

By: Whitmire

S.B. No. 628

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

SECTION 2. 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 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 3. Chapter 17, Code of Criminal Procedure, is amended by adding Articles 17.027, 17.028, 17.029, 17.034, 17.035, 17.036, and 17.037 to read as follows:

1 Art. 17.027. PRETRIAL RISK ASSESSMENT. (a) The judges of
2 the county courts, statutory county courts, and district courts
3 trying criminal cases in each county shall adopt an instrument to be
4 used in conducting a pretrial risk assessment of a defendant
5 charged with an offense in that county. The instrument adopted must
6 be the automated pretrial risk assessment system developed under
7 Section 72.033, Government Code, or another instrument that is:

8 (1) objective, validated for its intended use, and
9 standardized; and

10 (2) based on an analysis of empirical data and risk
11 factors relevant to:

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

14 (B) the safety of the community or the victim of
15 the alleged offense if the defendant is released.

16 (b) A magistrate considering the release on bail of a
17 defendant charged with an offense punishable as a Class B
18 misdemeanor or any higher category of offense shall order that:

19 (1) the personal bond office established under Article
20 17.42 for the county in which the defendant is being detained, or
21 other suitably trained person, use the instrument adopted under
22 Subsection (a) to conduct a pretrial risk assessment with respect
23 to the defendant; and

24 (2) the results of the assessment be provided to the
25 magistrate without unnecessary delay to ensure that the magistrate
26 is able to make a bail decision under Article 17.028 within the
27 period required by Subsection (a) of that article.

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

4 (d) Notwithstanding Subsection (b), a magistrate may
5 personally conduct a pretrial risk assessment using an instrument
6 adopted under Subsection (a).

7 (e) The magistrate must consider the results of the pretrial
8 risk assessment before making a bail decision under Article 17.028.

9 Art. 17.028. BAIL DECISION. (a) Without unnecessary delay
10 but not later than 48 hours after a defendant is arrested, a
11 magistrate shall order, after considering all circumstances and the
12 results of the pretrial risk assessment conducted under Article
13 17.027, that the defendant be:

14 (1) released on personal bond or monetary bail bond
15 without conditions;

16 (2) released on personal bond or monetary bail bond
17 with any condition the magistrate determines necessary; or

18 (3) denied bail in accordance with this chapter and
19 other law.

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

26 (c) In each criminal case, there is a rebuttable presumption
27 that monetary bail, conditions of release, or both monetary bail

1 and conditions of release are sufficient to reasonably ensure the
2 defendant's appearance in court as required and the safety of the
3 community and the victim of the alleged offense. For purposes of
4 rebutting the presumption established by this subsection, the court
5 may consider the results of the defendant's pretrial risk
6 assessment and other information as applicable.

7 (d) A magistrate may not require a defendant to provide a
8 monetary bail bond for the sole purpose of preventing the
9 defendant's release on bail.

10 (e) A magistrate who denies a defendant's bail shall inform
11 the defendant that the defendant is entitled to a bail review
12 hearing under Article 17.034 and, as soon as practicable but not
13 later than 24 hours after denying bail, issue a written order of
14 denial that includes findings of fact and a statement of the
15 magistrate's reasons for the denial.

16 (f) If the magistrate determines that a defendant is not
17 indigent and is able to pay any costs related to a condition of the
18 defendant's bail, the magistrate shall assess the costs as court
19 costs or order the costs to be paid directly by the defendant as a
20 condition of release.

21 (g) A judge may not adopt a bail schedule or enter a standing
22 order related to bail that:

23 (1) is inconsistent with this article; or

24 (2) authorizes a magistrate to make a bail decision
25 for a defendant without considering the results of the defendant's
26 pretrial risk assessment.

27 (h) This article does not prohibit a sheriff or other peace

1 officer, or a jailer licensed under Chapter 1701, Occupations Code,
2 from accepting bail under Article 17.20 or 17.22 before a pretrial
3 risk assessment has been conducted with respect to the defendant or
4 before a bail decision has been made by a magistrate under this
5 article.

6 Art. 17.029. DEFENDANT APPEARING IN RESPONSE TO CITATION.
7 A defendant who appears before a magistrate as ordered by citation
8 may not be temporarily detained for purposes of conducting a
9 pretrial risk assessment or for a magistrate to issue a bail
10 decision. The magistrate, after performing the duties imposed by
11 Article 15.17, shall release the defendant on personal bond, unless
12 the defendant is lawfully detained on another matter.

13 Art. 17.034. BAIL REVIEW HEARING REQUIRED. (a) As soon as
14 practicable after a defendant's bail is denied under Article
15 17.028, but not later than the 10th day after the date the
16 magistrate issues the written order denying bail, the court in
17 which the defendant's case is pending shall conduct a hearing
18 regarding whether to detain the defendant pending the trial of the
19 offense.

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

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

4 (d) The defendant may present any relevant information at
5 the bail review hearing, including by testifying, presenting
6 witnesses, and cross-examining witnesses presented by the attorney
7 representing the state.

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

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

- 13 (1) seek discovery or conduct an examining trial; or
14 (2) harass a victim of or witness to the alleged
15 offense.

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

25 Art. 17.035. BAIL REVIEW HEARING: FINDING AND ORDER. (a)
26 In a bail review hearing, the court shall consider:

- 27 (1) the nature and circumstances of the offense

1 charged;

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

5 (3) the history and characteristics of the defendant,
6 including:

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

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

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

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

24 (6) the results of the defendant's pretrial risk
25 assessment; and

26 (7) any other relevant information.

27 (b) The judge shall order the defendant to be released in

1 accordance with Article 17.028 unless the judge finds by clear and
2 convincing evidence that requiring bail and conditions of release
3 is insufficient to reasonably ensure the defendant's appearance in
4 court as required or the safety of the community or the victim of
5 the alleged offense. If the judge makes the finding described by
6 this subsection, the judge shall:

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

8 (2) issue a written order of denial that includes
9 findings of fact and a statement of the judge's reasons for the
10 denial.

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

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

20 SECTION 4. Section 4, Article 17.09, Code of Criminal
21 Procedure, is amended to read as follows:

22 Sec. 4. Notwithstanding any other provision of this
23 article, the judge or magistrate in whose court a criminal action is
24 pending may not order the accused to be rearrested or require the
25 accused to give another bond in a higher amount because the accused:

26 (1) withdraws a waiver of the right to counsel; [~~or~~]

27 (2) requests the assistance of counsel, appointed or

1 retained; or

2 (3) is formally charged with the same offense for
3 which the accused was initially arrested and bond was given.

4 SECTION 5. Article 17.15, Code of Criminal Procedure, is
5 amended to read as follows:

6 Art. 17.15. RULES FOR SETTING [~~FIXING~~] AMOUNT OF BAIL. (a)
7 The amount of bail to be required in any case is to be regulated by
8 the court, judge, magistrate, or officer taking the bail and is [~~+~~
9 ~~they are 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 any prior offenses
18 involving peace officers or family violence, are to be considered.

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

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

23 (6) The results of a pretrial risk assessment shall be
24 considered.

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

27 SECTION 6. Chapter 17, Code of Criminal Procedure, is

1 amended by adding Article 17.251 to read as follows:

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

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

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

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

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

14 (a) Except as otherwise provided by this subsection, if a
15 court releases a defendant [~~an accused~~] on personal bond on the
16 recommendation of a personal bond office, the court shall assess a
17 personal bond fee of \$20 or three percent of the amount of the bail
18 fixed for the defendant [~~accused~~], whichever is greater. The court
19 may waive the fee or assess a lesser fee if the court determines
20 that the defendant is indigent or demonstrates an inability to pay
21 the fee or if other good cause is shown. A court that requires a
22 defendant to give a personal bond under Article 45.016 may not
23 assess a personal bond fee under this subsection. A court may
24 require that a personal bond fee assessed under this subsection be
25 paid:

26 (1) before the defendant is released;

27 (2) as a condition of release; or

1 (3) as court costs.

2 (a-1) Notwithstanding Subsection (a), the court or jailer
3 may not refuse to release a defendant based solely on the
4 defendant's failure to pay a personal bond fee if the defendant is
5 indigent or demonstrates an inability to pay the fee.

6 SECTION 8. Section 27.005(a), Government Code, is amended
7 to read as follows:

8 (a) For purposes of removal under Chapter 87, Local
9 Government Code, "incompetency" in the case of a justice of the
10 peace includes the failure of the justice to successfully complete:

11 (1) within one year after the date the justice is first
12 elected, an 80-hour course in the performance of the justice's
13 duties, including not less than four hours of instruction regarding
14 the justice's duties:

15 (A) under Article 15.17, Code of Criminal
16 Procedure; and

17 (B) with respect to setting bail in criminal
18 cases; and

19 (2) each following year, a 20-hour course in the
20 performance of the justice's duties, including not less than:

21 (A) two hours of instruction regarding the
22 justice's duties:

23 (i) under Article 15.17, Code of Criminal
24 Procedure; and

25 (ii) with respect to setting bail in
26 criminal cases; and

27 (B) 10 hours of instruction regarding

1 substantive, procedural, and evidentiary law in civil matters.

2 SECTION 9. Subchapter C, Chapter 72, Government Code, is
3 amended by adding Section 72.033 to read as follows:

4 Sec. 72.033. AUTOMATED PRETRIAL RISK ASSESSMENT SYSTEM;
5 PRETRIAL RISK ASSESSMENT INSTRUMENTS. For purposes of Article
6 17.027, Code of Criminal Procedure, the office shall develop an
7 automated pretrial risk assessment system and make the system
8 available to judges and other magistrates in this state at no cost
9 to a county, municipality, or magistrate. The office shall also
10 make available nonautomated pretrial risk assessment instruments
11 to judges and other magistrates in this state at no cost to a
12 county, municipality, or magistrate.

13 SECTION 10. The following provisions of the Code of
14 Criminal Procedure are repealed:

15 (1) Article 17.03(g); and

16 (2) Sections 5(c) and 6(c), Article 17.42.

17 SECTION 11. (a) Section 27.005(a)(1), Government Code, as
18 amended by this Act, applies only to a justice of the peace who is
19 first elected or appointed on or after the effective date of this
20 Act. A justice of the peace who is first elected or appointed
21 before the effective date of this Act is governed by the law in
22 effect on the date the justice was first elected or appointed, and
23 the former law is continued in effect for that purpose.

24 (b) A justice of the peace serving on the effective date of
25 this Act must complete the justice's initial two hours of
26 instruction required by Section 27.005(a)(2)(A), Government Code,
27 as added by this Act, not later than September 1, 2020.

1 SECTION 12. Not later than September 1, 2020, the Office of
2 Court Administration of the Texas Judicial System shall develop the
3 automated pretrial risk assessment system and make available
4 automated or nonautomated pretrial risk assessment instruments as
5 required by Section 72.033, Government Code, as added by this Act.

6 SECTION 13. Not later than September 1, 2020, the judges of
7 the county courts, statutory county courts, and district courts
8 trying criminal cases in each county shall adopt a pretrial risk
9 assessment instrument as required by Article 17.027, Code of
10 Criminal Procedure, as added by this Act.

11 SECTION 14. The change in law made by this Act applies only
12 to a person who is arrested on or after September 1, 2020. A person
13 arrested before September 1, 2020, is governed by the law in effect
14 immediately before the effective date of this Act, and the former
15 law is continued in effect for that purpose.

16 SECTION 15. (a) Except as provided by Subsection (b) of
17 this section, this Act takes effect September 1, 2019.

18 (b) Section 2 of this Act takes effect December 1, 2019, but
19 only if the constitutional amendment proposed by the 86th
20 Legislature, Regular Session, 2019, is approved by the voters to
21 authorize the denial of bail to an accused person if necessary to
22 ensure the person's appearance in court and the safety of the
23 community and the victim of the alleged offense. If that amendment
24 is not approved by the voters, Section 2 of this Act has no effect.