By:  Huffman, et al. S.B. No. 6

(In the Senate - Filed August 7, 2021; August 7, 2021, read first time and referred to Committee on Jurisprudence; August 7, 2021, reported favorably by the following vote: Yeas 5, Nays 0; August 7, 2021, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Huffman           X

Hinojosa             X

Creighton            X

Hughes               X

Johnson              X

A BILL TO BE ENTITLED

AN ACT

relating to rules for setting the amount of bail, to the release of certain defendants on a monetary bond or personal bond, to related duties of certain officers taking bail bonds and of a magistrate in a criminal case, to charitable bail organizations, and to the reporting of information pertaining to bail bonds.

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. Any person [~~All prisoners~~] shall be eligible for bail [~~bailable~~] unless denial of bail is expressly permitted by the Texas Constitution or by other law [~~for capital offenses when the proof is evident~~]. This provision may [~~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.

SECTION 3.  Article 15.17(a), Code of Criminal Procedure, is amended to read as follows:

(a)  In each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall without unnecessary delay, but not later than 48 hours after the person is arrested, take the person arrested or have him taken before some magistrate of the county where the accused was arrested or, to provide more expeditiously to the person arrested the warnings described by this article, before a magistrate in any other county of this state. The arrested person may be taken before the magistrate in person or the image of the arrested person may be presented to the magistrate by means of a videoconference. The magistrate shall inform in clear language the person arrested, either in person or through a videoconference, of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to remain silent, of his right to have an attorney present during any interview with peace officers or attorneys representing the state, of his right to terminate the interview at any time, and of his right to have an examining trial. The magistrate shall also inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel. The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel. If applicable, the magistrate shall inform the person that the person may file the affidavit described by Article 17.028(f). If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate. The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. If the person arrested is indigent and requests appointment of counsel and if the magistrate is authorized under Article 26.04 to appoint counsel for indigent defendants in the county, the magistrate shall appoint counsel in accordance with Article 1.051. If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county, the forms requesting the appointment of counsel. The magistrate shall also inform the person arrested that he is not required to make a statement and that any statement made by him may be used against him. The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall, after determining whether the person is currently on bail for a separate criminal offense and whether the bail decision is subject to Article 17.027, admit the person arrested to bail if allowed by law. A record of the communication between the arrested person and the magistrate shall be made. The record shall be preserved until the earlier of the following dates: (1) the date on which the pretrial hearing ends; or (2) the 91st day after the date on which the record is made if the person is charged with a misdemeanor or the 120th day after the date on which the record is made if the person is charged with a felony. For purposes of this subsection, "videoconference" means a two-way electronic communication of image and sound between the arrested person and the magistrate and includes secure Internet videoconferencing.

SECTION 4.  Article 17.02, Code of Criminal Procedure, is amended to read as follows:

Art. 17.02.  DEFINITION OF "BAIL BOND". A "bail bond" is a written undertaking entered into by the defendant and the defendant's sureties for the appearance of the principal therein before a court or magistrate to answer a criminal accusation; provided, however, that the defendant on execution of the bail bond may deposit with the custodian of funds of the court in which the prosecution is pending current money of the United States in the amount of the bond in lieu of having sureties signing the same. Any cash funds deposited under this article shall be receipted for by the officer receiving the funds and, on order of the court, be refunded in the amount shown on the face of the receipt less the administrative fee authorized by Section 117.055, Local Government Code, if applicable, after the defendant complies with the conditions of the defendant's bond, to:

(1)  any person in the name of whom a receipt was issued, including the defendant if a receipt was issued to the defendant; or

(2)  the defendant, if no other person is able to produce a receipt for the funds.

SECTION 5.  Chapter 17, Code of Criminal Procedure, is amended by adding Articles 17.021, 17.022, 17.023, 17.024, 17.027, and 17.028 to read as follows:

Art. 17.021.  PUBLIC SAFETY REPORT SYSTEM. (a) The Office of Court Administration of the Texas Judicial System shall develop and maintain a public safety report system that is available for use for purposes of Article 17.15.

(b)  The public safety report system must:

(1)  state the requirements for setting bail under Article 17.15 and list each factor provided by Article 17.15(a);

(2)  provide the defendant's name and date of birth, the cause number of the case, if available, and the offense for which the defendant was arrested;

(3)  provide information on the eligibility of the defendant for a personal bond;

(4)  provide information regarding the applicability of any required or discretionary bond conditions;

(5)  provide, in summary form, the criminal history of the defendant, including information regarding any:

(A)  previous misdemeanor or felony convictions;

(B)  pending charges;

(C)  previous sentences imposing a term of confinement;

(D)  previous convictions or pending charges for offenses involving violence as defined by Article 17.03; and

(E)  previous failures of the defendant to appear in court following release on bail; and

(6)  be designed to collect and maintain the information provided on a bail form submitted under Section 72.038, Government Code.

(c)  The office shall provide access to the public safety report system to the appropriate officials in each county and each municipality at no cost. This subsection may not be construed to require the office to provide an official or magistrate with any equipment or support related to accessing or using the public safety report system.

(d)  The public safety report system may not:

(1)  be the only item relied on by a judge or magistrate in making a bail decision;

(2)  include a score, rating, or assessment of a defendant's risk or make any recommendation regarding the appropriate bail for the defendant; or

(3)  include any information other than the information listed in Subsection (b).

(e)  The office shall use the information maintained under Subsection (b)(6) to collect data regarding the number of defendants for whom bail was set during the preceding state fiscal year, including:

(1)  the number for each category of offense;

(2)  the number of personal bonds; and

(3)  the number of monetary bonds.

(f)  Not later than December 1 of each year, the office shall submit a report containing the data described by Subsection (e) to the governor, lieutenant governor, speaker of the house of representatives, and presiding officers of the standing committees of each house of the legislature with primary jurisdiction over the judiciary.

Art. 17.022.  PUBLIC SAFETY REPORT. (a) A magistrate considering the release on bail of a defendant charged with an offense punishable as a Class B misdemeanor or any higher category of offense shall order that:

(1)  the personal bond office established under Article 17.42 for the county in which the defendant is being detained, if a personal bond office has been established for that county, or other suitably trained person including judicial personnel or sheriff's department personnel, use the public safety report system developed under Article 17.021 to prepare a public safety report with respect to the defendant; and

(2)  the public safety report prepared under Subdivision (1) be provided to the magistrate as soon as practicable but not later than 48 hours after the defendant's arrest.

(b)  A magistrate may not, without the consent of the sheriff, order a sheriff or sheriff's department personnel to prepare a public safety report under Subsection (a).

(c)  Notwithstanding Subsection (a), a magistrate may personally prepare a public safety report, before or while making a bail decision, using the public safety report system developed under Article 17.021.

(d)  The magistrate shall:

(1)  consider the public safety report before setting bail; and

(2)  promptly but not later than 72 hours after the time bail is set, submit the bail form described by Section 72.038, Government Code, in accordance with that section.

(e)  A magistrate may, but is not required to, order, prepare, or consider a public safety report in setting bail for a defendant charged only with a misdemeanor punishable by fine only.

Art. 17.023.  AUTHORITY TO RELEASE ON BAIL IN CERTAIN CASES. (a) This article applies only to a defendant charged with an offense that is:

(1)  punishable as a felony; or

(2)  a misdemeanor punishable by confinement.

(b)  Notwithstanding any other law, a defendant to whom this article applies may be released on bail only by a magistrate who is:

(1)  any of the following:

(A)  a resident of this state and one of the counties served by the magistrate;

(B)  a justice of the peace serving under Section 27.054 or 27.055, Government Code; or

(C)  a judge or justice serving under Chapter 74, Government Code; and

(2)  in compliance with the training requirements of Article 17.024.

(c)  A magistrate is not eligible to release on bail a defendant described by Subsection (a) if the magistrate:

(1)  has been removed from office by impeachment, by the supreme court, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct, or by the legislature's abolition of the magistrate's court; or

(2)  has resigned from office after having received notice that formal proceedings by the State Commission on Judicial Conduct have been instituted as provided by Section 33.022, Government Code, and before final disposition of the proceedings.

Art. 17.024.  TRAINING ON DUTIES REGARDING BAIL. (a) The Office of Court Administration of the Texas Judicial System shall, in consultation with the court of criminal appeals, develop or approve training courses regarding a magistrate's duties, including duties with respect to setting bail in criminal cases. The courses developed must include:

(1)  an eight-hour initial training course that includes the content of the applicable training course described by Article 17.0501; and

(2)  a two-hour continuing education course.

(b)  The office shall provide for a method of certifying that a magistrate has successfully completed a training course required under this article and has demonstrated competency of the course content in a manner acceptable to the office.

(c)  A magistrate is in compliance with the training requirements of this article if:

(1)  not later than the 90th day after the date the magistrate takes office, the magistrate successfully completes the course described by Subsection (a)(1);

(2)  the magistrate successfully completes the course described by Subsection (a)(2) in each subsequent state fiscal biennium in which the magistrate serves; and

(3)  the magistrate demonstrates competency as provided by Subsection (b).

(c-1)  Notwithstanding Subsection (c), a magistrate who is serving on January 1, 2022, is considered to be in compliance with Subsection (c)(1) if the magistrate successfully completes the training course not later than September 1, 2022. This subsection expires February 1, 2023.

(d)  Any course developed or approved by the office under this article may be administered by the Texas Justice Court Training Center, the Texas Municipal Courts Education Center, the Texas Association of Counties, the Texas Center for the Judiciary, or a similar entity.

Art. 17.027.  RELEASE ON BAIL OF DEFENDANT CHARGED WITH OFFENSE COMMITTED WHILE ON BAIL. (a)  Notwithstanding any other law:

(1)  if a defendant is charged with committing an offense punishable as a felony while released on bail for another offense punishable as a felony and the subsequent offense was committed in the same county as the previous offense, only the court before whom the case for the previous offense is pending may release the defendant on bail; and

(2)  if a defendant is charged with committing an offense while released on bail for another offense and the subsequent offense was committed in a different county than the previous offense, electronic notice of the charge must be promptly given to the court specified by Subdivision (1) for purposes of reevaluating the bail decision, determining whether any bail conditions were violated, or taking any other applicable action.

(b)  This article may not be construed to extend any deadline provided by Article 15.17.

Art. 17.028.  BAIL DECISION. (a) Without unnecessary delay but not later than 48 hours after a defendant is arrested, a magistrate shall order, after individualized consideration of all circumstances and of the factors required by Article 17.15(a), that the defendant be:

(1)  granted personal bond with or without conditions;

(2)  granted surety or cash bond with or without conditions; or

(3)  denied bail in accordance with the Texas Constitution and other law.

(b)  In setting bail under this article, the magistrate shall impose the least restrictive conditions, if any, and the personal bond or monetary bond necessary to reasonably ensure the defendant's appearance in court as required and the safety of the community, law enforcement, and the victim of the alleged offense.

(c)  In each criminal case, unless specifically provided by other law, there is a rebuttable presumption that bail, conditions of release, or both bail and conditions of release are sufficient to reasonably ensure the defendant's appearance in court as required and the safety of the community, law enforcement, and the victim of the alleged offense. For purposes of setting bail or rebutting the presumption, the court may not consider testimonial evidence.

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

(1)  is inconsistent with this article; or

(2)  authorizes a magistrate to make a bail decision for a defendant without considering each of the factors in Article 17.15(a).

(e)  A defendant who is denied bail or who is unable to give bail in the amount required by any bail schedule or standing order related to bail shall be provided with the warnings described by Article 15.17.

(f)  A defendant who is charged with an offense punishable as a Class B misdemeanor or any higher category of offense and who is unable to give bail in the amount required by a schedule or order described by Subsection (e), other than a defendant who is denied bail, shall be provided with the opportunity to file with the applicable magistrate a sworn affidavit in substantially the following form:

"On this \_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, I have been advised by \_\_\_\_\_\_\_\_ (name of the court or magistrate, as applicable) of the importance of providing true and complete information about my financial situation in connection with the charge pending against me. I am without means to pay \_\_\_\_\_\_ and I hereby request that an appropriate bail be set. (signature of defendant)."

(g)  A defendant filing an affidavit under Subsection (f) shall complete a form to allow a magistrate to assess information relevant to the defendant's financial situation. The form must be the form used to request appointment of counsel under Article 26.04 or a form promulgated by the Office of Court Administration of the Texas Judicial System that collects, at a minimum and to the best of the defendant's knowledge, the information a court may consider under Article 26.04(m).

(g-1)  The magistrate making the bail decision under Subsection (a) shall, if applicable:

(1)  inform the defendant of the defendant's right to file an affidavit under Subsection (f); and

(2)  ensure that the defendant receives reasonable assistance in completing the affidavit described by Subsection (f) and the form described by Subsection (g).

(h)  A defendant described by Subsection (f) may file an affidavit under Subsection (f) at any time before or during the bail proceeding under Subsection (a). A defendant who files an affidavit under Subsection (f) is entitled to a prompt hearing before the magistrate on the bail amount. The hearing may be held before the magistrate making the bail decision under Subsection (a) or may occur as a separate pretrial proceeding held for that purpose. The defendant must be given the opportunity to present evidence and respond to evidence presented by the attorney representing the state. The magistrate shall consider the facts presented and the rules established by Article 17.15(a) and shall set the defendant's bail. If the magistrate does not set the defendant's bail in an amount below the amount required by the schedule or order described by Subsection (e), the magistrate shall issue written findings of fact supporting the bail decision.

(i)  The judges of the courts trying criminal cases and other magistrates in a county must report to the Office of Court Administration of the Texas Judicial System each defendant for whom a hearing under Subsection (h) was not held within 48 hours of the defendant's arrest. If a delay occurs that will cause the hearing under Subsection (h) to be held later than 48 hours after the defendant's arrest, the magistrate or an employee of the court or of the county in which the defendant is confined must notify the defendant's counsel of the delay.

(j)  The magistrate may enter an order or take other action authorized by Article 16.22 with respect to a defendant who does not appear capable of executing an affidavit under Subsection (f).

(k)  This article may not be construed to require the filing of an affidavit before a magistrate considers the defendant's ability to make bail under Article 17.15.

(l)  A written or oral statement obtained under this article or evidence derived from the statement may be used only to determine whether the defendant is indigent, to impeach the direct testimony of the defendant, or to prosecute the defendant for an offense under Chapter 37, Penal Code.

(m)  Notwithstanding Subsection (a), a magistrate may make a bail decision regarding a defendant who is charged only with a misdemeanor punishable by fine only without considering the factor required by Article 17.15(a)(6).

SECTION 6.  (a)  Article 17.03, Code of Criminal Procedure, as effective September 1, 2021, is amended by amending Subsection (b) and adding Subsections (b-2) and (b-3) to read as follows:

(b)  Only the court before whom the case is pending may release on personal bond a defendant who:

(1)  is charged with an offense under the following sections of the Penal Code:

(A)  [~~Section 19.03 (Capital Murder);~~

[~~(B)  Section 20.04 (Aggravated Kidnapping);~~

[~~(C)  Section 22.021 (Aggravated Sexual Assault);~~

[~~(D)  Section 22.03 (Deadly Assault on Law Enforcement or Corrections Officer, Member or Employee of Board of Pardons and Paroles, or Court Participant);~~

[~~(E)  Section 22.04 (Injury to a Child, Elderly Individual, or Disabled Individual);~~

[~~(F)  Section 29.03 (Aggravated Robbery);~~

[~~(G)~~]  Section 30.02 (Burglary); or

(B) [~~(H)~~]  Section 71.02 (Engaging in Organized Criminal Activity);

[~~(I)  Section 21.02 (Continuous Sexual Abuse of Young Child or Disabled Individual); or~~

[~~(J)  Section 20A.03 (Continuous Trafficking of Persons);~~]

(2)  is charged with a felony under Chapter 481, Health and Safety Code, or Section 485.033, Health and Safety Code, punishable by imprisonment for a minimum term or by a maximum fine that is more than a minimum term or maximum fine for a first degree felony; or

(3)  does not submit to testing for the presence of a controlled substance in the defendant's body as requested by the court or magistrate under Subsection (c) of this article or submits to testing and the test shows evidence of the presence of a controlled substance in the defendant's body.

(b-2)  Notwithstanding any other law, a defendant may not be released on personal bond if the defendant:

(1)  is charged with an offense involving violence; or

(2)  while released on bail or community supervision for an offense involving violence, is charged with committing:

(A)  any offense punishable as a felony; or

(B)  an offense under the following provisions of the Penal Code:

(i)  Section 22.01(a)(1) (assault);

(ii)  Section 22.05 (deadly conduct);

(iii)  Section 22.07 (terroristic threat); or

(iv)  Section 42.01(a)(7) or (8) (disorderly conduct involving firearm).

(b-3)  In this article:

(1)  "Controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.

(2)  "Offense involving violence" means an offense under the following provisions of the Penal Code:

(A)  Section 19.02 (murder);

(B)  Section 19.03 (capital murder);

(C)  Section 20.03 (kidnapping);

(D)  Section 20.04 (aggravated kidnapping);

(E)  Section 20A.02 (trafficking of persons);

(F)  Section 20A.03 (continuous trafficking of persons);

(G)  Section 21.02 (continuous sexual abuse of young child or disabled individual);

(H)  Section 21.11 (indecency with a child);

(I)  Section 22.01(a)(1) (assault), if the offense:

(i)  is punishable as a felony of the second degree under Subsection (b-2) of that section; or

(ii)  involved family violence as defined by Section 71.004, Family Code;

(J)  Section 22.011 (sexual assault);

(K)  Section 22.02 (aggravated assault);

(L)  Section 22.021 (aggravated sexual assault);

(M)  Section 22.04 (injury to a child, elderly individual, or disabled individual);

(N)  Section 25.072 (repeated violation of certain court orders or conditions of bond in family violence, child abuse or neglect, sexual assault or abuse, indecent assault, stalking, or trafficking case);

(O)  Section 25.11 (continuous violence against the family);

(P)  Section 29.03 (aggravated robbery);

(Q)  Section 38.14 (taking or attempting to take weapon from peace officer, federal special investigator, employee or official of correctional facility, parole officer, community supervision and corrections department officer, or commissioned security officer);

(R)  Section 43.04 (aggravated promotion of prostitution);

(S)  Section 43.05 (compelling prostitution); or

(T)  Section 43.25 (sexual performance by a child).

(b)  This section takes effect on the 91st day after the last day of the legislative session if this Act does not receive a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution, this section has no effect.

SECTION 7.  (a) Article 17.03, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsections (b-2) and (b-3) to read as follows:

(b)  Only the court before whom the case is pending may release on personal bond a defendant who:

(1)  is charged with an offense under the following sections of the Penal Code:

(A)  [~~Section 19.03 (Capital Murder);~~

[~~(B)  Section 20.04 (Aggravated Kidnapping);~~

[~~(C)  Section 22.021 (Aggravated Sexual Assault);~~

[~~(D)  Section 22.03 (Deadly Assault on Law Enforcement or Corrections Officer, Member or Employee of Board of Pardons and Paroles, or Court Participant);~~

[~~(E)  Section 22.04 (Injury to a Child, Elderly Individual, or Disabled Individual);~~

[~~(F)  Section 29.03 (Aggravated Robbery);~~

[~~(G)~~]  Section 30.02 (Burglary); or

(B) [~~(H)~~]  Section 71.02 (Engaging in Organized Criminal Activity);

[~~(I)  Section 21.02 (Continuous Sexual Abuse of Young Child or Children); or~~

[~~(J)  Section 20A.03 (Continuous Trafficking of Persons);~~]

(2)  is charged with a felony under Chapter 481, Health and Safety Code, or Section 485.033, Health and Safety Code, punishable by imprisonment for a minimum term or by a maximum fine that is more than a minimum term or maximum fine for a first degree felony; or

(3)  does not submit to testing for the presence of a controlled substance in the defendant's body as requested by the court or magistrate under Subsection (c) of this article or submits to testing and the test shows evidence of the presence of a controlled substance in the defendant's body.

(b-2)  Notwithstanding any other law, a defendant may not be released on personal bond if the defendant:

(1)  is charged with an offense involving violence; or

(2)  while released on bail or community supervision for an offense involving violence, is charged with committing:

(A)  any offense punishable as a felony; or

(B)  an offense under the following provisions of the Penal Code:

(i)  Section 22.01(a)(1) (assault);

(ii)  Section 22.05 (deadly conduct);

(iii)  Section 22.07 (terroristic threat); or

(iv)  Section 42.01(a)(7) or (8) (disorderly conduct involving firearm).

(b-3)  In this article:

(1)  "Controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.

(2)  "Offense involving violence" means an offense under the following provisions of the Penal Code:

(A)  Section 19.02 (murder);

(B)  Section 19.03 (capital murder);

(C)  Section 20.03 (kidnapping);

(D)  Section 20.04 (aggravated kidnapping);

(E)  Section 20A.02 (trafficking of persons);

(F)  Section 20A.03 (continuous trafficking of persons);

(G)  Section 21.02 (continuous sexual abuse of young child or children);

(H)  Section 21.11 (indecency with a child);

(I)  Section 22.01(a)(1) (assault), if the offense:

(i)  is punishable as a felony of the second degree under Subsection (b-2) of that section; or

(ii)  involved family violence as defined by Section 71.004, Family Code;

(J)  Section 22.011 (sexual assault);

(K)  Section 22.02 (aggravated assault);

(L)  Section 22.021 (aggravated sexual assault);

(M)  Section 22.04 (injury to a child, elderly individual, or disabled individual);

(N)  Section 25.072 (repeated violation of certain court orders or conditions of bond in family violence, child abuse or neglect, sexual assault or abuse, indecent assault, stalking, or trafficking case);

(O)  Section 25.11 (continuous violence against the family);

(P)  Section 29.03 (aggravated robbery);

(Q)  Section 38.14 (taking or attempting to take weapon from peace officer, federal special investigator, employee or official of correctional facility, parole officer, community supervision and corrections department officer, or commissioned security officer);

(R)  Section 43.04 (aggravated promotion of prostitution);

(S)  Section 43.05 (compelling prostitution); or

(T)  Section 43.25 (sexual performance by a child).

(b)  This section takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution, this section has no effect.

SECTION 8.  Chapter 17, Code of Criminal Procedure, is amended by adding Articles 17.0501 and 17.071 to read as follows:

Art. 17.0501.  REQUIRED TRAINING. The Department of Public Safety shall develop training courses that relate to the use of the statewide telecommunications system maintained by the department and that are directed to each magistrate, judge, sheriff, peace officer, or jailer required to obtain criminal history record information under this chapter, as necessary to enable the person to fulfill those requirements.

Art. 17.071.  CHARITABLE BAIL ORGANIZATIONS. (a) In this article, "charitable bail organization" means a person who solicits donations from the public for the purpose of depositing money with a court in the amount of a defendant's bail bond. The term does not include:

(1)  a person soliciting donations with respect to a defendant who is a member of the person's family, as determined under Section 71.003, Family Code; or

(2)  a nonprofit corporation organized for the purpose of religious worship.

(b)  This article does not apply to a charitable bail organization that pays a bail bond for not more than three defendants in any 180-day period.

(c)  A charitable bail organization shall file in the office of the county clerk of each county where the organization intends to pay bail bonds an affidavit designating the individuals authorized to pay bonds on behalf of the organization.

(d)  A charitable bail organization may only pay bail bonds for indigent defendants who:

(1)  are not charged with an offense involving violence as defined by Article 17.03; and

(2)  have not previously been convicted of an offense involving violence as defined by Article 17.03 during the 10-year period preceding the date of the defendant's arrest for the instant offense.

(e)  Not later than the 10th day of each month, a charitable bail organization shall submit, to the presiding judge of the administrative judicial region for each county in which the organization files an affidavit under Subsection (c), a report that includes the following information for each defendant for whom the organization paid a bail bond in the preceding calendar month:

(1)  the name of the defendant;

(2)  the cause number of the case;

(3)  the county in which the applicable charge is pending, if different from the county in which the bond was paid; and

(4)  any dates on which the defendant has failed to appear in court as required for the charge for which the bond was paid.

(f)  A charitable bail organization may not pay a bail bond for a defendant at any time the organization is considered to be out of compliance with the reporting requirements of this article.

(g)  The presiding judge of an administrative judicial region may suspend a charitable bail organization from paying bail bonds in the administrative judicial region for one year if the presiding judge determines the organization has paid bonds in violation of this article.

(h)  Chapter 22 applies to a bail bond paid by a charitable bail organization.

(i)  A charitable bail organization may not accept a premium or compensation for paying a bail bond for a defendant.

SECTION 9.  Article 17.15, Code of Criminal Procedure, is amended to read as follows:

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

1.  Bail and any conditions of bail [~~The bail~~] shall be sufficient [~~sufficiently high~~] to give reasonable assurance that the undertaking will be complied with.

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

3.  The nature of the offense and the circumstances under which the offense [~~it~~] was committed are to be considered, including whether the offense:

(A)  is an offense involving violence as defined by Article 17.03; or

(B)  involves violence directed against a peace officer.

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

5.  The future safety of a victim of the alleged offense, law enforcement, and the community shall be considered.

6.  The criminal history record information for the defendant, including information obtained through the statewide telecommunications system maintained by the Department of Public Safety and through the public safety report system developed under Article 17.021, shall be considered, including any acts of family violence, other pending criminal charges, and any instances in which the defendant failed to appear in court following release on bail.

7.  The citizenship status of the defendant shall be considered.

(b)  For purposes of determining whether clear and convincing evidence exists to deny a person bail under Section 11d, Article I, Texas Constitution, a magistrate shall consider all information relevant to the factors listed in Subsection (a).

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

SECTION 10.  Article 17.20, Code of Criminal Procedure, is amended to read as follows:

Art. 17.20.  BAIL IN MISDEMEANOR. (a)  In cases of misdemeanor, the sheriff or other peace officer, or a jailer licensed under Chapter 1701, Occupations Code, may, whether during the term of the court or in vacation, where the officer has a defendant in custody, take the defendant's [~~of the defendant a~~] bail [~~bond~~].

(b)  Before taking bail under this article, the sheriff, peace officer, or jailer shall obtain the defendant's criminal history record information through the statewide telecommunications system maintained by the Department of Public Safety and through the public safety report system developed under Article 17.021.

(c)  If the defendant is charged with or has previously been convicted of an offense involving violence as defined by Article 17.03, the sheriff, officer, or jailer may not set the amount of the defendant's bail but may take the defendant's bail in the amount set by the court.

SECTION 11.  Article 17.22, Code of Criminal Procedure, is amended to read as follows:

Art. 17.22.  MAY TAKE BAIL IN FELONY. (a)  In a felony case, if the court before which the case [~~same~~] is pending is not in session in the county where the defendant is in custody, the sheriff or other peace officer, or a jailer licensed under Chapter 1701, Occupations Code, who has the defendant in custody may take the defendant's bail [~~bond~~] in the [~~such~~] amount set [~~as may have been fixed~~] by the court or magistrate, or if no amount has been set [~~fixed~~], then in any [~~such~~] amount that the [~~as such~~] officer considers [~~may consider~~] reasonable and that is in compliance with Article 17.15.

(b)  Before taking bail under this article, the sheriff, peace officer, or jailer shall obtain the defendant's criminal history record information through the statewide telecommunications system maintained by the Department of Public Safety and through the public safety report system developed under Article 17.021.

(c)  If the defendant is charged with or has previously been convicted of an offense involving violence as defined by Article 17.03, the sheriff, officer, or jailer may not set the amount of the defendant's bail but may take the defendant's bail in the amount set by the court.

SECTION 12.  Chapter 17, Code of Criminal Procedure, is amended by adding Articles 17.51, 17.52, and 17.53 to read as follows:

Art. 17.51.  NOTICE OF CONDITIONS. (a) As soon as practicable but not later than the next business day after the date a magistrate issues an order imposing a condition of release on bond for a defendant or modifying or removing a condition previously imposed, the clerk of the court shall send a copy of the order to:

(1)  the appropriate attorney representing the state; and

(2)  the sheriff of the county where the defendant resides.

(b)  A clerk of the court may delay sending a copy of the order under Subsection (a) only if the clerk lacks information necessary to ensure service and enforcement.

(c)  If an order described by Subsection (a) prohibits a defendant from going to or near a child care facility or school, the clerk of the court shall send a copy of the order to the child care facility or school.

(d)  The copy of the order and any related information may be sent electronically or in another manner that can be accessed by the recipient.

(e)  The magistrate or the magistrate's designee shall provide written notice to the defendant of:

(1)  the conditions of release on bond; and

(2)  the penalties for violating a condition of release.

(f)  The magistrate shall make a separate record of the notice provided to the defendant under Subsection (e).

(g)  The Office of Court Administration of the Texas Judicial System shall promulgate a form for use by a magistrate or a magistrate's designee in providing notice to the defendant under Subsection (e). The form must include the relevant statutory language from the provisions of this chapter under which a condition of release on bond may be imposed on a defendant.

Art. 17.52.  REPORTING OF CONDITIONS. A chief of police or sheriff who receives a copy of an order described by Article 17.51(a), or the chief's or sheriff's designee, shall, as soon as practicable but not later than the 10th day after the date the copy is received, enter information relating to the condition of release into the appropriate database of the statewide law enforcement information system maintained by the Department of Public Safety or modify or remove information, as appropriate.

Art. 17.53.  PROCEDURES AND FORMS RELATED TO MONETARY BOND. The Office of Court Administration of the Texas Judicial System shall develop statewide procedures and prescribe forms to be used by a court to facilitate:

(1)  the refund of any cash funds paid toward a monetary bond, with an emphasis on refunding those funds to the person in whose name the receipt described by Article 17.02 was issued; and

(2)  the application of those cash funds to the defendant's outstanding court costs, fines, and fees.

SECTION 13.  Article 66.102(c), Code of Criminal Procedure, is amended to read as follows:

(c)  Information in the computerized criminal history system relating to an arrest must include:

(1)  the offender's name;

(2)  the offender's state identification number;

(3)  the arresting law enforcement agency;

(4)  the arrest charge, by offense code and incident number;

(5)  whether the arrest charge is a misdemeanor or felony;

(6)  the date of the arrest;

(7)  for an offender released on bail, whether a warrant was issued for any subsequent failure of the offender to appear in court;

(8)  the exact disposition of the case by a law enforcement agency following the arrest; and

(9) [~~(8)~~]  the date of disposition of the case by the law enforcement agency.

SECTION 14.  Section 27.005, Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

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

(1)  within one year after the date the justice is first elected:

(A)  [~~,~~] an 80-hour course in the performance of the justice's duties; and

(B)  the course described by Article 17.024(a)(1), Code of Criminal Procedure;

(2)  each following year, a 20-hour course in the performance of the justice's duties, including not less than 10 hours of instruction regarding substantive, procedural, and evidentiary law in civil matters; and

(3)  each following state fiscal biennium, the course described by Article 17.024(a)(2), Code of Criminal Procedure.

(c)  A course described by Subsection (a)(1)(A) may include a course described by Subsection (a)(1)(B).

SECTION 15.  Subchapter C, Chapter 71, Government Code, is amended by adding Section 71.0351 to read as follows:

Sec. 71.0351.  BAIL AND PRETRIAL RELEASE INFORMATION. (a) As a component of the official monthly report submitted to the Office of Court Administration of the Texas Judicial System under Section 71.035, the clerk of each court setting bail in criminal cases shall report:

(1)  the number of defendants for whom bail was set, including:

(A)  the number for each category of offense;

(B)  the number of personal bonds; and

(C)  the number of surety or cash bonds;

(2)  the number of defendants released on bail who subsequently failed to appear;

(3)  the number of defendants released on bail who subsequently violated a condition of release; and

(4)  the number of defendants who committed an offense while released on bail or community supervision.

(b)  The office shall post the information in a publicly accessible place on the agency's Internet website without disclosing any personal information of any defendant, judge, or magistrate.

(c)  Not later than December 1 of each year, the office shall submit a report containing the data collected under this section during the preceding state fiscal year to the governor, lieutenant governor, speaker of the house of representatives, and presiding officers of the standing committees of each house of the legislature with primary jurisdiction over the judiciary.

SECTION 16.  Subchapter C, Chapter 72, Government Code, is amended by adding Section 72.038 to read as follows:

Sec. 72.038.  BAIL FORM. (a) The office shall promulgate a form to be completed by a magistrate, judge, sheriff, peace officer, or jailer who sets bail under Chapter 17, Code of Criminal Procedure, for a defendant charged with an offense punishable as a Class B misdemeanor or any higher category of offense. The office shall incorporate the completed forms into the public safety report system developed under Article 17.021, Code of Criminal Procedure.

(b)  The form must:

(1)  state the cause number of the case, if available, the defendant's name and date of birth, and the offense for which the defendant was arrested;

(2)  state the name and the office or position of the person setting bail;

(3)  require the person setting bail to:

(A)  identify the bail type, the amount of the bail, and any conditions of bail;

(B)  certify that the person considered each factor provided by Article 17.15(a), Code of Criminal Procedure; and

(C)  certify that the person considered the information provided by the public safety report system; and

(4)  be electronically signed by the person setting the bail.

(c)  The person setting bail, an employee of the court that set the defendant's bail, or an employee of the county in which the defendant's bail was set must, on completion of the form required under this section, promptly but not later than 72 hours after the time the defendant's bail is set provide the form electronically to the office through the public safety report system.

(d)  The office shall publish each form submitted under this section in a database that is publicly accessible on the office's Internet website.

SECTION 17.  Section 117.055, Local Government Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a)  Except as provided by Subsection (a-1), to [~~To~~] compensate the county for the accounting and administrative expenses incurred in handling the registry funds that have not earned interest, including funds in a special or separate account, the clerk shall, at the time of withdrawal, deduct from the amount of the withdrawal a fee in an amount equal to five percent of the withdrawal but that may not exceed $50. Withdrawal of funds generated from a case arising under the Family Code is exempt from the fee deduction provided by this section.

(a-1)  A clerk may not deduct a fee under Subsection (a) from a withdrawal of funds generated by the collection of a cash bond or cash bail bond if in the case for which the bond was taken:

(1)  the defendant was found not guilty after a trial or appeal; or

(2)  the complaint, information, or indictment was dismissed without a plea of guilty or nolo contendere being entered.

(a-2)  On the request of a person to whom withdrawn funds generated by the collection of a cash bond or cash bail bond were disbursed, the clerk shall refund to the person the amount of the fee deducted under Subsection (a) if:

(1)  subsequent to the deduction, a court makes or enters an order or ruling in the case for which the bond was taken; and

(2)  had the court made or entered the order or ruling before the withdrawal of funds occurred, the deduction under Subsection (a) would have been prohibited under Subsection (a-1).

SECTION 18.  Article 17.03(f), Code of Criminal Procedure, is repealed.

SECTION 19.  As soon as practicable but not later than January 1, 2022, the Office of Court Administration of the Texas Judicial System shall create the public safety report system developed under Article 17.021, Code of Criminal Procedure, as added by this Act, and any related forms and materials and shall provide to the appropriate officials in each county and each municipality access to the system, forms, and materials at no cost. If those items are made available before January 1, 2022, the office shall notify each court clerk, judge or other magistrate, and office of an attorney representing the state.

SECTION 20.  (a) As soon as practicable but not later than January 1, 2022, the Office of Court Administration of the Texas Judicial System shall:

(1)  promulgate the forms required by Articles 17.028(g) and 17.51(g), Code of Criminal Procedure, as added by this Act, and by Section 72.038, Government Code, as added by this Act; and

(2)  develop or approve and make available the training courses and certification method as described by Article 17.024, Code of Criminal Procedure, as added by this Act, and develop the procedures and prescribe the forms required by Article 17.53, Code of Criminal Procedure, as added by this Act.

(b)  If the items described by Subsection (a) of this section are made available before January 1, 2022, the office shall notify each court clerk, judge or other magistrate, and office of an attorney representing the state.

SECTION 21.  Section 117.055, Local Government Code, as amended by this Act, applies only to a withdrawal of funds from a court registry under Section 117.055, Local Government Code, made on or after the effective date provided by Section 23(c) of this Act. A withdrawal of funds from a court registry made before the effective date provided by Section 23(c) of this Act is governed by the law in effect on the date the withdrawal was made, and the former law is continued in effect for that purpose.

SECTION 22.  The changes in law made by this Act apply 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.

SECTION 23.  (a) Except as provided by Subsection (b) or (c) of this section or another provision of this Act, this Act takes effect January 1, 2022.

(b)  Article 17.15(b), Code of Criminal Procedure, as added by this Act, takes effect June 1, 2022, but only if the constitutional amendment proposed by the 87th Legislature, 2nd Called Session, 2021, requiring a judge or magistrate to impose the least restrictive conditions of bail that may be necessary and authorizing the denial of bail under some circumstances to a person accused of a violent or sexual offense or of continuous trafficking of persons is approved by the voters. If that amendment is not approved by the voters, Article 17.15(b), Code of Criminal Procedure, has no effect.

(c)  Articles 17.021 and 17.024, Code of Criminal Procedure, as added by this Act, and Sections 4, 17, 19, 20, and 21 of this Act take effect on the 91st day after the last day of the legislative session.

\* \* \* \* \*