

By: Murr, Anderson, Coleman, et al.

H.B. No. 1323

Substitute the following for H.B. No. 1323:

By: Hunter

C.S.H.B. No. 1323

A BILL TO BE ENTITLED

AN ACT

relating to bail proceedings and related duties of a magistrate in a criminal case.

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

SECTION 1. Article 1.07, Code of Criminal Procedure, is amended to read as follows:

Art. 1.07. RIGHT TO BAIL. (a) Except as provided by Subsection (b) or Chapter 17, any person ~~[All prisoners]~~ shall be eligible for bail, [bailable] unless the person is accused of a [for] capital offense for which [offenses when] the proof is evident. This provision shall 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) A person charged with an offense listed in Article 42A.054 may be denied bail pending trial if a judge or magistrate determines by clear and convincing evidence that requiring bail and conditions of release is insufficient to reasonably ensure:

- (1) the person's appearance in court as required; or
- (2) the safety of the community or the victim of the alleged offense.

SECTION 2. Chapter 17, Code of Criminal Procedure, is amended by adding Articles 17.027, 17.028, 17.034, 17.035, 17.036, and 17.037 to read as follows:

Art. 17.027. DENIAL OF BAIL. A magistrate who denies a

1 defendant's bail as authorized by Article 1.07(b) shall inform the  
2 defendant that the defendant is entitled to a bail review hearing  
3 under Article 17.034 and, as soon as practicable but not later than  
4 24 hours after denying bail, issue a written order of denial that  
5 includes findings of fact and a statement of the magistrate's  
6 reasons for the denial.

7 Art. 17.028. BAIL SCHEDULE. A judge may not adopt a bail  
8 schedule or enter a standing order related to bail that is  
9 inconsistent with the laws of this state.

10 Art. 17.034. BAIL REVIEW HEARING REQUIRED. (a) As soon as  
11 practicable after a defendant's bail is denied, but not later than  
12 the 10th day after the date the magistrate issues the written order  
13 denying bail as described by Article 17.027, the court in which the  
14 defendant's case is pending shall conduct a hearing regarding  
15 whether to detain the defendant pending the trial of the offense.

16 (b) A defendant may voluntarily and intelligently waive in  
17 writing the defendant's right to a bail review hearing. The court  
18 or the attorney representing the state may not direct or encourage  
19 the defendant to waive the defendant's right to a bail review  
20 hearing. A waiver under this subsection shall be filed with and  
21 become part of the record of the proceedings. A waiver obtained in  
22 violation of this subsection is presumed invalid. A defendant may  
23 withdraw a waiver under this subsection at any time.

24 (c) A defendant is entitled to be represented by counsel at  
25 a bail review hearing, and an indigent defendant is entitled to have  
26 counsel appointed to represent the defendant for that purpose.

27 (d) The defendant may present any relevant information at

1 the bail review hearing, including by testifying, presenting  
2 witnesses, and cross-examining witnesses presented by the attorney  
3 representing the state.

4 (e) The rules of evidence applicable to criminal trials do  
5 not apply to a bail review hearing. The defendant or the attorney  
6 representing the state may request a proffer of a witness's  
7 testimony before the witness is presented.

8 (f) A defendant may not use a bail review hearing to:

9 (1) seek discovery or conduct an examining trial; or

10 (2) harass a victim of or witness to the alleged  
11 offense.

12 (g) At any time during the period occurring after the bail  
13 review hearing concludes and before the trial of the offense  
14 commences, and regardless of whether the defendant was released or  
15 confined as a result of that hearing, the court may reopen the bail  
16 review hearing based on new information that the court determines  
17 is material to the issue of whether monetary bail or conditions of  
18 release will reasonably ensure the defendant's appearance in court  
19 as required and the safety of the community and the victim of the  
20 alleged offense.

21 Art. 17.035. BAIL REVIEW HEARING: FINDING AND ORDER. (a)

22 In a bail review hearing, the court shall consider:

23 (1) the nature and circumstances of the offense  
24 charged;

25 (2) the weight of the evidence against the defendant,  
26 including whether the evidence is likely to be admissible in the  
27 trial of the offense;

1           (3) the history and characteristics of the defendant,  
2 including:

3                   (A) the defendant's character, physical and  
4 mental condition, family ties, employment, financial resources,  
5 length of residence in and other ties to the community, past  
6 conduct, criminal history including any prior offenses involving  
7 peace officers, history relating to drug or alcohol abuse, and  
8 history of attendance at court proceedings; and

9                   (B) whether, at the time of the offense, the  
10 defendant was on community supervision, parole, or mandatory  
11 supervision or was otherwise released pending trial, sentencing,  
12 or appeal for any offense, including an offense under federal law or  
13 the law of another state;

14           (4) the nature and seriousness of the danger to the  
15 community or the victim of the alleged offense as a result of the  
16 defendant's release on bail, if applicable;

17           (5) the nature and seriousness of the risk of  
18 obstruction to the criminal justice process as a result of the  
19 defendant's release on bail, if applicable;

20           (6) the results of any pretrial risk assessment of the  
21 defendant; and

22           (7) any other relevant information.

23           (b) After the bail review hearing, the judge shall authorize  
24 the defendant's release on bail unless the judge finds by clear and  
25 convincing evidence that requiring bail and conditions of release  
26 is insufficient to reasonably ensure the defendant's appearance in  
27 court as required or the safety of the community or the victim of

1 the alleged offense. If the judge makes the finding described by  
2 this subsection, the judge shall:

3 (1) deny the defendant's bail; and

4 (2) issue a written order of denial that includes  
5 findings of fact and a statement of the judge's reasons for the  
6 denial.

7 Art. 17.036. BAIL REVIEW HEARING: CONTINUANCE. Except for  
8 good cause shown, the court may not authorize a continuance for more  
9 than five days, excluding weekends and legal holidays.

10 Art. 17.037. BAIL REVIEW HEARING: APPEAL. A defendant is  
11 entitled to appeal a denial of bail. The defendant shall be  
12 detained in jail pending the appeal. The court of criminal appeals  
13 shall adopt rules accelerating the disposition by the appellate  
14 court and the court of criminal appeals of an appeal under this  
15 article.

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

18 Art. 17.251. NOTIFICATION OF CONDITIONS OF RELEASE. (a) A  
19 magistrate authorizing a defendant's release on bail shall, if  
20 applicable, provide written notice to the defendant of:

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

22 (2) the penalties of violating a condition of release,  
23 including the defendant's arrest.

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

27 SECTION 4. The change in law made by this Act applies only

1 to a person who is arrested on or after September 1, 2020. A person  
2 arrested before September 1, 2020, 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 5. (a) Except as provided by Subsection (b) of this  
6 section, this Act takes effect September 1, 2019.

7 (b) Sections 1 and 2 of this Act take effect December 1,  
8 2019, but only if the constitutional amendment proposed by the 86th  
9 Legislature, Regular Session, 2019, is approved by the voters to  
10 authorize the denial of bail to an accused person if necessary to  
11 ensure the person's appearance in court and the safety of the  
12 community and the victim of the alleged offense. If that amendment  
13 is not approved by the voters, Sections 1 and 2 of this Act have no  
14 effect.