

1-1 By: Whitmire S.B. No. 1338
 1-2 (In the Senate - Filed March 6, 2017; March 14, 2017, read
 1-3 first time and referred to Committee on Criminal Justice;
 1-4 April 24, 2017, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 7, Nays 0; April 24, 2017,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

| | Yea | Nay | Absent | PNV |
|------|-----|-----|--------|-----|
| 1-8 | | | | |
| 1-9 | X | | | |
| 1-10 | | | X | |
| 1-11 | X | | | |
| 1-12 | X | | | |
| 1-13 | X | | | |
| 1-14 | X | | | |
| 1-15 | | | X | |
| 1-16 | X | | | |
| 1-17 | X | | | |

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1338 By: Whitmire

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to bail and to judicial education regarding bail
 1-22 practices.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Chapter 17, Code of Criminal Procedure, is
 1-25 amended by adding Articles 17.027, 17.028, 17.029, and 17.034 to
 1-26 read as follows:

1-27 Art. 17.027. PRETRIAL RISK ASSESSMENT. (a) The judges of
 1-28 the county courts, statutory county courts, and district courts
 1-29 trying criminal cases in each county shall adopt an instrument to be
 1-30 used in conducting a pretrial risk assessment of a defendant
 1-31 charged with an offense in that county. The instrument adopted must
 1-32 be the automated pretrial risk assessment system developed under
 1-33 Section 72.032, Government Code, or another instrument that is:

1-34 (1) objective, validated for its intended use, and
 1-35 standardized; and

1-36 (2) based on an analysis of empirical data and risk
 1-37 factors relevant to:

1-38 (A) the risk of a defendant failing to appear in
 1-39 court as required; and

1-40 (B) the safety of the community or the victim of
 1-41 the alleged offense if the defendant is released.

1-42 (b) A magistrate considering the release on bail of a
 1-43 defendant charged with an offense punishable as a Class B
 1-44 misdemeanor or any higher category of offense shall order that:

1-45 (1) the personal bond office for the county in which
 1-46 the defendant is being detained, or other suitably trained person,
 1-47 use the instrument adopted under Subsection (a) to conduct a
 1-48 pretrial risk assessment with respect to the defendant; and

1-49 (2) the results of the assessment be provided to the
 1-50 magistrate without unnecessary delay to ensure that the magistrate
 1-51 is able to make a bail decision under Article 17.028 within the
 1-52 period required by Subsection (a) of that article.

1-53 (c) Notwithstanding Subsection (b), a magistrate may
 1-54 personally conduct a pretrial risk assessment using an instrument
 1-55 adopted under Subsection (a).

1-56 (d) The magistrate must consider the results of the pretrial
 1-57 risk assessment before making a bail decision under Article 17.028.

1-58 Art. 17.028. BAIL DECISION. (a) Without unnecessary delay
 1-59 but not later than 48 hours after a defendant is arrested, a
 1-60 magistrate shall order, after considering all circumstances and the

2-1 results of the pretrial risk assessment conducted under Article
2-2 17.027, that, unless otherwise prohibited by law, the defendant be
2-3 released on:

2-4 (1) personal bond or monetary bail bond without
2-5 conditions; or

2-6 (2) personal bond or monetary bail bond with any
2-7 condition the magistrate determines necessary.

2-8 (b) A magistrate may release a defendant arrested pursuant
2-9 to a warrant that was issued in a county other than the county in
2-10 which the defendant was arrested if a bail decision has not
2-11 previously been made by another magistrate and if the magistrate
2-12 would have had jurisdiction over the matter had the warrant been
2-13 issued in the county of arrest. If applicable, the magistrate shall
2-14 forward a copy of the bail order to a personal bond office in the
2-15 county in which the arrest warrant was issued.

2-16 (c) In making a bail decision under this article, the
2-17 magistrate shall impose, as applicable, the least restrictive
2-18 conditions and the minimum amount of bail, whether personal bond or
2-19 monetary bail bond, necessary to reasonably ensure the defendant's
2-20 appearance in court as required and the safety of the community and
2-21 the victim of the alleged offense.

2-22 (d) A magistrate may not require a defendant to provide a
2-23 monetary bail bond for the sole purpose of preventing the
2-24 defendant's release on bail.

2-25 (e) If the magistrate determines that a defendant is not
2-26 indigent and is able to pay any costs related to a condition of the
2-27 defendant's bail, the magistrate shall assess the costs as court
2-28 costs or order the costs to be paid directly by the defendant as a
2-29 condition of release.

2-30 (f) A judge may not adopt a bail schedule or enter a standing
2-31 order related to bail that:

2-32 (1) is inconsistent with this article; or

2-33 (2) authorizes a magistrate to make a bail decision
2-34 for a defendant without considering the results of the defendant's
2-35 pretrial risk assessment.

2-36 (g) This article does not prohibit a sheriff or other peace
2-37 officer, or a jailer licensed under Chapter 1701, Occupations Code,
2-38 from accepting bail under Article 17.20 or 17.22 before a pretrial
2-39 risk assessment has been conducted with respect to the defendant or
2-40 before a bail decision has been made by a magistrate under this
2-41 article.

2-42 Art. 17.029. DEFENDANT APPEARING IN RESPONSE TO CITATION.
2-43 A defendant who appears before a magistrate as ordered by citation
2-44 may not be temporarily detained for purposes of conducting a
2-45 pretrial risk assessment or for a magistrate to issue a bail
2-46 decision. The magistrate, after performing the duties imposed by
2-47 Article 15.17, shall release the defendant on personal bond, unless
2-48 the defendant is lawfully detained on another matter.

2-49 Art. 17.034. RELEASE OF DEFENDANT ARRESTED FOR FAILURE TO
2-50 APPEAR. A magistrate shall release on personal bond a defendant who
2-51 was released on personal bond and subsequently arrested on a
2-52 warrant issued for the defendant's failure to appear as ordered if
2-53 the defendant shows good cause for the failure to appear. If good
2-54 cause is not shown, a magistrate may release the defendant in
2-55 accordance with Article 17.028.

2-56 SECTION 2. Section 4, Article 17.09, Code of Criminal
2-57 Procedure, is amended to read as follows:

2-58 Sec. 4. (a) Notwithstanding any other provision of this
2-59 article, the judge or magistrate in whose court a criminal action is
2-60 pending may not order the accused to be rearrested or require the
2-61 accused to give another bond in a higher amount because the accused:

2-62 (1) withdraws a waiver of the right to counsel; ~~or~~

2-63 (2) requests the assistance of counsel, appointed or
2-64 retained; or

2-65 (3) is formally charged with the same offense for
2-66 which the accused was initially arrested and bond was given, except
2-67 as provided by Subsection (b).

2-68 (b) The judge or magistrate may order the accused to be
2-69 rearrested or require the accused to give another bond in a higher

3-1 amount based on the circumstance described by Subsection (a)(3)
 3-2 only after providing notice to each party to the action and, on
 3-3 request of any party, an opportunity for a hearing.

3-4 SECTION 3. Article 17.20, Code of Criminal Procedure, is
 3-5 amended to read as follows:

3-6 Art. 17.20. BAIL IN MISDEMEANOR. In cases of misdemeanor
 3-7 when the defendant is in the custody of the officer or jailer, the
 3-8 sheriff or other peace officer~~[r]~~ or a jailer licensed under
 3-9 Chapter 1701, Occupations Code, may, whether during the term of the
 3-10 court or in vacation, ~~[where the officer has a defendant in~~
 3-11 ~~custody,~~] take ~~[of]~~ the bail of the defendant as the officer or
 3-12 jailer may consider reasonable [a bail bond].

3-13 SECTION 4. Article 17.21, Code of Criminal Procedure, is
 3-14 amended to read as follows:

3-15 Art. 17.21. BAIL IN FELONY. (a) In cases of felony, when
 3-16 the defendant [accused] is in the custody of a [the] sheriff or
 3-17 other peace officer or a jailer licensed under Chapter 1701,
 3-18 Occupations Code, and the court before which the prosecution is
 3-19 pending is in session in the county where the defendant [accused] is
 3-20 in custody, the court shall make a bail decision in accordance with
 3-21 Article 17.028. After approving the bail, the [fix the amount of
 3-22 bail, if it is a bailable case and determine if the accused is
 3-23 eligible for a personal bond, and the sheriff or other peace]
 3-24 officer, unless it be the police of a city, or [a] jailer may
 3-25 [licensed under Chapter 1701, Occupations Code, is authorized to]
 3-26 take the [a] bail [bond] of the defendant [accused in the amount] as
 3-27 ordered [fixed] by the court under Article 17.028. On taking the
 3-28 bail, the~~[, to be approved by such]~~ officer or jailer shall [taking
 3-29 the same, and will thereupon] discharge the defendant [accused]
 3-30 from custody.

3-31 (b) The defendant and the defendant's sureties are not
 3-32 required to appear in court.

3-33 SECTION 5. Article 17.22, Code of Criminal Procedure, is
 3-34 amended to read as follows:

3-35 Art. 17.22. MAY TAKE BAIL IN FELONY. In a felony case, if
 3-36 the court before which the case [same] is pending is not in session
 3-37 in the county where the defendant is in custody, the sheriff or
 3-38 other peace officer~~[r]~~ or a jailer licensed under Chapter 1701,
 3-39 Occupations Code, who has the defendant in custody may take the
 3-40 defendant's bail [bond in such amount] as ordered [may have been
 3-41 fixed] by the court or magistrate under Article 17.028~~[r]~~ or, if
 3-42 bail [no amount] has not been ordered [fixed], [then in such amount]
 3-43 as the [such] officer or jailer may consider reasonable.

3-44 SECTION 6. Chapter 17, Code of Criminal Procedure, is
 3-45 amended by adding Article 17.251 to read as follows:

3-46 Art. 17.251. NOTIFICATION OF CONDITIONS OF RELEASE. (a) A
 3-47 magistrate authorizing a defendant's release on bail shall, if
 3-48 applicable, provide written notice to the defendant of:

3-49 (1) the conditions of the defendant's release; and
 3-50 (2) the penalties of violating a condition of release,
 3-51 including the defendant's arrest.

3-52 (b) The notice under Subsection (a) must be provided in a
 3-53 manner that is sufficiently clear and specific to serve as a guide
 3-54 for the defendant's conduct while released.

3-55 SECTION 7. Section 4, Article 17.42, Code of Criminal
 3-56 Procedure, is amended by amending Subsection (a) and adding
 3-57 Subsection (a-1) to read as follows:

3-58 (a) If a court releases a defendant [an accused] on personal
 3-59 bond on the recommendation of a personal bond office, the court
 3-60 shall assess a personal bond fee of \$20 or three percent of the
 3-61 amount of the bail fixed for the defendant [accused], whichever is
 3-62 greater. The court may waive the fee or assess a lesser fee if the
 3-63 court determines that the defendant is indigent or demonstrates an
 3-64 inability to pay or if other good cause is shown. The court may
 3-65 require that any fee assessed under this subsection be paid:

3-66 (1) before the defendant is released;

3-67 (2) as a condition of release; or

3-68 (3) as court costs.

3-69 (a-1) Notwithstanding Subsection (a), the court or jailer

4-1 may not refuse to release a defendant based solely on the
4-2 defendant's failure to pay a personal bond fee if the defendant is
4-3 indigent or demonstrates an inability to pay the fee.

4-4 SECTION 8. Article 17.43(a), Code of Criminal Procedure, is
4-5 amended to read as follows:

4-6 (a) A magistrate may require as a condition of release [~~on~~
4-7 ~~personal bond~~] that the defendant submit to home curfew and
4-8 electronic monitoring under the supervision of an agency designated
4-9 by the magistrate.

4-10 SECTION 9. Article 17.44(e), Code of Criminal Procedure, is
4-11 amended to read as follows:

4-12 (e) The cost of electronic monitoring or testing for
4-13 controlled substances under this article may be assessed as court
4-14 costs or ordered paid directly by the defendant as a condition of
4-15 bond. A magistrate may reduce or waive a cost described by this
4-16 subsection if the magistrate determines that the defendant is
4-17 indigent or demonstrates an inability to pay.

4-18 SECTION 10. Section 54.737(c), Government Code, is amended
4-19 to read as follows:

4-20 (c) The rules must provide that a criminal law magistrate
4-21 judge may only release a defendant under Article 17.028(b)
4-22 [~~17.031~~], Code of Criminal Procedure, under guidelines established
4-23 by the council of judges.

4-24 SECTION 11. Section 56.003, Government Code, is amended by
4-25 adding Subsection (b-1) to read as follows:

4-26 (b-1) In addition to the uses described by Subsection (b),
4-27 funds appropriated for any fiscal year may be used to provide
4-28 continuing legal education regarding bail practices to any master,
4-29 magistrate, referee, or associate judge appointed pursuant to
4-30 Chapter 54 or 54A as required by the court of criminal appeals under
4-31 Section 74.025.

4-32 SECTION 12. Subchapter C, Chapter 72, Government Code, is
4-33 amended by adding Section 72.032 to read as follows:

4-34 Sec. 72.032. AUTOMATED PRETRIAL RISK ASSESSMENT SYSTEM;
4-35 PRETRIAL RISK ASSESSMENT INSTRUMENTS. For purposes of Article
4-36 17.027, Code of Criminal Procedure, the office shall develop an
4-37 automated pretrial risk assessment system and make the system
4-38 available to judges and other magistrates in this state at no cost
4-39 to a county, municipality, or magistrate. The office shall also
4-40 make available nonautomated pretrial risk assessment instruments
4-41 to judges and other magistrates in this state at no cost to a
4-42 county, municipality, or magistrate.

4-43 SECTION 13. The following provisions of the Code of
4-44 Criminal Procedure are repealed:

- 4-45 (1) Article 17.03(g);
- 4-46 (2) Article 17.031; and
- 4-47 (3) Sections 5(c) and 6(c), Article 17.42.

4-48 SECTION 14. Not later than January 1, 2019, the Office of
4-49 Court Administration of the Texas Judicial System shall develop the
4-50 automated pretrial risk assessment system and make available
4-51 automated or nonautomated pretrial risk assessment instruments as
4-52 required by Section 72.032, Government Code, as added by this Act.

4-53 SECTION 15. Not later than January 1, 2019, the judges of
4-54 the county courts, statutory county courts, and district courts
4-55 trying criminal cases in each county shall adopt a pretrial risk
4-56 assessment instrument as required by Article 17.027, Code of
4-57 Criminal Procedure, as added by this Act.

4-58 SECTION 16. The change in law made by this Act applies only
4-59 to a person who is arrested on or after January 1, 2019. A person
4-60 arrested before January 1, 2019, is governed by the law in effect on
4-61 the date the person was arrested, and the former law is continued in
4-62 effect for that purpose.

4-63 SECTION 17. This Act takes effect September 1, 2017.

4-64 * * * * *