88R3170 JRR-D

By:  Cunningham H.B. No. 1728

A BILL TO BE ENTITLED

AN ACT

relating to the release on bail of certain defendants accused of committing a felony offense and the criminal consequences of committing a felony while released on bail for a prior felony; creating a criminal offense; increasing the minimum term of imprisonment for certain felonies; changing eligibility for deferred adjudication community supervision, mandatory supervision, and parole.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. MINIMUM BAIL FOR CERTAIN FELONY OFFENDERS

SECTION 1.01.  Article 17.028(m), Code of Criminal Procedure, is amended to read as follows:

(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 or a defendant who receives a citation under Article 14.06(c) without considering the factor required by Article 17.15(a)(7) [~~17.15(a)(6)~~].

SECTION 1.02.  Article 17.03(a), Code of Criminal Procedure, is amended to read as follows:

(a)  Except as otherwise provided by this article [~~Subsection (b) or (b-1)~~], a magistrate may, in the magistrate's discretion, release the defendant on personal bond without sureties or other security.

SECTION 1.03.  Article 17.15(a), Code of Criminal Procedure, is amended to read as follows:

(a)  The amount of bail and any conditions of bail to be required in any case in which the defendant has been arrested are 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 are governed by the Constitution and the following rules:

1.  Bail and any conditions of bail shall be sufficient to give reasonable assurance that the undertaking will be complied with.

2.  The power to require bail is not to be used to make bail an instrument of oppression.

3.  The nature of the offense and the circumstances under which the offense 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 minimum amount of bail for an offense involving violence, as defined by Article 17.03, that is punishable as a felony of the second degree or any higher category of offense is:

(A)  $5 million if the offense is a capital offense;

(B)  $3 million if the offense is a felony of the first degree; and

(C)  $2 million if the offense is a felony of the second degree.

5. The ability to make bail shall be considered, and proof may be taken on this point.

6 [~~5~~].  The future safety of a victim of the alleged offense, law enforcement, and the community shall be considered.

7 [~~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.

8 [~~7~~].  The citizenship status of the defendant shall be considered.

SECTION 1.04.  Article 17.20(c), Code of Criminal Procedure, is amended to read as follows:

(c)  Notwithstanding Subsection (b), a sheriff, peace officer, or jailer may make a bail decision regarding a defendant who is charged only with a misdemeanor punishable by fine only or a defendant who receives a citation under Article 14.06(c) without considering the factor required by Article 17.15(a)(7) [~~17.15(a)(6)~~].

SECTION 1.05.  Chapter 17, Code of Criminal Procedure, as amended by this article, applies only to a person who is arrested on or after December 1, 2023. A person arrested before December 1, 2023, 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.

ARTICLE 2. IMPROPER SETTING OF BAIL; LIABILITY; OFFENSE

SECTION 2.01.  Title 5, Civil Practice and Remedies Code, is amended by adding Chapter 108A to read as follows:

CHAPTER 108A. PUBLIC SERVANT LIABILITY

Sec. 108A.001.  LIABILITY OF JUDGE OR MAGISTRATE FOR IMPROPER SETTING OF BAIL. (a) A victim of an offense that was committed while the person was released on bail, or the victim's estate if the victim is deceased, may bring a cause of action against the judge or magistrate who released the person on bail for damages incurred as a result of the offense if:

(1)  the offense for which the person was released on bail is an offense involving violence, as defined by Article 17.03, Code of Criminal Procedure, that is punishable as a felony of the second degree or any higher category of offense; and

(2)  the amount of bail set by the judge or magistrate was less than the minimum amount required under Article 17.15(a)(4), Code of Criminal Procedure, for the offense.

(b)  The amount of damages awarded in an action brought under this section may not exceed $10 million.

(c)  A judge or magistrate may not assert judicial immunity or other forms of immunity as a defense to an action brought under this section.

(d)  Section 108.002 does not apply to an action brought under this section.

SECTION 2.02.  Subchapter C, Chapter 33, Government Code, is amended by adding Section 33.052 to read as follows:

Sec. 33.052.  IMPROPER SETTING OF BAIL OR RELEASE OF CERTAIN DEFENDANTS; OFFENSE; REMOVAL. (a) A judge or magistrate commits an offense if the judge or magistrate:

(1)  sets bail for an offense involving violence, as defined by Article 17.03, Code of Criminal Procedure, that is punishable as a felony of the second degree or any higher category of offense and the amount of the bail set by the judge or magistrate is less than the minimum amount required under Article 17.15(a)(4), Code of Criminal Procedure, for the offense; or

(2)  releases on bail a defendant who is charged with committing a felony while released on bail for a prior felony in violation of Section 11d, Article I, Texas Constitution.

(b)  Except as provided by Subsection (c), an offense under this section is a misdemeanor punishable by a fine not to exceed $4,000.

(c)  An offense under this section is a misdemeanor punishable by a fine not to exceed $10,000 if it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section.

SECTION 2.03.  Sections 81.078(c) and (d), Government Code, are amended to read as follows:

(c)  On proof of final conviction of any felony involving moral turpitude, an offense punishable under Section 33.052(c), or any misdemeanor involving theft, embezzlement, or fraudulent misappropriation of money or other property, the district court of the county of the residence of the convicted attorney shall enter an order disbarring the attorney.

(d)  In an action to disbar any attorney for acts made the basis of a conviction for a felony involving moral turpitude, an offense punishable under Section 33.052(c), or a misdemeanor involving theft, embezzlement, or fraudulent misappropriation of money or other property, the record of conviction is conclusive evidence of the guilt of the attorney for the crime of which he was convicted.

SECTION 2.04.  Chapter 108A, Civil Practice and Remedies Code, as added by this article, applies only to a cause of action that accrues on or after December 1, 2023.

ARTICLE 3. INCREASED PENALTIES FOR FELONY COMMITTED WHILE RELEASED ON BAIL

SECTION 3.01.  Article 42.01, Code of Criminal Procedure, is amended by adding Section 17 to read as follows:

Sec. 17.  In addition to the information described by Section 1, the judgment must reflect affirmative findings entered pursuant to Article 42.0195.

SECTION 3.02.  Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.0195 to read as follows:

Art. 42.0195.  FINDING REGARDING CERTAIN FELONY OFFENSES COMMITTED WHILE ON BAIL. In the trial of an offense punishable as a felony of the first, second, or third degree, on the motion of the attorney representing the state the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that the offense was committed while the defendant was released on bail for a prior felony for which the defendant has been charged.

SECTION 3.03.  Article 42A.102(b), Code of Criminal Procedure, is amended to read as follows:

(b)  In all other cases, the judge may grant deferred adjudication community supervision unless:

(1)  the defendant is charged with an offense:

(A)  under Section 20A.02, 20A.03, 49.045, 49.05, 49.065, 49.07, or 49.08, Penal Code;

(B)  under Section 49.04 or 49.06, Penal Code, and, at the time of the offense:

(i)  the defendant held a commercial driver's license or a commercial learner's permit; or

(ii)  the defendant's alcohol concentration, as defined by Section 49.01, Penal Code, was 0.15 or more;

(C)  for which punishment may be increased under Section 49.09, Penal Code;

(D)  for which punishment may be increased under Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any one of those subsections; [~~or~~]

(E)  under Section 481.1123, Health and Safety Code, that is punishable under Subsection (d), (e), or (f) of that section; or

(F)  punishable as a felony of the first, second, or third degree, if it is shown that the defendant committed the offense while the defendant was released on bail for a prior felony for which the defendant has been charged;

(2)  the defendant:

(A)  is charged with an offense under Section 21.11, 22.011, 22.021, 43.04, or 43.05, Penal Code, regardless of the age of the victim, or a felony described by Article 42A.453(b), other than a felony described by Subdivision (1)(A) or (3)(B) of this subsection; and

(B)  has previously been placed on community supervision for an offense under Paragraph (A);

(3)  the defendant is charged with an offense under:

(A)  Section 21.02, Penal Code; or

(B)  Section 22.021, Penal Code, that is punishable under Subsection (f) of that section or under Section 12.42(c)(3) or (4), Penal Code; or

(4)  the defendant is charged with an offense under Section 19.02, Penal Code, except that the judge may grant deferred adjudication community supervision on determining that the defendant did not cause the death of the deceased, did not intend to kill the deceased or another, and did not anticipate that a human life would be taken.

SECTION 3.04.  Subchapter K, Chapter 42A, Code of Criminal Procedure, is amended by adding Article 42A.518 to read as follows:

Art. 42A.518.  COMMUNITY SUPERVISION FOR CERTAIN FELONY OFFENSES COMMITTED WHILE ON BAIL. A court granting community supervision to a defendant convicted of an offense for which the court has made an affirmative finding under Article 42.0195 shall require as a term of community supervision that the defendant serve a term of imprisonment in the Texas Department of Criminal Justice of not less than five years.

SECTION 3.05.  Section 508.145, Government Code, is amended by adding Subsection (e-1) to read as follows:

(e-1)  Except as otherwise provided by this subsection, an inmate serving a sentence for an offense for which the judgment contains an affirmative finding under Article 42.0195, Code of Criminal Procedure, is not eligible for release on parole until the inmate's actual calendar time served, without consideration of good conduct time, equals five calendar years, or until the date that the inmate would otherwise be eligible for release on parole under another provision of this section, whichever is later. This subsection does not apply to an inmate who is ineligible for release on parole pursuant to another provision of this section.

SECTION 3.06.  Section 508.147, Government Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a)  Except as provided by Subsection (a-1) and Section 508.149, a parole panel shall order the release of an inmate who is not on parole to mandatory supervision when the actual calendar time the inmate has served plus any accrued good conduct time equals the term to which the inmate was sentenced.

(a-1)  An inmate serving a sentence for an offense for which the judgment contains an affirmative finding under Article 42.0195, Code of Criminal Procedure, may not be released to mandatory supervision unless:

(1)  the inmate's actual calendar time served, without consideration of good conduct time, equals at least five years; and

(2)  the inmate is otherwise eligible for release under Subsection (a).

SECTION 3.07.  Subchapter D, Chapter 12, Penal Code, is amended by adding Section 12.502 to read as follows:

Sec. 12.502.  PENALTY FOR CERTAIN FELONY OFFENSES COMMITTED WHILE ON BAIL. If an affirmative finding is made under Article 42.0195, Code of Criminal Procedure, in the trial of an offense, the minimum term of imprisonment for the offense is increased to five years unless another provision of law applicable to the offense provides for a minimum term of imprisonment of five years or more.

SECTION 3.08.  Chapters 42 and 42A, Code of Criminal Procedure, as amended by this article, Sections 508.145 and 508.147, Government Code, as amended by this article, and Section 12.502, Penal Code, as added by this article, apply only to an offense committed on or after September 1, 2023. An offense committed before September 1, 2023, is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before September 1, 2023, if any element of the offense occurred before that date.

ARTICLE 4. EFFECTIVE DATE

SECTION 4.01.  (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2023.

(b)  Articles 1 and 2 of this Act take effect December 1, 2023, but only if the constitutional amendment proposed by the 88th Legislature, Regular Session, 2023, authorizing the legislature to set a minimum amount of monetary bond for persons charged with certain felony offenses involving violence and requiring the denial of bail to a person accused of committing a felony while released on bail for a prior felony under most circumstances is approved by the voters. If that amendment is not approved by the voters, Articles 1 and 2 of this Act have no effect.