

By: Kacal, Harris

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 12 members appointed as follows:

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

(A) one person with at least 10 years of experience acting, either as principal or on behalf of a corporation, as a surety for compensation;

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

(C) one attorney licensed to practice law in this state who has practiced primarily in the area of criminal defense

1 for at least 10 years; and

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

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

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

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

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

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

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

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

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

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

27 (f) A member of the commission is not entitled to

1 compensation for service on the commission but is entitled to
2 reimbursement for actual and necessary expenses incurred in
3 performing commission duties.

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

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

14 (1) develop a recommended validated pretrial risk
15 assessment tool that is standardized for statewide use, that is
16 available for use for purposes of Article 17.1501, and that:

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

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

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

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

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

1 and has been demonstrated to produce results that are unbiased with
2 respect to the race or ethnicity of defendants; and

3 (D) is designed to function in a transparent
4 manner with respect to the public and each defendant to whom the
5 tool is applied;

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

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

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

16 (i) The commission shall make the factors considered in
17 developing the tool available to the public.

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

26 (k) The Texas Judicial Council shall review the report and
27 may recommend to the commission changes to the tool consistent with

1 the requirements of Subsection (h)(1). Any recommended changes
2 must be submitted to the commission not later than June 1, 2020. If
3 the council recommends changes to the tool, the commission shall
4 revise the tool in accordance with the recommendations, prepare a
5 report containing the recommended tool as revised, and deliver the
6 report to the persons and entities listed in Subsection (j) not
7 later than August 1, 2020.

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

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

16 (n) A county may, as necessary, in consultation with the
17 district and county court at law judges and the county bail bond
18 board, if one exists, modify the validated pretrial risk assessment
19 tool adopted under this article as necessary to ensure that the
20 requirements of Subsection (h)(1) are being met and, as soon as
21 practicable, shall provide notice of that modification to the
22 Office of Court Administration of the Texas Judicial System.

23 (o) Not later than January 1, 2023, the commission shall
24 prepare a report regarding the implementation and use of the
25 validated pretrial risk assessment tool adopted under Subsection
26 (l) and its effect on pretrial recidivism rates and the rates at
27 which defendants failed to appear in court as required and shall

1 deliver the report to the governor, the lieutenant governor, each
2 member of the legislature, the chief justice of the supreme court,
3 the presiding judge of the court of criminal appeals, and the Texas
4 Judicial Council. The report must include a description of any
5 modifications to the tool made by counties under this article and
6 known to the commission at the time of the report.

7 (p) The commission is abolished effective September 1,
8 2023.

9 Art. 17.027. AUTHORITY TO RELEASE ON BAIL IN CERTAIN CASES.

10 (a) Notwithstanding any other law and except as provided by Article
11 17.03(b), only a magistrate who meets the qualifications described
12 by Subsection (b) may release on bail a defendant charged with an
13 offense:

14 (1) punishable as a felony; or

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

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

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

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

27 (3) not have resigned from office after having

1 received notice that formal proceedings by the State Commission on
2 Judicial Conduct had been instituted as provided by Section 33.022,
3 Government Code, and before final disposition of the proceedings.

4 (c) In addition to the requirements of Subsection (b), to
5 qualify to release on bail a defendant described by Subsection (a),
6 a magistrate must have completed not less than four hours of
7 instruction regarding the magistrate's duties under Article 17.028
8 and duties with respect to setting bail in criminal cases.

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

11 Art. 17.028. PRETRIAL RISK ASSESSMENT. (a) A magistrate
12 considering the release on bail of a defendant charged with an
13 offense punishable as a Class B misdemeanor or any higher category
14 of offense shall order that:

15 (1) the personal bond office established under Article
16 17.42 for the county in which the defendant is being detained, or
17 other suitably trained person, use the validated pretrial risk
18 assessment tool described by Article 17.1501 to conduct a pretrial
19 risk assessment with respect to the defendant; and

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

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

25 (c) Notwithstanding Subsection (a), a magistrate may
26 personally conduct a pretrial risk assessment using the validated
27 pretrial risk assessment tool described by Article 17.1501.

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

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

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

11 (1) [~~1.~~] The bail shall be sufficiently high to give
12 reasonable assurance that the undertaking will be complied with.

13 (2) [~~2.~~] The power to require bail is not to be so used
14 as to make it an instrument of oppression.

15 (3) [~~3.~~] The nature of the offense, [~~and~~] the
16 circumstances under which the offense [~~it~~] was committed, and the
17 defendant's criminal history, including acts of family violence,
18 shall [~~are to~~] be considered.

19 (4) [~~4.~~] The ability to make bail shall [~~is to~~] be
20 considered [~~regarded~~], and proof may be taken upon this point.

21 (5) [~~5.~~] The future safety of a victim of the alleged
22 offense, peace officers, and the community shall be considered.

23 (6) Any other relevant facts or circumstances may be
24 considered.

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

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

1 amended by adding Article 17.1501 to read as follows:

2 Art. 17.1501. RULES FOR SETTING AMOUNT OF BAIL: PRETRIAL
3 RISK ASSESSMENT. In addition to the requirements of Article 17.15,
4 in setting the amount of bail to be required in any case, the court,
5 judge, magistrate, or officer taking the bail shall consider the
6 results of a pretrial risk assessment conducted using the validated
7 pretrial risk assessment tool adopted for statewide use under
8 Article 17.021(1).

9 SECTION 6. As soon as practicable but not later than
10 September 1, 2020, the Office of Court Administration of the Texas
11 Judicial System shall make available on the office's Internet
12 website the validated pretrial risk assessment tool adopted under
13 Article 17.021(1), Code of Criminal Procedure, as added by this
14 Act, and any related forms and materials. If those items are made
15 available before September 1, 2020, the office shall notify each
16 court clerk, judge or other magistrate, and office of an attorney
17 representing the state.

18 SECTION 7. (a) Except as otherwise provided by this Act,
19 the changes in law made by this Act apply only to a person who is
20 arrested on or after September 1, 2020.

21 (b) Article 17.027, Code of Criminal Procedure, as added by
22 this Act, and Article 17.15, Code of Criminal Procedure, as amended
23 by this Act, apply to a person who is arrested on or after September
24 1, 2019.

25 SECTION 8. Article 17.027(c), Code of Criminal Procedure,
26 as added by this Act, applies only with respect to a release of a
27 defendant on bail that occurs on or after September 1, 2020.

1 SECTION 9. (a) Except as provided by Subsection (b) of this
2 section, this Act takes effect September 1, 2019.

3 (b) Articles 17.028 and 17.1501, Code of Criminal
4 Procedure, as added by this Act, take effect September 1, 2020.