A BILL TO BE ENTITLED

1   AN ACT

2   relating to bail and to judicial education regarding bail

3   practices.

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

5   SECTION 1. Chapter 17, Code of Criminal Procedure, is

6   amended by adding Articles 17.027, 17.028, 17.029, and 17.034 to

7   read as follows:

8   Art. 17.027. PRETRIAL RISK ASSESSMENT. (a) The judges of

9   the county courts, statutory county courts, and district courts

10 trying criminal cases in each county shall adopt an instrument to be

11 used in conducting a pretrial risk assessment of a defendant

12 charged with an offense in that county. The instrument adopted must

13 be the automated pretrial risk assessment system developed under

14 Section 72.032, Government Code, or another instrument that is:

15   (1) objective, validated for its intended use, and

16 standardized; and

17   (2) based on an analysis of empirical data and risk

18 factors relevant to:

19   (A)   the risk of a defendant failing to appear in

20 court as required; and

21   (B)   the safety of the community or the victim of

22 the alleged offense if the defendant is released.

23   (b) A magistrate considering the release on bail of a

24 defendant charged with an offense punishable as a Class B

1 misdemeanor or any higher category of offense shall order that:

2   (1) the personal bond office for the county in which

3 the defendant is being detained, or other suitably trained person,

4 use the instrument adopted under Subsection (a) to conduct a

5 pretrial risk assessment with respect to the defendant; and

6   (2) the results of the assessment be provided to the

7 magistrate without unnecessary delay to ensure that the magistrate

8 is able to make a bail decision under Article 17.028 within the

9 period required by Subsection (a) of that article.

10   (c) A magistrate may not, without the consent of the

11 sheriff, order a sheriff or sheriff's department personnel to

12 conduct a pretrial risk assessment under Subsection (b).

13   (d) Notwithstanding Subsection (b), a magistrate may

14 personally conduct a pretrial risk assessment using an instrument

15 adopted under Subsection (a).

16   (e) The magistrate must consider the results of the pretrial

17 risk assessment before making a bail decision under Article 17.028.

18   Art. 17.028. BAIL DECISION. (a) Without unnecessary delay

19 but not later than 48 hours after a defendant is arrested, a

20 magistrate shall order, after considering all circumstances and the

21 results of the pretrial risk assessment conducted under Article

22 17.027, that, unless otherwise prohibited by law, the defendant be

23 released on:

24   (1) personal bond or monetary bail bond without

25 conditions; or

26   (2) personal bond or monetary bail bond with any

27 condition the magistrate determines necessary.

1   (b) A magistrate may release a defendant arrested pursuant

2 to a warrant that was issued in a county other than the county in

3 which the defendant was arrested if a bail decision has not

4 previously been made by another magistrate and if the magistrate

5 would have had jurisdiction over the matter had the warrant been

6 issued in the county of arrest. If applicable, the magistrate shall

7 forward a copy of the bail order to a personal bond office in the

8 county in which the arrest warrant was issued.

9   (c) In making a bail decision under this article, the

10 magistrate shall impose, as applicable, the conditions and amount

11 of bail, whether personal bond or monetary bail bond, necessary to

12 reasonably ensure the defendant's appearance in court as required

13 and the safety of the community and the victim of the alleged

14 offense.

15   (d) A magistrate may not require a defendant to provide a

16 monetary bail bond for the sole purpose of preventing the

17 defendant's release on bail.

18   (e) If the magistrate determines that a defendant is not

19 indigent and is able to pay any costs related to a condition of the

20 defendant's bail, the magistrate shall assess the costs as court

21 costs or order the costs to be paid directly by the defendant as a

22 condition of release.

23   (f) A judge may not adopt a bail schedule or enter a standing

24 order related to bail that:

25   (1) is inconsistent with this article; or

26   (2) authorizes a magistrate to make a bail decision

27 for a defendant without considering the results of the defendant's

1 pretrial risk assessment.

2   (g)   This article does not prohibit a sheriff or other peace

3 officer, or a jailer licensed under Chapter 1701, Occupations Code,

4 from accepting bail under Article 17.20 or 17.22 before a pretrial

5 risk assessment has been conducted with respect to the defendant or

6 before a bail decision has been made by a magistrate under this

7 article.

8   Art. 17.029.   DEFENDANT APPEARING IN RESPONSE TO CITATION.

9 A defendant who appears before a magistrate as ordered by citation

10 may not be temporarily detained for purposes of conducting a

11 pretrial risk assessment or for a magistrate to issue a bail

12 decision.   The magistrate, after performing the duties imposed by

13 Article 15.17, shall release the defendant on personal bond, unless

14 the defendant is lawfully detained on another matter.

15   Art. 17.034.   RELEASE OF DEFENDANT ARRESTED FOR FAILURE TO

16 APPEAR. A magistrate shall release on personal bond a defendant who

17 was released on personal bond and subsequently arrested on a

18 warrant issued for the defendant's failure to appear as ordered if

19 the defendant shows good cause for the failure to appear. If good

20 cause is not shown, a magistrate may release the defendant in

21 accordance with Article 17.028.

22   SECTION 2. Section 4, Article 17.09, Code of Criminal

23 Procedure, is amended to read as follows:

24   Sec. 4. (a) Notwithstanding any other provision of this

25 article, the judge or magistrate in whose court a criminal action is

26 pending may not order the accused to be rearrested or require the

27 accused to give another bond in a higher amount because the accused:

1   (1) withdraws a waiver of the right to counsel; [or]

2   (2) requests the assistance of counsel, appointed or

3 retained; or

4   (3) is formally charged with the same offense for

5 which the accused was initially arrested and bond was given, except

6 as provided by Subsection (b).

7   (b) The judge or magistrate may order the accused to be

8 rearrested or require the accused to give another bond in a higher

9 amount based on the circumstance described by Subsection (a)(3)

10 only after providing notice to each party to the action and, on

11 request of any party, an opportunity for a hearing.

12   SECTION 3. Article 17.20, Code of Criminal Procedure, is

13 amended to read as follows:

14   Art. 17.20. BAIL IN MISDEMEANOR. In cases of misdemeanor

15 when the defendant is in the custody of the officer or jailer, the

16 sheriff or other peace officer[,] or a jailer licensed under

17 Chapter 1701, Occupations Code, may, whether during the term of the

18 court or in vacation, [where the officer has a defendant in

19 custody,] take [of] the bail of the defendant as the officer or

20 jailer may consider reasonable [a bail bond].

21   SECTION 4. Article 17.21, Code of Criminal Procedure, is

22 amended to read as follows:

23   Art. 17.21. BAIL IN FELONY. (a) In cases of felony, when

24 the defendant [accused] is in the custody of a [the] sheriff or

25 other peace officer or a jailer licensed under Chapter 1701,

26 Occupations Code, and the court before which the prosecution is

27 pending is in session in the county where the defendant [accused] is

1   in custody, the court shall make a bail decision in accordance with

2   Article 17.028. After approving the bail, the [~~fix the amount of~~

3   ~~bail, if it is a bailable case and determine if the accused is~~

4   ~~eligible for a personal bond; and the sheriff or other peace~~]

5   officer, unless it be the police of a city, or [~~a~~] jailer may

6   [~~licensed under Chapter 1701, Occupations Code, is authorized to~~]

7   take the [~~a~~] bail [~~bond~~] of the defendant [~~accused in the amount~~] as

8   ordered [~~fixed~~] by the court under Article 17.028. On taking the

9   bail, the[~~, to be approved by such~~] officer or jailer shall [~~taking~~

10 ~~the same, and will thereupon~~] discharge the defendant [~~accused~~]

11 from custody.

12   (b) The defendant and the defendant's sureties are not

13 required to appear in court.

14   SECTION 5. Article 17.22, Code of Criminal Procedure, is

15 amended to read as follows:

16   Art. 17.22. MAY TAKE BAIL IN FELONY. In a felony case, if

17 the court before which the case [~~same~~] is pending is not in session

18 in the county where the defendant is in custody, the sheriff or

19 other peace officer[~~,~~] or a jailer licensed under Chapter 1701,

20 Occupations Code, who has the defendant in custody may take the

21 defendant's bail [~~bond in such amount~~] as ordered [~~may have been~~

22 ~~fixed~~] by the court or magistrate under Article 17.028[~~,~~] or, if

23 bail [~~no amount~~] has not been ordered [~~fixed~~], [~~then in such amount~~]

24 as the [~~such~~] officer or jailer may consider reasonable.

25   SECTION 6. Chapter 17, Code of Criminal Procedure, is

26 amended by adding Article 17.251 to read as follows:

27   Art. 17.251. NOTIFICATION OF CONDITIONS OF RELEASE. (a) A

1 magistrate authorizing a defendant's release on bail shall, if

2 applicable, provide written notice to the defendant of:

3   (1) the conditions of the defendant's release; and

4   (2) the penalties of violating a condition of release,

5 including the defendant's arrest.

6   (b) The notice under Subsection (a) must be provided in a

7 manner that is sufficiently clear and specific to serve as a guide

8 for the defendant's conduct while released.

9   SECTION 7. Section 4, Article 17.42, Code of Criminal

10 Procedure, is amended by amending Subsection (a) and adding

11 Subsection (a-1) to read as follows:

12   (a) If a court releases a defendant [an accused] on personal

13 bond on the recommendation of a personal bond office, the court

14 shall assess a personal bond fee of $20 or three percent of the

15 amount of the bail fixed for the defendant [accused], whichever is

16 greater. The court may waive the fee or assess a lesser fee if the

17 court determines that the defendant is indigent or demonstrates an

18 inability to pay or if other good cause is shown. The court may

19 require that any fee assessed under this subsection be paid:

20   (1) before the defendant is released;

21   (2) as a condition of release; or

22   (3) as court costs.

23   (a-1) Notwithstanding Subsection (a), the court or jailer

24 may not refuse to release a defendant based solely on the

25 defendant's failure to pay a personal bond fee if the defendant is

26 indigent or demonstrates an inability to pay the fee.

27   SECTION 8. Article 17.43(a), Code of Criminal Procedure, is

7

1 amended to read as follows:

2 (a) A magistrate may require as a condition of release [on

3 personal bond] that the defendant submit to home curfew and

4 electronic monitoring under the supervision of an agency designated

5 by the magistrate.

6 SECTION 9. Article 17.44(e), Code of Criminal Procedure, is

7 amended to read as follows:

8 (e) The cost of electronic monitoring or testing for

9 controlled substances under this article may be assessed as court

10 costs or ordered paid directly by the defendant as a condition of

11 bond. A magistrate may reduce or waive a cost described by this

12 subsection if the magistrate determines that the defendant is

13 indigent or demonstrates an inability to pay.

14 SECTION 10. Section 54.737(c), Government Code, is amended

15 to read as follows:

16 (c) The rules must provide that a criminal law magistrate

17 judge may only release a defendant under Article 17.028(b)

18 [17.031], Code of Criminal Procedure, under guidelines established

19 by the council of judges.

20 SECTION 11. Section 56.003, Government Code, is amended by

21 adding Subsection (b-1) to read as follows:

22 (b-1) In addition to the uses described by Subsection (b),

23 funds appropriated for any fiscal year may be used to provide

24 continuing legal education regarding bail practices to any master,

25 magistrate, referee, or associate judge appointed pursuant to

26 Chapter 54 or 54A as required by the court of criminal appeals under

27 Section 74.025.

1 　　　　SECTION 12.　Subchapter C, Chapter 72, Government Code, is

2 amended by adding Section 72.032 to read as follows:

3 　　　　Sec. 72.032.　AUTOMATED PRETRIAL RISK ASSESSMENT SYSTEM;

4 PRETRIAL RISK ASSESSMENT INSTRUMENTS.　For purposes of Article

5 17.027, Code of Criminal Procedure, the office shall develop an

6 automated pretrial risk assessment system and make the system

7 available to judges and other magistrates in this state at no cost

8 to a county, municipality, or magistrate.　The office shall also

9 make available nonautomated pretrial risk assessment instruments

10 to judges and other magistrates in this state at no cost to a

11 county, municipality, or magistrate.

12 　　　　SECTION 13.　The following provisions of the Code of

13 Criminal Procedure are repealed:

14 　　　　　　　　(1)　Article 17.03(g);

15 　　　　　　　　(2)　Article 17.031; and

16 　　　　　　　　(3)　Sections 5(c) and 6(c), Article 17.42.

17 　　　　SECTION 14.　Not later than January 1, 2019, the Office of

18 Court Administration of the Texas Judicial System shall develop the

19 automated pretrial risk assessment system and make available

20 automated or nonautomated pretrial risk assessment instruments as

21 required by Section 72.032, Government Code, as added by this Act.

22 　　　　SECTION 15.　Not later than January 1, 2019, the judges of

23 the county courts, statutory county courts, and district courts

24 trying criminal cases in each county shall adopt a pretrial risk

25 assessment instrument as required by Article 17.027, Code of

26 Criminal Procedure, as added by this Act.

27 　　　　SECTION 16.　The change in law made by this Act applies only

1 to a person who is arrested on or after January 1, 2019. A person

2 arrested before January 1, 2019, is governed by the law in effect

3 immediately before the effective date of this Act, and the former

4 law is continued in effect for that purpose.

5   SECTION 17.   This Act takes effect September 1, 2017.