By:  Coleman H.B. No. 4571

A BILL TO BE ENTITLED

AN ACT

relating to criminal justice.

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

ARTICLE 1. BAIL AND PRETRIAL RELEASE

SECTION 1.01.  Article 17.03, Code of Criminal Procedure, is amended by amending Subsections (a) and (c) and adding Subsection (b-2) to read as follows:

(a)  Except as provided by Subsection (b), [~~or~~] (b-1), or (b-2), a magistrate may, in the magistrate's discretion, release the defendant on personal bond without sureties or other security.

(b-2)  Notwithstanding any other law, a magistrate shall release on personal bond a defendant who is not charged with and has not been previously convicted of a violent offense unless the magistrate finds good cause to justify not releasing the defendant on personal bond.

(c)  When setting a personal bond under this chapter, on reasonable belief by the investigating or arresting law enforcement agent or magistrate of the presence of a controlled substance in the defendant's body or on the finding of drug or alcohol abuse related to the offense for which the defendant is charged, the court or a magistrate may [~~shall~~] require as a condition of personal bond that the defendant submit to testing for alcohol or a controlled substance in the defendant's body and participate in an alcohol or drug abuse treatment or education program if such a condition will serve to reasonably assure the appearance of the defendant for trial.

SECTION 1.02.  Articles 17.033(a), (b), and (c), Code of Criminal Procedure, are amended to read as follows:

(a)  Except as provided by Subsection (c), a person who is arrested without a warrant and who is detained in jail must be released on personal bond[~~, in an amount not to exceed $5,000,~~] not later than the 24th hour after the person's arrest if the person was arrested for a misdemeanor and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. [~~If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond.~~]

(b)  Except as provided by Subsection (c), a person who is arrested without a warrant and who is detained in jail must be released on bond, in an amount not to exceed $5,000 [~~$10,000~~], not later than the 24th [~~48th~~] hour after the person's arrest if the person was arrested for a felony and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond.

(c)  On the filing of an application by the attorney representing the state, a magistrate may postpone the release of a person under Subsection (a) or (b) for not more than 48 [~~72~~] hours after the person's arrest. An application filed under this subsection must state the reason a magistrate has not determined whether probable cause exists to believe that the person committed the offense for which the person was arrested.

SECTION 1.03.  The change in law made by this article to Article 17.03, Code of Criminal Procedure, applies only to a personal bond that is executed on or after the effective date of this Act. A personal bond executed before the effective date of this Act is governed by the law in effect when the personal bond was executed, and the former law is continued in effect for that purpose.

SECTION 1.04.  The change in law made by this article to Article 17.033, Code of Criminal Procedure, applies only to a person who is arrested on or after the effective date of this Act. A person arrested before the effective date of this Act is governed by the law in effect on the date the person was arrested, and the former law is continued in effect for that purpose.

ARTICLE 2. JAIL STANDARDS

SECTION 2.01.  Section 511.009(a), Government Code, is amended to read as follows:

(a)  The commission shall:

(1)  adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails;

(2)  adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners;

(3)  adopt reasonable rules establishing minimum standards for the number of jail supervisory personnel and for programs and services to meet the needs of prisoners;

(4)  adopt reasonable rules and procedures establishing minimum requirements for programs of rehabilitation, education, and recreation in county jails;

(5)  revise, amend, or change rules and procedures if necessary;

(6)  provide to local government officials consultation on and technical assistance for county jails;

(7)  review and comment on plans for the construction and major modification or renovation of county jails;

(8)  require that the sheriff and commissioners of each county submit to the commission, on a form prescribed by the commission, an annual report on the conditions in each county jail within their jurisdiction, including all information necessary to determine compliance with state law, commission orders, and the rules adopted under this chapter;

(9)  review the reports submitted under Subdivision (8) and require commission employees to inspect county jails regularly to ensure compliance with state law, commission orders, and rules and procedures adopted under this chapter;

(10)  adopt a classification system to assist sheriffs and judges in determining which defendants are low-risk and consequently suitable participants in a county jail work release program under Article 42.034, Code of Criminal Procedure;

(11)  adopt rules relating to requirements for segregation of classes of inmates and to capacities for county jails;

(12)  require that the chief jailer of each municipal lockup submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the lockup, including all information necessary to determine compliance with state law concerning secure confinement of children in municipal lockups;

(13)  at least annually determine whether each county jail is in compliance with the rules and procedures adopted under this chapter;

(14)  require that the sheriff and commissioners court of each county submit to the commission, on a form prescribed by the commission, an annual report of persons under 17 years of age securely detained in the county jail, including all information necessary to determine compliance with state law concerning secure confinement of children in county jails;

(15)  schedule announced and unannounced inspections of jails under the commission's jurisdiction using the risk assessment plan established under Section 511.0085 to guide the inspections process;

(16)  adopt a policy for gathering and distributing to jails under the commission's jurisdiction information regarding:

(A)  common issues concerning jail administration;

(B)  examples of successful strategies for maintaining compliance with state law and the rules, standards, and procedures of the commission; and

(C)  solutions to operational challenges for jails;

(17)  report to the Texas Correctional Office on Offenders with Medical or Mental Impairments on a jail's compliance with Article 16.22, Code of Criminal Procedure;

(18)  adopt reasonable rules and procedures establishing minimum requirements for jails to:

(A)  determine if a prisoner is pregnant; and

(B)  ensure that the jail's health services plan addresses medical and mental health care, including nutritional requirements, and any special housing or work assignment needs for persons who are confined in the jail and are known or determined to be pregnant;

(19)  provide guidelines to sheriffs regarding contracts between a sheriff and another entity for the provision of food services to or the operation of a commissary in a jail under the commission's jurisdiction, including specific provisions regarding conflicts of interest and avoiding the appearance of impropriety;

(20)  adopt reasonable rules and procedures establishing minimum standards for prisoner visitation that provide each prisoner at a county jail with a minimum of two in-person, noncontact visitation periods per week of at least 20 minutes duration each;

(21)  require the sheriff of each county to:

(A)  investigate and verify the veteran status of each prisoner by using data made available from the Veterans Reentry Search Service (VRSS) operated by the United States Department of Veterans Affairs or a similar service; and

(B)  use the data described by Paragraph (A) to assist prisoners who are veterans in applying for federal benefits or compensation for which the prisoners may be eligible under a program administered by the United States Department of Veterans Affairs;

(22)  adopt reasonable rules and procedures regarding visitation of a prisoner at a county jail by a guardian, as defined by Section 1002.012, Estates Code, that:

(A)  allow visitation by a guardian to the same extent as the prisoner's next of kin, including placing the guardian on the prisoner's approved visitors list on the guardian's request and providing the guardian access to the prisoner during a facility's standard visitation hours if the prisoner is otherwise eligible to receive visitors; and

(B)  require the guardian to provide the sheriff with letters of guardianship issued as provided by Section 1106.001, Estates Code, before being allowed to visit the prisoner; [~~and~~]

(23)  adopt reasonable rules and procedures to ensure the safety of prisoners, including rules and procedures that require a county jail to:

(A)  give prisoners the ability to access a mental health professional at the jail or through a telemental health service 24 hours a day;

(B)  give prisoners the ability to access a health professional at the jail or through a telehealth service 24 hours a day or, if a health professional is unavailable at the jail or through a telehealth service, provide for a prisoner to be transported to access a health professional; and

(C)  if funding is available under Section 511.019, install automated electronic sensors or cameras to ensure accurate and timely in-person checks of cells or groups of cells confining at-risk individuals;

(24)  adopt reasonable rules and procedures establishing minimum standards regarding the management of an intoxicated prisoner in county jails; and

(25)  adopt reasonable rules and procedures establishing minimum standards regarding the prevention of sexual assault in county jails.

SECTION 2.02.  Section 511.020(e), Government Code, is added to read as follows:

(e)  the reports described in this section ought to be broken down by gender and race or ethnicity of the prisoner.

SECTION 2.03.  Not later than September 1, 2019, the Commission on Jail Standards shall adopt the rules and procedures required by Sections 511.009(a)(24) and (25), Government Code, as added by this article. On and after January 1, 2020, a county jail shall comply with any rule or procedure adopted by the Commission on Jail Standards under those subdivisions.

ARTICLE 3. MOTOR VEHICLE STOPS, SEARCHES, AND ISSUANCE OF CITATIONS

SECTION 3.01.  Article 2.13, Code of Criminal Procedure, is amended by adding Subsection (g) to read as follows:

(g)  The officer may not conduct a search based solely on a person's consent to the search unless:

(1)  the officer verbally and in writing informs the person of the person's right to refuse the search; and

(2)  the person signs an acknowledgment that the person:

(A)  received the information described by Subdivision (1); and

(B)  consents to the search.

SECTION 3.02.  Article 2.134(f), Code of Criminal Procedure, is amended to read as follows:

(f)  The data collected as a result of the reporting requirements of this article shall not constitute prima facie evidence of racial profiling but is admissible in a court of law.

SECTION 3.03.  Article 3.05, Code of Criminal Procedure, is amended to read as follows:

Art. 3.05.  RACIAL PROFILING. (a) In this code, "racial profiling" means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

(b)  Racial profiling may be identified through the examination of sufficient and evidence-based data analysis, taking into consideration the context and surroundings of an action initiated by law enforcement.

SECTION 3.04.  Article 14.06, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b)  A peace officer who is charging a person, including a child, with committing an offense that is a [~~Class C~~] misdemeanor punishable by a fine only, other than an offense under Section 49.02, Penal Code, an offense under Chapter 106, Alcoholic Beverage Code, or an offense for which the officer reasonably believes it is necessary to take the person before a magistrate to prevent a foreseeable injury or an altercation, shall [~~may~~], instead of taking the person before a magistrate, issue a citation to the person that contains:

(1)  written notice of the time and place the person must appear before a magistrate;

(2)  the name and address of the person charged;

(3)  the offense charged;

(4)  information regarding the alternatives to the full payment of any fine or costs assessed against the person, if the person is convicted of the offense and is unable to pay that amount; and

(5)  the following admonishment, in boldfaced or underlined type or in capital letters:

"If you are convicted of a misdemeanor offense involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a handgun or long gun, or ammunition, pursuant to federal law under 18 U.S.C. Section 922(g)(9) or Section 46.04(b), Texas Penal Code. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney."

(b-1)  A peace officer who is charging a person, including a child, with committing an offense that is a misdemeanor punishable by a fine only under Chapter 106, Alcoholic Beverage Code, may, instead of taking the person before a magistrate, issue to the person a citation that contains written notice of the time and place the person must appear before a magistrate, the name and address of the person charged, and the offense charged.

SECTION 3.05.  Section 543.004(a), Transportation Code, is amended to read as follows:

(a)  An officer shall issue a written notice to appear if:

(1)  the offense charged is[~~:~~

[~~(A)  speeding;~~

[~~(B)  the use of a wireless communication device under Section 545.4251; or~~

[~~(C)~~]  a misdemeanor under this subtitle that is punishable by a fine only [~~violation of the open container law, Section 49.031, Penal Code~~]; and

(2)  the person makes a written promise to appear in court as provided by Section 543.005.

SECTION 3.06.  Article 2.13(g), Code of Criminal Procedure, as added by this article, applies only to a motor vehicle stop or search that occurs on or after the effective date of this Act.

SECTION 3.07.  The changes in law made by this article apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this article if any element of the offense occurred before that date.

SECTION 1.  Section 9.41, Penal Code, is amended to read as follows:

Sec. 9.41.  PROTECTION OF ONE'S OWN PROPERTY. (a) A person in lawful possession of land, including a habitation on the land, or tangible, movable property is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to prevent or terminate the other's trespass on the land or unlawful interference with the property.

(b)  A person unlawfully dispossessed of land, including a habitation on the land, or tangible, movable property by another is justified in using force against the other when and to the degree the actor reasonably believes the force is immediately necessary to reenter the land or recover the property if the actor uses the force immediately or in fresh pursuit after the dispossession and:

(1)  the actor reasonably believes the other had no claim of right when he dispossessed the actor; or

(2)  the other accomplished the dispossession by using force, threat, or fraud against the actor.

ARTICLE 4. DEADLY FORCE.

SECTION 4,01.  Section 9.42, Penal Code, is amended to read as follows:

Sec. 9.42.  DEADLY FORCE TO PROTECT PROPERTY. A person is justified in using deadly force against another to protect land, including a habitation on the land, or tangible, movable property if the actor:

(1)  is [~~if he would be~~] justified in using force against the other under Section 9.41; [~~and~~]

(2)  [~~when and to the degree he~~] reasonably believes the deadly force is immediately necessary:

(A)  to prevent the other's imminent commission of arson, burglary, robbery, aggravated robbery, theft during the nighttime, or criminal mischief during the nighttime; or

(B)  to prevent the other who is fleeing immediately after committing burglary, robbery, aggravated robbery, or theft during the nighttime from escaping with the property; and

(3)  [~~he~~] reasonably believes that:

(A)  the land or property cannot be protected or recovered by any other means; or

(B)  the use of force other than deadly force to protect or recover the land or property would expose the actor or another to a substantial risk of death or serious bodily injury.

SECTION 4.02.  Sections 9.32(a) and (c), Penal Code, are amended to read as follows:

(a)  A person is justified in using deadly force against another if the actor:

(1)  is [~~if the actor would be~~] justified in using force against the other under Section 9.31; [~~and~~]

(2)  is unable to safely retreat; and

(3)  [~~when and to the degree the actor~~] reasonably believes the deadly force is immediately necessary:

(A)  to protect the actor against the other's use or attempted use of unlawful deadly force; or

(B)  to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, or aggravated sexual assault[~~, robbery, or aggravated robbery~~].

(c)  A person who is in the person's own habitation and [~~has a right to be present at the location where the deadly force is used,~~] who has not provoked the person against whom the deadly force is used[~~, and who is not engaged in criminal activity at the time the deadly force is used~~] is not required to retreat before using deadly force as described by this section.

SECTION 4.03.  Sections 9.32(b) and (d), Penal Code, are repealed.

SECTION 4.04.  The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

ARTICLE 5. POLICE TRAINING

SECTION 5.01.  Section 1701.253, Occupations Code, is amended by adding Subsection (o) to read as follows:

(o)  As part of the minimum curriculum requirements, the commission shall require an officer to complete a statewide education and training program on tactical communication.

ARTICLE 6. EFFECTIVE DATE

SECTION 6.01.  This Act takes effect September 1, 2019.