

By: Reynolds

H.B. No. 170

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 who is charged with a felony offense involving the use or exhibition of a deadly weapon or who is charged with an offense listed in Article 42A.054(a) other than a nonviolent drug offense under Chapter 481, Health and Safety Code, 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 of any person, including the victim of the alleged offense.

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

4 Art. 17.027. PRETRIAL RISK ASSESSMENT. (a) The judges of
5 the county courts, statutory county courts, and district courts
6 trying criminal cases in each county shall adopt an instrument to be
7 used in conducting a pretrial risk assessment of a defendant
8 charged with an offense in that county. The instrument adopted must
9 be the automated pretrial risk assessment system developed under
10 Section 72.038, Government Code, or another instrument that is:

11 (1) objective, validated for its intended use, and
12 standardized;

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

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

17 (B) the safety of the community or of any person,
18 including the victim of the alleged offense, if the defendant is
19 released;

20 (3) transparent and available for review by the
21 public; and

22 (4) designed to reduce the likelihood of bail
23 decisions being affected by bias based on sex, race, or other
24 protected classifications.

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

1 (1) the personal bond office established under Article
2 17.42 for the county in which the defendant is being detained, or
3 other suitably trained person, use the instrument adopted under
4 Subsection (a) to conduct a pretrial risk assessment with respect
5 to the defendant; and

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

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

13 (d) Notwithstanding Subsection (b), a magistrate may
14 personally conduct a pretrial risk assessment using an instrument
15 adopted under Subsection (a).

16 (e) The results of any pretrial risk assessment conducted
17 under this article must be promptly provided to the defendant and
18 the attorney representing the state.

19 (f) The magistrate must consider the results of the pretrial
20 risk assessment before making a bail decision under Article 17.028.

21 Art. 17.028. BAIL DECISION. (a) Without unnecessary delay
22 but not later than 48 hours after a defendant is arrested, a
23 magistrate shall hold a proceeding open to the public and, after
24 considering all circumstances and the results of the pretrial risk
25 assessment conducted under Article 17.027, shall order that the
26 defendant be:

27 (1) released on personal bond without conditions;

1 (2) released on personal bond or monetary bail bond
2 with any condition the magistrate determines necessary to
3 reasonably ensure the defendant's appearance in court as required
4 and the safety of the community and of any person, including the
5 victim of the alleged offense; or

6 (3) denied bail in accordance with this chapter and
7 other law.

8 (b) In making a bail decision under this article, the
9 magistrate shall impose, as applicable, the least restrictive
10 conditions and minimum amount of bail, whether personal bond or
11 monetary bail bond, necessary to reasonably ensure the defendant's
12 appearance in court as required and the safety of the community and
13 of any person, including the victim of the alleged offense.

14 (c) In each criminal case, there is a rebuttable presumption
15 that personal bond, conditions of release, or both personal bond
16 and conditions of release are sufficient to reasonably ensure the
17 defendant's appearance in court as required and the safety of the
18 community and of any person, including the victim of the alleged
19 offense. For purposes of rebutting the presumption established by
20 this subsection, the court may consider the results of the
21 defendant's pretrial risk assessment and other information as
22 applicable.

23 (d) A magistrate may not require a defendant to provide a
24 monetary bail bond for the sole purpose of preventing the
25 defendant's release on bail. A defendant who remains in custody for
26 more than 48 hours after a magistrate enters an order requiring the
27 defendant to provide a monetary bail bond is entitled to a bail

1 review hearing under Article 17.034.

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

8 (f) If the magistrate determines that a defendant is not
9 indigent and is able to pay any costs related to a condition of the
10 defendant's bail, the magistrate shall assess the costs as court
11 costs or order the costs to be paid directly by the defendant as a
12 condition of release.

13 (g) A judge may enter a standing order to release defendants
14 charged with specified offenses on personal bond before a pretrial
15 risk assessment has been conducted, but may not otherwise adopt a
16 bail schedule or enter a standing order related to bail that:

- 17 (1) is inconsistent with this article; or
18 (2) authorizes a magistrate to make a bail decision
19 for a defendant without considering the results of the defendant's
20 pretrial risk assessment or the ability of the defendant to pay a
21 monetary bail bond.

22 (h) This article does not prohibit a sheriff or other peace
23 officer, or a jailer licensed under Chapter 1701, Occupations Code,
24 from accepting bail under Article 17.20 or 17.22 before a pretrial
25 risk assessment has been conducted with respect to the defendant or
26 before a bail decision has been made by a magistrate under this
27 article.

1 Art. 17.029. DEFENDANT APPEARING IN RESPONSE TO CITATION.

2 A defendant who appears before a magistrate as ordered by citation
3 may not be temporarily detained for purposes of conducting a
4 pretrial risk assessment or for a magistrate to issue a bail
5 decision. The magistrate, after performing the duties imposed by
6 Article 15.17, shall release the defendant on personal bond, unless
7 the defendant is lawfully detained on another matter.

8 Art. 17.034. BAIL REVIEW HEARING REQUIRED. (a) As soon as
9 practicable after a defendant's bail is denied under Article 17.028
10 or after the defendant becomes eligible for a bail review hearing
11 under Article 17.028(d), but not later than the third day after the
12 date the magistrate issues the written order denying or setting
13 bail, as applicable, the court in which the defendant's case is
14 pending shall conduct a hearing regarding whether to detain the
15 defendant pending the trial of the offense.

16 (b) A defendant may voluntarily waive in writing the
17 defendant's right to a bail review hearing. The court or the
18 attorney representing the state may not direct or encourage the
19 defendant to waive the defendant's right to a bail review hearing. A
20 waiver under this subsection shall be filed with and become part of
21 the record of the proceedings. A waiver obtained in violation of
22 this subsection is presumed invalid. At any time, a defendant may
23 withdraw a waiver under this subsection and request a bail review
24 hearing, which must be held not later than the third day after the
25 date of the withdrawal.

26 (c) A defendant is entitled to be represented by counsel at
27 a bail review hearing, and an indigent defendant is entitled to have

1 counsel appointed to represent the defendant for that purpose.

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

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

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

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

14 (g) At any time during the period occurring after the bail
15 review hearing concludes and before the trial of the offense
16 commences, and regardless of whether the defendant was released or
17 confined as a result of that hearing, the court may reopen the bail
18 review hearing based on new information that the court determines
19 is material to the bail decision made with respect to the defendant.

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

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

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

27 (3) the history and characteristics of the defendant,

1 including:

2 (A) the defendant's character, physical and
3 mental condition, family ties, employment, financial resources,
4 length of residence in and other ties to the community, past
5 conduct, criminal history including any prior offenses involving
6 peace officers, history relating to drug or alcohol abuse, and
7 history of attendance at court proceedings related to a charge for a
8 Class B misdemeanor or any higher category of offense; 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 to any person, including the victim of the alleged
16 offense as a result of the defendant's release on bail, if
17 applicable;

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

21 (6) the results of the defendant's pretrial risk
22 assessment; and

23 (7) any other relevant information.

24 (b) The judge shall reduce any applicable amount of monetary
25 bail in accordance with the defendant's ability to pay and shall
26 order the defendant to be released in accordance with Article
27 17.028 unless the judge finds by clear and convincing evidence that

1 requiring bail and conditions of release is insufficient to
2 reasonably ensure the defendant's appearance in court as required
3 or the safety of the community or of any person, including the
4 victim of the alleged offense. If the judge makes the finding
5 described by this subsection, the judge shall:

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

7 (2) issue a written order of denial that includes:

8 (A) findings of fact;

9 (B) a statement of the judge's reasons for the
10 denial; and

11 (C) an explanation of how the denial was
12 supported by the results of the defendant's pretrial risk
13 assessment.

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

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

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

25 Sec. 4. Notwithstanding any other provision of this
26 article, the judge or magistrate in whose court a criminal action is
27 pending may not order the accused to be rearrested or require the

1 accused to give another bond in a higher amount because the accused:

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

3 (2) requests the assistance of counsel, appointed or
4 retained; or

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

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

9 Art. 17.15. RULES FOR SETTING ~~[FIXING]~~ AMOUNT OF BAIL. (a)

10 The amount of bail to be required in any case is to be regulated by
11 the court, judge, magistrate, or officer taking the bail and is ~~[+~~
12 ~~they are to be]~~ governed ~~[in the exercise of this discretion]~~ by the
13 Constitution and ~~[by]~~ the following rules:

14 (1) [1.] ~~[1.]~~ The bail shall be sufficiently high to give
15 reasonable assurance that the undertaking will be complied with.

16 (2) [2.] ~~[2.]~~ The power to require bail is not to be so used
17 as to make it an instrument of oppression.

18 (3) [3.] ~~[3.]~~ The nature of the offense, ~~[and]~~ the
19 circumstances under which the offense ~~[it]~~ was committed, and the
20 defendant's criminal history, including any prior offenses
21 involving peace officers or family violence, are to be considered.

22 (4) [4.] ~~[4.]~~ The ability to make bail is to be considered
23 ~~[regarded]~~, and proof shall ~~[may]~~ be taken upon this point before a
24 bail decision is made under Article 17.028.

25 (5) [5.] ~~[5.]~~ The future safety of the community and of any
26 person, including a victim of the alleged offense, ~~[and the~~
27 ~~community]~~ shall be considered.

1 (6) The results of a pretrial risk assessment shall be
2 considered.

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

5 SECTION 6. Chapter 17, Code of Criminal Procedure, is
6 amended by adding Article 17.251 to read as follows:

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

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

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

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

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

19 (a) Except as otherwise provided by this subsection, if a
20 court releases a defendant [~~an accused~~] on personal bond on the
21 recommendation of a personal bond office, the court shall assess a
22 personal bond reimbursement fee of \$20 or three percent of the
23 amount of the bail set [~~fixed~~] for the defendant [~~accused~~],
24 whichever is greater. The court may waive the fee or assess a
25 lesser fee if the court determines that the defendant is indigent or
26 demonstrates an inability to pay the fee or if other good cause is
27 shown. A court that requires a defendant to give a personal bond

1 under Article 45.016 may not assess a personal bond reimbursement
2 fee under this subsection. A court may require that a personal bond
3 reimbursement fee assessed under this subsection be paid as court
4 costs.

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

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

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

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

18 (A) under Article 15.17, Code of Criminal
19 Procedure; and

20 (B) with respect to setting bail in criminal
21 cases; and

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

24 (A) two hours of instruction regarding the
25 justice's duties:

26 (i) under Article 15.17, Code of Criminal
27 Procedure; and

1 (ii) with respect to setting bail in
2 criminal cases; and

3 (B) 10 hours of instruction regarding
4 substantive, procedural, and evidentiary law in civil matters.

5 SECTION 9. Subchapter C, Chapter 72, Government Code, is
6 amended by adding Section 72.038 to read as follows:

7 Sec. 72.038. AUTOMATED PRETRIAL RISK ASSESSMENT SYSTEM;
8 PRETRIAL RISK ASSESSMENT INSTRUMENTS. For purposes of Article
9 17.027, Code of Criminal Procedure, the office shall develop an
10 automated pretrial risk assessment system and make the system
11 available to judges and other magistrates in this state at no cost
12 to a county, municipality, or magistrate. The office shall also
13 make available nonautomated pretrial risk assessment instruments
14 to judges and other magistrates in this state at no cost to a
15 county, municipality, or magistrate.

16 SECTION 10. The following provisions of the Code of
17 Criminal Procedure are repealed:

18 (1) Article 17.03(g); and

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

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

27 (b) A justice of the peace serving on the effective date of

1 this Act must complete the justice's initial two hours of
2 instruction required by Section 27.005(a)(2)(A), Government Code,
3 as added by this Act, not later than March 1, 2022.

4 SECTION 12. Not later than March 1, 2022, the Office of
5 Court Administration of the Texas Judicial System shall develop the
6 automated pretrial risk assessment system and make available
7 automated or nonautomated pretrial risk assessment instruments as
8 required by Section 72.038, Government Code, as added by this Act.

9 SECTION 13. Not later than March 1, 2022, the judges of the
10 county courts, statutory county courts, and district courts trying
11 criminal cases in each county shall adopt a pretrial risk
12 assessment instrument as required by Article 17.027, Code of
13 Criminal Procedure, as added by this Act.

14 SECTION 14. The change in law made by this Act applies only
15 to a person who is arrested on or after March 1, 2022. A person
16 arrested before March 1, 2022, is governed by the law in effect
17 immediately before the effective date of this Act, and the former
18 law is continued in effect for that purpose.

19 SECTION 15. (a) Except as provided by Subsection (b) of
20 this section, this Act takes effect on the 91st day after the last
21 day of the legislative session.

22 (b) Section 2 of this Act takes effect December 1, 2021, but
23 only if the constitutional amendment proposed by the 87th
24 Legislature, 1st Called Session, 2021, authorizing the denial of
25 bail to an accused person if a judge or magistrate determines by
26 clear and convincing evidence that requiring bail and conditions of
27 release is insufficient to reasonably ensure the person's

1 appearance in court or the safety of the community or of any person,
2 including the victim of the alleged offense, is approved by the
3 voters. If that amendment is not approved by the voters, Section 2
4 of this Act has no effect.