

By: Murr

H.B. No. 20

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

Art. 1.07. RIGHT TO BAIL. (a) Except as provided by Subsections (b) and (c) or Chapter 17, any person [All prisoners] shall be eligible for bail, [bailable] unless the person is accused of a [for] capital offense [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 accused of a violent or sexual offense may be denied bail pending trial if a judge or magistrate determines 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, peace officers, or the victim of the alleged offense.

(c) A person charged with an offense under Section 19.03, Penal Code (capital murder), or a sexual offense involving a victim younger than 17 years of age, must be denied bail pending trial unless a judge or magistrate determines by clear and convincing

1 evidence that extraordinary circumstances allow the judge or
2 magistrate to set bail and conditions of release sufficient to
3 reasonably ensure:

- 4 (1) the person's appearance in court as required; and
5 (2) the safety of the community, peace officers, and
6 the victim of the alleged offense.

7 (d) In this section, "sexual offense" and "violent offense"
8 have the meanings assigned by Section 11a, Article I, Texas
9 Constitution.

10 SECTION 3. Chapter 17, Code of Criminal Procedure, is
11 amended by adding Articles 17.021, 17.022, 17.023, 17.024, and
12 17.028 to read as follows:

13 Art. 17.021. PRETRIAL RISK ASSESSMENT TOOL. (a) The Office
14 of Court Administration of the Texas Judicial System shall develop
15 and maintain a validated pretrial risk assessment tool that is
16 standardized for statewide use, that is available for use for
17 purposes of Article 17.15, and that:

18 (1) is objective, validated for its intended use, and
19 standardized;

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

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

24 (B) the safety of the victim of the alleged
25 offense, peace officers, and the community if the defendant is
26 released;

27 (3) does not consider factors that disproportionately

1 affect persons who are members of racial or ethnic minority groups
2 or who are socioeconomically disadvantaged;

3 (4) has been demonstrated to produce results that are
4 unbiased with respect to the race or ethnicity of defendants; and

5 (5) is designed to function in a transparent manner
6 with respect to the public and each defendant to whom the tool is
7 applied.

8 (b) The office shall provide access to the pretrial risk
9 assessment tool to the appropriate officials in all counties at no
10 cost. This requirement may not be construed to require the office
11 to furnish a county official or magistrate with any equipment or
12 support to access or use the pretrial risk assessment tool.

13 (c) The office shall collect data relating to the use and
14 efficiency of the pretrial risk assessment tool. Not later than
15 December 1 of each even-numbered year, the office shall submit a
16 report containing the data collected and describing any changes or
17 updates to the pretrial risk assessment tool to the governor, the
18 lieutenant governor, the speaker of the house of representatives,
19 and the presiding officers of the standing committees of each house
20 of the legislature with jurisdiction over the judiciary.

21 Art. 17.022. PRETRIAL RISK ASSESSMENT. (a) A magistrate
22 considering the release on bail of a defendant charged with an
23 offense punishable as a Class B misdemeanor or any higher category
24 of offense shall order that:

25 (1) the personal bond office established under Article
26 17.42 for the county in which the defendant is being detained, or
27 other suitably trained person, use the validated pretrial risk

1 assessment tool developed under Article 17.021 to conduct a
2 pretrial risk assessment with respect to the defendant; and

3 (2) the results of the assessment conducted under
4 Subdivision (1) be provided to the magistrate within 48 hours of the
5 defendant's arrest.

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

9 (c) Notwithstanding Subsection (a), a magistrate may
10 personally conduct a pretrial risk assessment using the validated
11 pretrial risk assessment tool developed under Article 17.021.

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

14 Art. 17.023. AUTHORITY TO RELEASE ON BAIL IN CERTAIN CASES.

15 (a) This article applies only to a defendant charged with an
16 offense:

17 (1) that is punishable as a felony; or

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

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

23 (1) is a resident of this state and one of the counties
24 in which the magistrate serves;

25 (2) has two years of experience as a magistrate;

26 (3) has completed a training course provided or
27 approved by the Office of Court Administration of the Texas

1 Judicial System on the magistrate's duties under Article 17.022 and
2 duties with respect to setting bail in criminal cases that is at
3 least:

4 (A) four hours in length if the magistrate is
5 licensed to practice law in this state; or

6 (B) 16 hours in length if the magistrate is not
7 licensed to practice law in this state;

8 (4) has passed the examination administered by the
9 Office of Court Administration under Article 17.024(a)(3); and

10 (5) is not disqualified for the purpose as described
11 by Subsection (c).

12 (c) A magistrate is disqualified from releasing a defendant
13 on bail under Subsection (b)(5) if the magistrate:

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

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

23 (d) Beginning September 1, 2023, a magistrate who is
24 qualified to release a defendant on bail under Subsection (b) must
25 complete every state fiscal biennium after becoming qualified a
26 refresher course provided by the Office of Court Administration on
27 the magistrate's duties under Article 17.022 and duties with

1 respect to setting bail in criminal cases.

2 Art. 17.024. TRAINING AND EXAMINATION ON MAGISTRATES'
3 DUTIES REGARDING BAIL. (a) The Office of Court Administration of
4 the Texas Judicial System shall:

5 (1) develop or approve four-hour and 16-hour training
6 courses regarding a magistrate's duties under Article 17.022 and
7 duties with respect to setting bail in criminal cases that are
8 required for magistrates in Article 17.023(b)(3);

9 (2) develop and maintain a four-hour refresher course
10 regarding a magistrate's duties under Article 17.022 and duties
11 with respect to setting bail in criminal cases that is required for
12 magistrates in Article 17.023(d);

13 (3) develop and administer an examination that covers
14 the contents of the training courses in Subdivision (1); and

15 (4) provide for a method of certifying that a
16 magistrate has completed the training course required in Article
17 17.023(b)(3) and the refresher course required in Article
18 17.023(d).

19 (b) The office shall ensure that the training courses in
20 Subsection (a)(1) and the refresher course in Subsection (a)(2) are
21 available online to all magistrates at no cost.

22 Art. 17.028. BAIL DECISION. (a) Without unnecessary delay
23 but not later than 48 hours after a defendant is arrested, a
24 magistrate shall order, after considering all circumstances and the
25 results of the pretrial risk assessment conducted under Article
26 17.022, that the defendant be:

27 (1) denied bail in accordance with this chapter and

1 other law;

2 (2) granted personal bond or monetary bail bond with
3 conditions; or

4 (3) granted personal bond or monetary bail bond
5 without conditions.

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

13 (c) Except as specifically provided by other law, in each
14 criminal case, there is a rebuttable presumption that monetary
15 bail, conditions of release, or both monetary bail and conditions
16 of release are sufficient to reasonably ensure the defendant's
17 appearance in court as required and the safety of the community,
18 peace officers, and the victim of the alleged offense. In giving
19 individualized consideration to each case and for purposes of
20 rebutting the presumption established by this subsection, the court
21 is not required to hold a hearing and may rely on the results of the
22 defendant's pretrial risk assessment and other information as
23 applicable.

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

26 (1) is inconsistent with this article; or

27 (2) authorizes a magistrate to make a bail decision

1 for a defendant without considering the results of the defendant's
2 pretrial risk assessment.

3 (e) This article does not prohibit a sheriff or other peace
4 officer, or a jailer licensed under Chapter 1701, Occupations Code,
5 from accepting bail under Article 17.20 or 17.22 before a pretrial
6 risk assessment has been conducted with respect to the defendant or
7 before a bail decision has been made by a magistrate under this
8 article.

9 SECTION 4. Article 17.03(b), Code of Criminal Procedure, is
10 amended to read as follows:

11 (b) Notwithstanding any other law, a defendant [~~Only the~~
12 ~~court before whom the case is pending~~] may not be released [~~release~~
13 on personal bond if the [a] defendant [~~who~~]:

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

16 (A) Section 19.02 (Murder);
17 (B) Section 19.03 (Capital Murder);
18 (C) [~~(B)~~] Section 20.04 (Aggravated Kidnapping);
19 (D) Section 20A.02 (Trafficking of Persons);
20 (E) Section 20A.03 (Continuous Trafficking of
21 Persons);

22 (F) Section 21.02 (Continuous Sexual Abuse of
23 Young Child or Children);

24 (G) Section 21.11 (Indecency with a Child);

25 (H) Section 22.01 (Assault), if committed
26 against a peace officer or judge;

27 (I) Section 22.011 (Sexual Assault);

1 (J) Section 22.02 (Aggravated Assault);
2 (K) [(C)] Section 22.021 (Aggravated Sexual
3 Assault);
4 (L) [(D) Section 22.03 (Deadly Assault on Law
5 ~~Enforcement or Corrections Officer, Member or Employee of Board of~~
6 ~~Pardons and Paroles, or Court Participant);~~
7 [(E)] Section 22.04 (Injury to a Child, Elderly
8 Individual, or Disabled Individual);
9 (M) [(F)] Section 29.03 (Aggravated Robbery);
10 (N) [(G)] Section 30.02 (Burglary);
11 (O) Section 43.04 (Aggravated Promotion of
12 Prostitution);
13 (P) Section 43.041 (Aggravated Online Promotion
14 of Prostitution);
15 (Q) Section 43.05 (Compelling Prostitution);
16 (R) Section 43.25 (Sexual Performance by a
17 Child); or
18 (S) [(H)] Section 71.02 (Engaging in Organized
19 Criminal Activity) [↗
20 ~~[(I) Section 21.02 (Continuous Sexual Abuse of~~
21 ~~Young Child or Children); or~~
22 ~~[(J) Section 20A.03 (Continuous Trafficking of~~
23 ~~Persons)];~~
24 (2) is charged with a felony under Chapter 481, Health
25 and Safety Code, or Section 485.033, Health and Safety Code,
26 punishable by imprisonment for a minimum term or by a maximum fine
27 that is more than a minimum term or maximum fine for a first degree

1 felony; ~~or~~]

2 (3) is charged with a felony committed while
3 participating in a riot as defined by Section 42.02, Penal Code; or

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

9 SECTION 5. Article 17.032(b), Code of Criminal Procedure,
10 is amended to read as follows:

11 (b) Notwithstanding [~~Article 17.03(b), or~~] a bond schedule
12 adopted or a standing order entered by a judge, a magistrate shall
13 release a defendant on personal bond unless good cause is shown
14 otherwise if:

15 (1) the defendant:

16 (A) is not charged with and has not been
17 previously convicted of a violent offense; and

18 (B) is not charged with an offense listed in
19 Article 17.03(b);

20 (2) the defendant is examined by the service provider
21 that contracts with the jail to provide mental health or
22 intellectual and developmental disability services, the local
23 mental health authority, the local intellectual and developmental
24 disability authority, or another qualified mental health or
25 intellectual and developmental disability expert under Article
26 16.22;

27 (3) the applicable expert, in a written report

1 submitted to the magistrate under Article 16.22:

2 (A) concludes that the defendant has a mental
3 illness or is a person with an intellectual disability and is
4 nonetheless competent to stand trial; and

5 (B) recommends mental health treatment or
6 intellectual and developmental disability services for the
7 defendant, as applicable;

8 (4) the magistrate determines, in consultation with
9 the local mental health authority or local intellectual and
10 developmental disability authority, that appropriate
11 community-based mental health or intellectual and developmental
12 disability services for the defendant are available in accordance
13 with Section 534.053 or 534.103, Health and Safety Code, or through
14 another mental health or intellectual and developmental disability
15 services provider; and

16 (5) the magistrate finds, after considering all the
17 circumstances, a pretrial risk assessment, [~~if applicable,~~] and any
18 other credible information provided by the attorney representing
19 the state or the defendant, that release on personal bond would
20 reasonably ensure the defendant's appearance in court as required
21 and the safety of the community, peace officers, and the victim of
22 the alleged offense.

23 SECTION 6. Article 17.15, Code of Criminal Procedure, is
24 amended to read as follows:

25 Art. 17.15. RULES FOR SETTING [~~FIXING~~] AMOUNT OF BAIL. (a)
26 The amount of bail to be required in any case is to be regulated by
27 the court, judge, magistrate, or officer taking the bail in

1 accordance with Articles 17.20, 17.21, and 17.22 and is~~[, they are~~
2 ~~to be]~~ governed ~~[in the exercise of this discretion]~~ by the
3 Constitution and ~~[by]~~ the following rules:

4 (1) ~~[1.]~~ The bail shall be sufficiently high to give
5 reasonable assurance that the undertaking will be complied with.

6 (2) ~~[2.]~~ The power to require bail is not to be so used
7 as to make it an instrument of oppression.

8 (3) ~~[3.]~~ The nature of the offense, ~~[and]~~ the
9 circumstances under which the offense ~~[it]~~ was committed, and the
10 defendant's criminal history, including acts of family violence,
11 shall ~~[are to]~~ be considered.

12 (4) ~~[4.]~~ The ability to make bail shall ~~[is to]~~ be
13 considered ~~[regarded]~~, and proof may be taken upon this point.

14 (5) ~~[5.]~~ The future safety of a victim of the alleged
15 offense, peace officers, and the community shall be considered.

16 (6) The results of any pretrial risk assessment
17 conducted using the validated pretrial risk assessment tool
18 developed under Article 17.021 shall be considered.

19 (7) Any other relevant facts or circumstances may be
20 considered.

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

23 SECTION 7. Chapter 17, Code of Criminal Procedure, is
24 amended by adding Articles 17.50 and 17.51 to read as follows:

25 Art. 17.50. NOTICE OF CONDITIONS. (a) As soon as
26 practicable but not later than the next business day after the date
27 a magistrate issues an order imposing a condition of release on bond

1 for a defendant or modifying or removing a condition previously
2 imposed, the clerk of the court shall send a copy of the order to:

3 (1) the appropriate attorney representing the state;

4 and

5 (2) either:

6 (A) the chief of police in the municipality where
7 the defendant resides, if the defendant resides in a municipality;

8 or

9 (B) the sheriff of the county where the defendant
10 resides, if the defendant does not reside in a municipality.

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

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

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

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

23 (1) the conditions of release on bond; and

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

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

1 Art. 17.51. REPORTING OF CONDITIONS. A chief of police or
2 sheriff who receives a copy of an order under Article 17.50(a), or
3 the chief's or sheriff's designee, shall, as soon as practicable but
4 not later than the 10th day after the date the copy is received,
5 enter information relating to the condition of release into the
6 appropriate database of the statewide law enforcement information
7 system maintained by the Department of Public Safety or modify or
8 remove information, as appropriate.

9 SECTION 8. As soon as practicable but not later than
10 December 1, 2021, the Office of Court Administration of the Texas
11 Judicial System shall make provide access to the appropriate
12 officials in all counties the validated pretrial risk assessment
13 tool developed under Article 17.021, Code of Criminal Procedure, as
14 added by this Act, and any related forms and materials, at no cost.
15 If those items are made available before December 1, 2021, the
16 office shall notify each court clerk, judge or other magistrate,
17 and office of an attorney representing the state.

18 SECTION 9. As soon as practicable but not later than
19 December 1, 2021, the Office of Court Administration of the Texas
20 Judicial System shall develop or approve and make available the
21 training courses, and develop and make available the refresher
22 course, examination, and certification method required under
23 Article 17.024, Code of Criminal Procedure, as added by this Act.
24 If those items are made available before December 1, 2021, the
25 office shall notify each court clerk, judge or other magistrate,
26 and office of an attorney representing the state.

27 SECTION 10. The changes in law made by this Act apply only

1 to a person who is arrested on or after the effective date of this
2 Act. A person arrested before the effective date of this Act is
3 governed by the law in effect on the date the person was arrested,
4 and the former law is continued in effect for that purpose.

5 SECTION 11. (a) Except as provided by Subsections (b) and
6 (c) of this section, this Act takes effect December 1, 2021.

7 (b) Articles 17.021 and 17.024, Code of Criminal Procedure,
8 as added by Section 3 of this Act, and Sections 8 and 9 of this Act
9 take effect September 1, 2021.

10 (c) Section 2 of this Act takes effect December 1, 2021, but
11 only if the constitutional amendment proposed by the 87th
12 Legislature, Regular Session, 2021, is approved by the voters to
13 authorize the denial of bail to an accused person if necessary to
14 ensure the person's appearance in court and the safety of the
15 community, law enforcement, and the victim of the alleged offense,
16 and to require the denial of bail to a person accused of capital
17 murder or a sexual offense involving children under most
18 circumstances. If that amendment is not approved by the voters,
19 Section 2 of this Act has no effect.