanding any other law, from being detained in jail pending trial for a cumulative period that exceeds the maximum term of confinement that may be imposed on conviction of the offense of which the defendant is accused.

SECTION 7. Amends Article 17.20, Code of Criminal Procedure, as follows:

Art. 17.20. BAIL IN MISDEMEANOR. Authorizes the sheriff or other peace officer or jailer licensed under Chapter 1701 (Law Enforcement Officers), Occupations Code, notwithstanding a bail schedule or any standing order entered by a judge and in cases of misdemeanor when the defendant is in the custody of the officer or jailer, to take the bail of the defendant in accordance with Article 17.028, after considering the results of the defendant's pretrial risk assessment and whether during the term of the court or in vacation. Deletes existing text authorizing the sheriff or other peace officer, or a jailer licensed under Chapter 1701, Occupations Code, in cases of misdemeanor, whether during the term of the court or in vacation, where the officer has a defendant in custody, to take of the defendant a bail bond.

SECTION 8. Amends Article 17.21, Code of Criminal Procedure, as follows:

Art. 17.21. BAIL IN FELONY. (a) Creates this subsection from existing text. Requires the court, notwithstanding a bail schedule or any standing order entered by a judge, in cases of felony when the defendant, rather than the accused, is in the custody of a sheriff or other peace officer or a jailer licensed under Chapter 1701, Occupations Code, and the court before which the prosecution is pending is in session in the county where the defendant is in custody, to make a pretrial release decision in accordance with Article 17.028. Authorizes the officer or jailer, after approving the bail, to take the bail of the defendant as ordered by the court and requires the officer or jailer, on taking the bail, to discharge the defendant from custody. Deletes existing text requiring the court to fix the amount of bail, if it is aailable case and determine if the accused is eligible for a personal bond, authorizing the sheriff or other peace officer, unless it be the police of a city, or a jailer licensed under Chapter 1701, Occupations Code, to take a bail bond of the accused in the amount as fixed by the court, to be approved by such officer taking the same, and will thereupon discharge the accused from custody. Makes conforming and nonsubstantive changes.

(b) Creates this subsection from existing text and makes no further changes to this subsection.

(c) Provides that this article does not apply to a peace officer employed by a municipality.

SECTION 9. Amends Article 17.22, Code of Criminal Procedure, as follows:

Art. 17.22. MAY TAKE BAIL IN FELONY. Authorizes the sheriff or other peace officer or a jailer licensed under Chapter 1701, Occupations Code, who has the defendant in custody, if, in a felony case, the court before which the case is pending is not in session in the county where the defendant is in custody, to take the defendant's bail if bail has been ordered by the court or magistrate under Article 17.028 or, notwithstanding a bail schedule or any standing order entered by a judge, to take the defendant's bail in accordance with Article 17.028 after considering the results of the defendant's pretrial risk assessment and if bail has not been ordered. Deletes existing text authorizing the sheriff or other peace officer or a jailer licensed under Chapter 1701, Occupations Code, who has the defendant in custody, if, in a felony case, the court before which the same is pending is not in session in the county where the defendant is in custody to take the defendant's bail bond in such amount as may have been fixed by the court or magistrate, or if no amount has been fixed, then in such amount as such officer may consider reasonable. Makes nonsubstantive changes.

SECTION 10. Amends Chapter 17, Code of Criminal Procedure, by adding Article 17.251, as follows:

Art. 17.251. NOTIFICATION OF CONDITIONS OF RELEASE. (a) Requires a magistrate authorizing a defendant's release on bail to, if applicable, provide written notice to the defendant of the conditions of the defendant's release and the penalties of violating a condition of release, including the defendant's arrest.

(b) Requires the notice under Subsection (a) to be provided in a manner that is sufficiently clear and specific to serve as a guide for the defendant's conduct while released.

SECTION 11. Amends Articles 17.41(b) and (c), Code of Criminal Procedure, as follows:

(b) Requires the magistrate, subject to Subsections (c) (relating to authorizing the defendant supervised access to the alleged victim) and (d) (relating to certain procedures when a court order under this article conflicts with an existing court order granting possession of or access to a child), to require as a condition of release, rather than as a condition of bond, for a defendant charged with an offense described by Subsection (a)

(relating to this article applying for certain offenses committed against a child younger than 14 years of age) that the defendant not take certain actions.

(c) Makes a conforming change.

SECTION 12. Amends Section 1, Article 17.42, Code of Criminal Procedure, to authorize any county or any judicial district with jurisdiction in more than one county, with the approval of the commissioners court of each county in the district, to establish a PBO, rather than to establish a PBO to gather and review information about an accused that may have a bearing on whether he will comply with the conditions of a personal bond and report its findings to the court before which the case is pending.

SECTION 13. Amends Section 4, Article 17.42, Code of Criminal Procedure, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Authorizes the court to waive a certain fee or assess a lesser fee if the court determines that the defendant is indigent or demonstrates an inability to pay or if other good cause is shown. Prohibits the court or jailer from refusing to release a defendant solely because the defendant is unable to pay the fee if the court determines that the defendant is indigent or demonstrates an inability to pay the fee. Makes a conforming change.

(a-1) Authorizes the court to require that any fee assessed under Subsection (a) be paid before the defendant is released, as a condition of release, or as court costs.

SECTION 14. Amends Sections 5(a) and (b), Article 17.42, Code of Criminal Procedure, as follows:

(a) Requires a PBO established under this article (Personal Bond Office), rather than a personal bond pretrial release office established under this article, to, among certain other requirements, prepare a record containing information about any defendant, rather than any accused person, identified by case number only who, after review by the PBO, is released by a court on personal bond.

(b) Requires the PBO, in preparing a record under Subsection (a), to include in the record a statement of:

(1) the offense with which the defendant, rather than person, is charged;

(2) makes a conforming change;

(3) whether a summons or a warrant of arrest has been issued as a result of the defendant's failure to appear in accordance with the terms of release, rather than whether a warrant has been issued for the person's arrest for failure to appear in accordance with the terms of the person's release;

(4) whether the defendant has failed to comply with the conditions of release, rather than whether the person has failed to comply with the conditions of release on personal bond; and

(5) makes no changes to this subdivision.

SECTION 15. Amends Section 6(b), Article 17.42, Code of Criminal Procedure, as follows:

(b) Requires the PBO, in preparing an annual report, to include in the report a statement of:

(1) and (2) makes no changes to these subdivisions;

(3) the number of defendants, rather than the number of accused persons, who were released by a court on personal bond after review by the PBO;

(4) the number of defendants, rather than the number of persons, described by Subdivision (3):

(A) who were convicted of the same offense or of any felony within the six years preceding the date on which charges were filed in the matter pending during the defendant's release, rather than during the person's release;

(B) makes no changes to this paragraph;

(C) for whom a summons or a warrant of arrest was issued as a result of the defendant's failure to appear in accordance with the terms of release, rather than for whom a warrant was issued for the person's arrest for failure to appear in accordance with the terms of the person's arrest;

(D) makes no changes to this paragraph.

SECTION 16. Amends Article 17.43, Code of Criminal Procedure, as follows:

Art. 17.43. HOME CURFEW AND ELECTRONIC MONITORING AS CONDITION.

(a) Authorizes a magistrate to require as a condition of release, rather than as a condition of release on personal bond, that the defendant submit to home curfew and electronic monitoring under the supervision of an agency designated by the magistrate.

(b) Authorizes the cost of monitoring to be assessed as court costs or ordered paid directly by the defendant as a condition of release, rather than as a condition of bond.

SECTION 17. Amends the heading to Article 17.44, Code of Criminal Procedure, to read as follows:

Art. 17.44. HOME CONFINEMENT, ELECTRONIC MONITORING, ALCOHOL OR DRUG TESTING, OR TREATMENT AS CONDITION.

SECTION 18. Amends Article 17.44, Code of Criminal Procedure, by amending Subsections (a), (c), and (e) and adding Subsections (a-1) and (a-2), as follows:

(a) Authorizes a magistrate to require as a condition of release, rather than as a condition of release on bond, that the defendant submit to home confinement and electronic monitoring under the supervision of an agency designated by the magistrate. Deletes Subdivision (2) authorizing a magistrate to require as a condition of release on bond that the defendant submit to testing on a weekly basis for the presence of a controlled substance in the defendant's body.

(a-1) Authorizes a magistrate, on reasonable belief that a defendant is under the influence of alcohol or a controlled substance or on the finding that alcohol or a controlled substance related to the offense for which the defendant is charged and if the magistrate determines that the condition will serve to reasonably ensure the defendant's required appearance in court or the safety of the community or the victim of the alleged offense, to require as a condition of release that the defendant submit to testing for alcohol or a controlled substance in the defendant's body or participate in an alcohol or drug abuse treatment or education program.

(a-2) Prohibits the state's attorney from using the results of any test conducted under this chapter in a criminal proceeding arising out of the offense for which the defendant is charged.

(c) Authorizes the magistrate to revoke the bond and order the defendant arrested if the defendant:

(1) makes no changes to this subdivision;

(2) refuses to:

(A) submit to a test for alcohol or controlled substances. Creates this paragraph from existing text.; or

(B) participate in an alcohol or drug abuse treatment or education program;

(3) creates this subdivision from existing text and makes conforming changes; or

(4) fails to pay the costs of monitoring, testing for alcohol or controlled substances, or participating in a treatment or education program, if payment is ordered as a condition of release and the magistrate makes a certain determination, rather than fails to pay the costs of monitoring or testing for controlled substances, if payment is ordered as a condition of bond and the magistrate makes a certain determination. Redesignates existing Subdivision (3) as Subdivision (4).

(e) Authorizes the cost of electronic monitoring, testing for alcohol or controlled substances, or participating in a treatment or education program under this article (Home Confinement, Electronic Monitoring, and Drug Testing as Condition) to be assessed as court costs or paid directly by the defendant as a condition of release, rather than as a condition of release bond. Authorizes a magistrate to reduce or waive a cost described by this subsection if the magistrate determines that the defendant is indigent or demonstrates an inability to pay. Makes a nonsubstantive change.

SECTION 19. Amends Article 17.441(a), Code of Criminal Procedure, to require a magistrate, except as provided by Subsection (b) (relating to prohibiting a magistrate from requiring the installation of a certain device), to require as a condition of release, rather than to require on release, that a defendant charged with certain subsequent offenses have a certain device installed on a motor vehicle owned by or regularly driven by the defendant and not operate any motor vehicle unless it is equipped with that device.

SECTION 20. Amends Article 17.45, Code of Criminal Procedure, to authorize a magistrate to require as a condition of release, rather than as a condition of bond, that a defendant charged with an offense under Section 43.02 (Prostitution), Penal Code, receive certain counseling or education, or both.

SECTION 21. Amends Article 17.46, Code of Criminal Procedure, as follows:

Art. 17.46. CONDITIONS FOR A DEFENDANT CHARGED WITH STALKING. (a) Authorizes a magistrate to require as a condition of release, rather than as a condition of release on bond, that a defendant charged with an offense under Section 42.072 (Stalking), Penal Code, may not take certain actions relating to the victim.

(b) Makes a conforming change.

SECTION 22. Amends Article 17.47, Code of Criminal Procedure, as follows:

Art. 17.47. CONDITIONS REQUIRING SUBMISSION OF SPECIMEN. (a) Authorizes a magistrate to require as a condition of release, rather than as a condition of release on bail or bond of a defendant, that a defendant, rather than the defendant, provide to a local law enforcement agency one or more specimens for the purpose of creating a DNA

record under Subchapter G (DNA Database System), Chapter 411 (Department of Public Safety of the State of Texas), Government Code.

(b) Requires a magistrate, for a defendant described by Section 411.1471(a) (providing that this section applies to certain defendants), Government Code, to require as a condition of release, rather than to require as a condition of release on bail or bond of a defendant described by Section 411.1471(a), Government Code, that the defendant provide to a local law enforcement agency one or more specimens for the purpose of creating a DNA record under Subchapter G, Chapter 411, Government Code.

SECTION 23. Amends Articles 17.49(b), (d), (e), and (j), Code of Criminal Procedure, as follows:

(b) Authorizes a magistrate to require as a condition of release, rather than as a condition of release on bond, that a defendant charged with an offense involving family violence follow certain guidelines.

(d) Requires a magistrate, before imposing a condition described by Subsection (b)(3) (relating to providing a victim with a certain electronic receptor device under certain circumstances), to provide to an alleged victim information regarding, among certain other matters, any sanctions that the court is authorized to impose on the defendant for violating a condition of release imposed under this article (Conditions for Defendant Charged with Offense Involving Family Violence), rather than for violating a condition of bond imposed under this article. Makes a conforming change.

(e) and (j) Makes conforming changes.

SECTION 24. Amends Chapter 17, Code of Criminal Procedure, by adding Articles 17.50, 17.51, and 17.52, as follows:

Art. 17.50. VIOLATION OF CONDITION OF RELEASE. (a) Authorizes a court to, on its own motion or on the motion of the state's attorney, issue a summons or a warrant of arrest for a defendant if there is reason to believe that the defendant has violated a condition of release. Requires a summons to order the defendant to appear before the court for a hearing on the violation on a certain date.

(b) Prohibits an attorney representing the state from filing a motion requesting the issuance of a summons or warrant under Subsection (a) based solely on the defendant's alleged commission of an offense punishable by a fine only.

Art. 17.51. HEARING ON VIOLATION OF CONDITION OF RELEASE. (a) Requires the court to hold a hearing on an alleged violation of a condition of release before revoking a defendant's bail. Requires the hearing to be held not later than certain dates.

(b) Provides that, if the court on its own motion or on the motion of the state's attorney announces its intention to revoke the bail of a defendant who is in custody on the underlying case, the defendant is entitled to a hearing not later than the 10th day after the date the court announces its intention.

(c) Requires an attorney representing the state, if a revocation hearing is held following the filing of a motion by the attorney under Article 17.50(a), to establish by a preponderance of the evidence that the defendant violated a condition of release.

Art. 17.52. REVOCATION OF BAIL. (a) Authorizes the court, after a hearing under Article 17.51, to revoke the defendant's bail if the court finds by a preponderance of the evidence that the defendant violated a condition of release and by clear and convincing evidence that, considering certain relevant circumstances, monetary bail and conditions

of release are insufficient to reasonably ensure the defendant's required appearance in court or the safety of the community or the victim of the alleged offense.

(b) Requires a court that revokes the defendant's bail to order that the defendant be immediately returned to custody. Provides that, once the defendant is placed in custody, the revocation of the defendant's bail discharges the sureties on the bail bond, if any, from any future liability on the bond. Provides that a discharge under this subsection from any future liability on the bail bond does not discharge any surety from liability for previous forfeitures on the bond.

SECTION 25. Amends Subchapter B, Chapter 22, Government Code, by adding Section 22.113, as follows:

Sec. 22.113. DUTIES REGARDING BAIL. Authorizes CCA to adopt rules as necessary to implement Chapter 17, Code of Criminal Procedure.

SECTION 26. Amends Section 54.737(c), Government Code, to require the rules to provide that a criminal law magistrate judge is authorized to only release a defendant under Article 17.028(b), rather than under Article 17.031 (Release on Personal Bond), Code of Criminal Procedure, under guidelines established by the council of judges.

SECTION 27. Amends Section 56.003(b), Government Code, as follows:

(b) Requires that no more than one-third of the funds appropriated for any fiscal year be used for the continuing legal education of certain judicial officials, including masters, magistrates, referees, and associate judges appointed pursuant to Chapter 54 (Masters; Magistrates; Referees; Associate Judges) or 54A (Associate Judges) as required by the Texas court of criminal appeals under Section 74.025 (Education Programs) and of their court personnel, rather than for the continuing education of certain judicial officials, including full-time masters, magistrates, referees, and associate judges appointed pursuant to Chapter 54 as required by CCA under Section 74.025 and of their court personnel.

SECTION 28. Amends Subchapter C, Chapter 72, Government Code, by adding Section 72.032, as follows:

Sec. 72.032. AUTOMATED PRETRIAL RISK ASSESSMENT SYSTEM. Requires the Office of Court Administration of the Texas Judicial System (OCA), for purposes of Article 17.027, Code of Criminal Procedure, to develop an automated pretrial risk assessment system and make the system available to judges and magistrates in this state.

SECTION 29. Repealers: Articles 17.03 (Personal Bond), 17.031 (Release on Personal Bond), 17.15 (Rules for Fixing Amount of Bail), 17.33 (Request Setting of Bail), and 17.40 (Conditions Related to Victim or Community Safety), Code of Criminal Procedure.

Repealers: Sections 5(c) (relating to the applicability of this section) and 6(c) (relating to the applicability of this section), Article 17.42 (Personal Bond Office), Code of Criminal Procedure.

SECTION 30. Requires OCA, not later than November 1, 2018, to develop the automated pretrial risk assessment system required by Section 72.032, Government Code, as added by this Act.

SECTION 31. Requires each judicial district to adopt the pretrial risk assessment instrument required by Article 17.027, Code of Criminal Procedure, as added by this Act, not later than November 1, 2018.

SECTION 32. Makes application of this Act prospective to November 1, 2018.

SECTION 33. (a) Effective date, except as provided by Subsection (b): September 1, 2017.

(b) Effective date, Section 1 of this Act: December 1, 2017, contingent upon approval by the voters of the constitutional amendment relating to authorizing 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 and the victim of the alleged offense.