86R27502 ADM-F

By:  Kacal, Harris H.B. No. 2020

Substitute the following for H.B. No. 2020:

By:  Murr C.S.H.B. No. 2020

A BILL TO BE ENTITLED

AN ACT

relating to the release of defendants on bail.

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

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

SECTION 2.  Chapter 17, Code of Criminal Procedure, is amended by adding Articles 17.021 and 17.027 to read as follows:

Art. 17.021.  BAIL ADVISORY COMMISSION. (a) The Bail Advisory Commission is established to develop recommendations for the Texas Judicial Council regarding a validated pretrial risk assessment tool that is standardized for statewide use and regarding best practices for personal bond offices. The recommendations must include a validated pretrial risk assessment tool that is developed as described by Subsection (h).

(b)  The commission is composed of 11 members appointed as follows:

(1)  three members with an interest in criminal justice who are appointed by the governor, including:

(A)  one person with at least 10 years of law enforcement experience;

(B)  one attorney licensed to practice law in this state who has practiced primarily in the area of criminal defense for at least 10 years; and

(C)  one attorney licensed to practice law in this state who has practiced criminal law in the office of an attorney representing the state for at least 10 years;

(2)  the presiding officer of the Senate Committee on Criminal Justice;

(3)  two members of the senate who are appointed by the lieutenant governor;

(4)  the presiding officer of the House Committee on Criminal Jurisprudence;

(5)  two members of the house of representatives who are appointed by the speaker of the house of representatives;

(6)  one member appointed by the chief justice of the supreme court; and

(7)  one member appointed by the presiding judge of the court of criminal appeals.

(c)  In making appointments under Subsections (b)(1), (3), and (5), the governor, lieutenant governor, and speaker of the house of representatives shall coordinate to ensure that the membership of the commission reflects, to the extent possible, the ethnic, racial, and geographic diversity of this state.

(d)  The governor shall designate the presiding officer of the commission.

(e)  The commission shall meet at the call of the presiding officer and may hold public meetings as necessary to fulfill its duties under this article.

(f)  A member of the commission is not entitled to compensation for service on the commission but is entitled to reimbursement for actual and necessary expenses incurred in performing commission duties.

(g)  The Office of Court Administration of the Texas Judicial System shall provide administrative support for the commission. Funding for the administrative and operational expenses of the commission, including any contracts or other engagements necessary for the development of a recommended validated pretrial risk assessment tool as described by Subsection (h)(1), shall be provided through an appropriation to the Office of Court Administration for that purpose.

(h)  The commission shall, in coordination with the Office of Court Administration of the Texas Judicial System:

(1)  develop a recommended validated pretrial risk assessment tool that is standardized for statewide use, that is available for use for purposes of Article 17.15(a)(6), and that:

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

(B)  is based on an analysis of empirical data and risk factors relevant to:

(i)  the risk of a defendant failing to appear in court as required; and

(ii)  the safety of the community or the victim of the alleged offense if the defendant is released; and

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

(2)  develop recommendations regarding best practices for personal bond offices to use for pretrial services authorized by Article 17.42;

(3)  collect and analyze information related to pretrial release practices and distribute the analyses and information as a resource to courts, personal bond offices, and other relevant organizations; and

(4)  collect information relating to defendants released on bail, including the rate of failure to appear, commission of new offenses, and other relevant information.

(i)  Not later than March 1, 2020, the commission shall prepare a report containing the recommendations of the commission developed under this article, including the commission's recommended validated pretrial risk assessment tool, and shall deliver the report to the governor, the lieutenant governor, each member of the legislature, the chief justice of the supreme court, the presiding judge of the court of criminal appeals, and the Texas Judicial Council.

(j)  The Texas Judicial Council shall review the report and may recommend to the commission changes to the tool consistent with the requirements of Subsection (h)(1). Any recommended changes must be submitted to the commission not later than June 1, 2020. If the council recommends changes to the tool, the commission shall revise the tool in accordance with the recommendations, prepare a report containing the recommended tool as revised, and deliver the report to the persons and entities listed in Subsection (i) not later than August 1, 2020.

(k)  Not later than August 31, 2020, the Texas Judicial Council shall adopt either the validated pretrial risk assessment tool recommended by the commission under Subsection (i) or the revised tool recommended by the commission under Subsection (j).

(l)  The Office of Court Administration of the Texas Judicial System shall provide the validated pretrial risk assessment tool adopted under Subsection (k) to magistrates in this state at no cost.

(m)  Not later than January 1, 2023, the commission shall prepare a report regarding the implementation and use of the validated pretrial risk assessment tool adopted under Subsection (k) and its effect on pretrial recidivism rates and the rates at which defendants failed to appear in court as required and shall deliver the report to the governor, the lieutenant governor, each member of the legislature, the chief justice of the supreme court, the presiding judge of the court of criminal appeals, and the Texas Judicial Council.

(n)  The commission is abolished effective September 1, 2023.

Art. 17.027.  AUTHORITY TO RELEASE ON BAIL IN CERTAIN CASES. (a) Notwithstanding any other law and except as provided by Article 17.03(b), only a magistrate who meets the qualifications described by Subsection (b) may release on bail a defendant charged with an offense:

(1)  punishable as a felony; or

(2)  under Chapter 21 or 22, Penal Code, that is punishable as a Class B misdemeanor or any higher category of offense.

(b)  To qualify to release on bail a defendant described by Subsection (a), a magistrate must:

(1)  be a resident of this state and one of the counties in which the magistrate serves;

(2)  have been licensed to practice law in this state for at least four years;

(3)  not have been removed from office by impeachment, by the supreme court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct, or by the legislature's abolition of the magistrate's court; and

(4)  not have resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided by Section 33.022, Government Code, and before final disposition of the proceedings.

SECTION 3.  Chapter 17, Code of Criminal Procedure, is amended by adding Article 17.028 to read as follows:

Art. 17.028.  PRETRIAL RISK ASSESSMENT. (a) 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 shall order that:

(1)  the personal bond office established under Article 17.42 for the county in which the defendant is being detained, or other suitably trained person, use the validated pretrial risk assessment tool described by Article 17.15(a)(6) to conduct a pretrial risk assessment with respect to the defendant; and

(2)  the results of the assessment be provided to the magistrate within 48 hours of the defendant's arrest.

(b)  A magistrate may not, without the consent of the sheriff, order a sheriff or sheriff's department personnel to conduct a pretrial risk assessment under Subsection (a).

(c)  Notwithstanding Subsection (a), a magistrate may personally conduct a pretrial risk assessment using the validated pretrial risk assessment tool described by Article 17.15(a)(6).

(d)  The magistrate shall consider the results of the pretrial risk assessment before making a bail decision.

SECTION 4.  Article 17.15, Code of Criminal Procedure, is amended to read as follows:

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

(1) [~~1.~~]  The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.

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

(3) [~~3.~~]  The nature of the offense, [~~and~~] the circumstances under which the offense [~~it~~] was committed, and the defendant's criminal history, including acts of family violence, shall [~~are to~~] be considered.

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

(5) [~~5.~~]  The future safety of a victim of the alleged offense, peace officers, and the community shall be considered.

(6)  The results of a pretrial risk assessment conducted using the validated pretrial risk assessment tool adopted for statewide use under Article 17.021(k) shall be considered.

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

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

SECTION 5.  As soon as practicable but not later than September 1, 2020, the Office of Court Administration of the Texas Judicial System shall make available on the office's Internet website the validated pretrial risk assessment tool adopted under Article 17.021(k), Code of Criminal Procedure, as added by this Act, and any related forms and materials. If those items are made available before September 1, 2020, the office shall notify each court clerk, judge or other magistrate, and office of an attorney representing the state.

SECTION 6.  (a)  Except as provided by Subsection (b) of this section, the changes in law made by this Act apply only to a person who is arrested on or after September 1, 2020.

(b)  Article 17.027, Code of Criminal Procedure, as added by this Act, applies to a person who is arrested on or after September 1, 2019.

SECTION 7.  (a)  Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2020.

(b)  Sections 2, 5, and 6 of this Act take effect September 1, 2019.