88R14130 JCG-F

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A BILL TO BE ENTITLED

AN ACT

relating to citations and arrests for criminal offenses and pretrial detention and release.

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

SECTION 1.  Title 1, Code of Criminal Procedure, is amended by adding Chapter 17B to read as follows:

CHAPTER 17B. PRETRIAL RELEASE AND DETENTION ACT

SUBCHAPTER A. GENERAL PROVISIONS

Art. 17B.001.  SHORT TITLE. This chapter may be cited as the Texas Pretrial Release and Detention Act.

Art. 17B.002.  DEFINITIONS. In this chapter:

(1)  "Abscond" means to fail to appear in court as required with the intent to avoid or delay adjudication.

(2)  "Charge" means an allegation of an offense in a complaint, information, indictment, citation, or similar record.

(3)  "Citation" means a record issued by a peace officer alleging an offense.

(4)  "Covered offense" means:

(A)  a violent offense or sexual offense as those terms are defined by Section 11a(b), Article I, Texas Constitution; or

(B)  an offense under Section 20A.03, Penal Code (Continuous Trafficking of Persons).

(5)  "Detention hearing" means a hearing under Article 17B.151.

(6)  "Homeless person" means a person who at any time in the preceding six months had a primary address at:

(A)  a shelter operated and supervised by a governmental entity or a private charitable organization for the purpose of providing temporary living accommodations, including welfare hotels, congregate shelters, or transitional housing for persons with behavioral or mental health disorders; or

(B)  a public or private place not designed for or regularly used as a regular sleeping accommodation for human beings, including an automobile, a park, an abandoned building, a bus or train station, or a similar setting.

(7)  "Obstruct justice" means interfere with the criminal process with the intent to influence or impede the administration of justice. The term includes tampering with a witness or evidence.

(8)  "Offense" means conduct prohibited by law and subject to a criminal penalty.

(9)  "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10)  "Release hearing" means a hearing under Article 17B.101.

(11)  "Release on recognizance" means pretrial release of an individual with no condition other than to appear in court as required and to abide by generally applicable laws.

(12)  "Secured appearance bond" means a person's promise, secured by sufficient surety, deposit, lien, or proof of access to collateral, to forfeit a specified sum if the individual whose appearance is the subject of the bond absconds or does not appear.

(13)  "Undue hardship" means a burden that causes a person or the person's dependents to sacrifice to some extent the basic necessities of life, including food, medical care, clothing, shelter, transportation, or hygiene products.

(14)  "Unsecured appearance bond" means a person's promise other than through secured appearance bond to forfeit a specified sum if the individual whose appearance is the subject of the bond absconds or does not appear.

Art. 17B.003.  SCOPE. This chapter governs a determination to arrest, release, or detain an individual before trial. This chapter does not affect the law of this state other than this chapter regarding related matters, including:

(1)  forfeiture, release, or collection of a secured appearance bond or an unsecured appearance bond;

(2)  involuntary commitment;

(3)  a right of a crime victim, including a right of notification;

(4)  appellate review; or

(5)  release pending appeal.

Art. 17B.004.  CONFLICT OF LAWS. To the extent of any conflict between this chapter and another law, this chapter prevails.

SUBCHAPTER B. CITATION AND ARREST

Art. 17B.051.  AUTHORITY FOR CITATION OR ARREST. (a) If a peace officer has probable cause to believe an individual is committing or has committed an offense, the peace officer may issue the individual a citation or take other action authorized by law.

(b)  Except as otherwise provided by law of this state other than this chapter, a peace officer, including a person acting at the direction of the peace officer, may arrest an individual only if:

(1)  the individual is subject to an order of detention from any jurisdiction, including an arrest warrant or order of revocation of community supervision, parole, mandatory supervision, or release; or

(2)  subject to Subsection (c), the peace officer has probable cause to believe the individual is committing or has committed an offense.

(c)  If an offense under Subsection (b)(2) is a misdemeanor, a peace officer, including a person acting at the direction of a peace officer, may not arrest an individual unless:

(1)  after the person has used all reasonably available means to confirm the identification of the individual, the individual fails to provide adequate identification, orally or through documentation, as lawfully requested by the person; or

(2)  the peace officer reasonably believes arrest is necessary to:

(A)  protect a reasonably identifiable individual from significant imminent harm; or

(B)  prevent the individual from fleeing the jurisdiction.

(d)  For each arrest a peace officer makes under this article, the peace officer shall report to the law enforcement agency that employs the officer the reason the officer did not issue a citation in lieu of arrest under Subsection (a).

Art. 17B.052.  FORM OF CITATION. A citation must state:

(1)  the circumstances of the alleged offense and the provision of law violated;

(2)  if a court appearance is required:

(A)  the time and place the individual must appear before a magistrate; and

(B)  the process for requesting a change in the appearance date; and

(3)  the possible consequences of failing to appear as required by the citation or committing an offense before the individual's first court appearance.

Art. 17B.0525.  DUTIES AFTER CITATION. After issuing a citation under Article 17B.051 to an individual, a peace officer shall offer the following services to the individual:

(1)  phone calls and text messages to the individual for the purpose of reminding the individual of the date the individual is required to appear in court;

(2)  information on how the individual may:

(A)  contact the court for further information;

(B)  report to the court a change in circumstances, including difficulties in attending a scheduled court appearance; or

(C)  reschedule the date and time the individual is required to appear in court; and

(3)  if available in the jurisdiction, transportation to the court for the scheduled appearance, transitional housing as needed, and child care for the purpose of assisting the individual in attending the scheduled court appearance.

Art. 17B.053.  RELEASE AFTER ARREST. A peace officer may release an individual after arrest and without a release hearing by issuing a citation under Article 17B.051(a). The peace officer may require the individual to execute an unsecured appearance bond as a condition of release.

Art. 17B.054.  APPEARANCE ON CITATION. (a) If an individual appears as required by a citation, the court shall issue an order of pretrial release on recognizance in the case for which the citation was issued. The order must include the information under Article 17B.104(a).

(b)  If an individual absconds or does not appear as required by a citation, the court may issue an arrest warrant.

SUBCHAPTER C. RELEASE HEARING

Art. 17B.101.  RIGHT TO HEARING; TIMING. (a) Unless an arrested individual is released under Article 17B.053 after arrest, the individual is entitled to a hearing to determine release pending trial. Except as otherwise provided in Subsection (b), the court shall hold the hearing not later than 24 hours after the arrest.

(b)  The court may continue a release hearing:

(1)  on motion of the arrested individual; or

(2)  in extraordinary circumstances, to a time that is not later than 48 hours after arrest, on its own motion.

Art. 17B.102.  RIGHTS OF ARRESTED INDIVIDUAL. (a) An arrested individual has a right to be heard at a release hearing.

(b)  An arrested individual has a right to counsel at a release hearing. If the individual is unable to obtain counsel for the hearing, the court shall appoint counsel. The scope of representation under this article may be limited to the subject matter of the hearing.

Art. 17B.103.  JUDICIAL DETERMINATION OF RELEVANT RISK. At a release hearing, the court shall determine whether the arrested individual poses a risk that is relevant to pretrial release. The individual poses a relevant risk only if the court determines by clear and convincing evidence that the individual is significantly likely to abscond, obstruct justice, violate a protective order, or cause significant harm to a reasonably identifiable individual. The court shall consider:

(1)  available information concerning:

(A)  the nature, seriousness, and circumstances of the alleged offense;

(B)  the weight of the evidence against the individual;

(C)  the individual's adult criminal history, history of absconding, and community ties;

(D)  whether the individual has a pending charge in another matter or is on community supervision, parole, or mandatory supervision; and

(E)  only as factors supporting release, the defendant's:

(i)  place of residence and the period for which the defendant has resided there;

(ii)  community ties; and

(iii)  employment and education commitments;

(2)  any relevant information in a pretrial risk assessment; and

(3)  other relevant information that weighs in favor of release, including information provided by the individual or the attorney representing the state.

Art. 17B.104.  PRETRIAL RELEASE. (a) Except as otherwise provided in Subsection (b) and Article 17B.108, at a release hearing the court shall issue an order of pretrial release on recognizance. The order must state:

(1)  the time and place the individual must appear before a magistrate; and

(2)  the possible consequences of failing to appear as required by the order of committing an offense while the charge is pending.

(b)  If the court determines under Article 17B.103 that an arrested individual poses a relevant risk, the court shall determine under Articles 17B.105, 17B.106, and 17B.107 whether pretrial release of the individual is appropriate.

(c)  If the court determines under Articles 17B.105, 17B.106, and 17B.107 that pretrial release is appropriate, the court shall issue an order of pretrial release. The order must include the information required under Subsection (a) and any restrictive condition imposed by the court.

Art. 17B.105.  PRACTICAL ASSISTANCE; VOLUNTARY SUPPORTIVE SERVICES. (a) If the court determines under Article 17B.103 that an arrested individual poses a relevant risk, the court shall determine whether practical assistance or a voluntary supportive service, or both, are available and sufficient to address satisfactorily the risk.

(b)  If the court determines the practical assistance or a voluntary supportive service is available and sufficient to address satisfactorily a relevant risk the court identifies under Article 17B.103, the court shall refer the individual to the practical assistance or voluntary supportive service and issue an order of pretrial release under Article 17B.104(c).

(c)  For purposes of this article, "voluntary supportive service" includes transportation assistance, child care assistance, and referrals to community-based mental health services.

Art. 17B.106.  RESTRICTIVE CONDITION OF RELEASE. (a) If the court determines under Article 17B.105 that practical assistance or a voluntary supportive service is not sufficient to address satisfactorily a relevant risk the court identifies under Article 17B.103, the court shall impose the least restrictive condition or conditions reasonably necessary to address satisfactorily the risk and issue an order of pretrial release under Article 17B.104(c).

(b)  A restrictive condition under Subsection (a) may include:

(1)  mandatory therapeutic treatment or social services;

(2)  a requirement to seek to obtain or maintain employment or maintain an education commitment;

(3)  a restriction on possession or use of a weapon;

(4)  a restriction on travel;

(5)  a restriction on contact with a specified person;

(6)  a restriction on a specified activity;

(7)  supervision by a community supervision and corrections department or an individual;

(8)  active or passive electronic monitoring;

(9)  house arrest;

(10)  subject to Article 17B.107, a secured appearance bond or unsecured appearance bond;

(11)  a condition proposed by the arrested individual, the attorney representing the state, or an alleged victim;

(12)  any other nonfinancial condition required by law of this state other than this chapter; or

(13)  another condition to address satisfactorily the relevant risk the court identifies under Article 17B.103.

(c)  The court shall state in a record the reasons the restrictive condition or conditions imposed under Subsection (a) are the least restrictive reasonably necessary to address satisfactorily the relevant risk the court identifies under Article 17B.103.

Art. 17B.107.  FINANCIAL CONDITION OF RELEASE. (a) Subject to Articles 17B.108 and 17B.153, the court may not impose a restrictive condition under Article 17B.106 that requires initial payment of a fee in a sum greater than the arrested individual is able to pay without causing undue hardship from personal financial resources not later than 24 hours after the condition is imposed. If the individual is unable to pay the initial fee, the court shall waive or modify the fee, or waive or modify the restrictive condition that requires payment of the fee, to the extent necessary to release the individual. If the individual is unable to pay a recurring fee, the court shall waive or modify the recurring fee or the restrictive condition that requires payment of the fee.

(b)  Before imposing a secured appearance bond or unsecured appearance bond under Article 17B.106, the court shall consider the arrested individual's personal financial resources and obligations, including income, assets, expenses, liabilities, and dependents.

(c)  Subject to Articles 17B.108 and 17B.153, the court may not impose a secured appearance bond as a restrictive condition under Article 17B.106 unless the court determines by clear and convincing evidence that the arrested individual is significantly likely to abscond, obstruct justice, or violate a protective order.

(d)  Subject to Articles 17B.108 and 17B.153, the court may not impose a secured appearance bond as a restrictive condition under Article 17B.106:

(1)  to keep an arrested individual detained;

(2)  for a charge that is not a felony, unless the individual has been previously convicted of an offense under Section 38.10, Penal Code, within the preceding five years; or

(3)  the cost of which is an amount greater than the individual is able to pay without causing undue hardship from personal financial resources not later than 24 hours after the condition is imposed.

(e)  The court shall presume that a restrictive condition requiring the payment of a fee or imposing a secured appearance bond causes undue hardship under Subsection (a) or (d) on the arrested individual if the individual:

(1)  is eligible for the appointment of counsel in a criminal proceeding under Article 26.04 or other law;

(2)  is, or has been at any time within the preceding six months, a homeless person;

(3)  regularly earns income at or below 200% of the federal poverty level;

(4)  is a full-time student enrolled at a college or an institution of higher education;

(5)  has been at any time in the preceding six months confined in a correctional facility, as defined by Section 1.07, Penal Code;

(6)  has resided at any time in the preceding six months in a facility primarily engaged in providing mental health services; or

(7)  qualifies for or has dependents who qualify for any state or federal assistance program, including:

(A)  the medical assistance program operated under Chapter 32, Human Resources Code;

(B)  the supplemental nutrition assistance program (SNAP) operated under Chapter 33, Human Resources Code;

(C)  the Temporary Assistance for Needy Families (TANF) program;

(D)  Supplemental Security Income (SSI) benefits under 42 U.S.C. Section 1381 et seq.;

(E)  Social Security Disability Insurance (SSDI) benefits under 42 U.S.C. Section 401 et seq.; or

(F)  housing assistance payments under any federal law described by Section 2306.6702(5)(A)(i), Government Code.

(f)  A restrictive condition imposed under Article 17B.106 that requires the payment of a fee or imposes a secured appearance bond may never be in an amount that exceeds two percent of the arrested individual's annual income.

Art. 17B.108.  TEMPORARY PRETRIAL DETENTION. (a) At the conclusion of a release hearing, the court may issue an order to detain the arrested individual temporarily until a detention hearing, or may impose a financial condition of release in an amount greater than the individual is able to pay from personal financial resources not later than 24 hours after the condition is imposed, only if the individual is charged with a covered offense and the court determines by clear and convincing evidence that:

(1)  it is likely that the individual will abscond, obstruct justice, violate a protective order, or cause significant harm to a reasonably identifiable individual and that no less restrictive condition is sufficient to address satisfactorily the relevant risk the court identifies under Article 17B.103; or

(2)  the individual has violated a condition of an order of pretrial release for a pending criminal charge.

(b)  If the court issues an order under Subsection (a) to detain the arrested individual temporarily or that imposes a financial condition of release in an amount greater than the individual is able to pay from personal financial resources not later than 24 hours after the condition is imposed, the court shall state its reasons in a record, including why no less restrictive condition or combination of conditions is sufficient.

SUBCHAPTER D. DETENTION HEARING

Art. 17B.151.  DUTY TO HOLD HEARING; TIMING. (a) If the court issues an order of temporary pretrial detention of an arrested individual under Article 17B.108, or pretrial release of an arrested individual under Article 17B.104 subject to a restrictive condition that results in continued detention of the individual, the court shall hold a hearing to consider continued detention of the individual pending trial. The hearing must be held not later than 48 hours after issuance of the order.

(b)  The court on its own motion may continue a detention hearing for good cause for not more than 48 hours.

(c)  The court shall continue a detention hearing on motion of the detained individual for not more than 48 hours.

(d)  At the conclusion of a detention hearing, the court shall issue an order of pretrial release or detention.

Art. 17B.152.  RIGHTS OF DETAINED INDIVIDUAL. (a) At a detention hearing, the detained individual has a right to counsel. If the individual is indigent, the court shall appoint counsel. The scope of representation under this article may be limited to the subject matter of the hearing.

(b)  At a detention hearing, the detained individual has a right to:

(1)  review evidence to be introduced by the attorney representing the state before it is introduced at the hearing;

(2)  present evidence, call witnesses, and provide information;

(3)  testify; and

(4)  cross-examine witnesses.

Art. 17B.153.  PRETRIAL DETENTION. (a) At a detention hearing, the court shall consider the criteria in Articles 17B.103, 17B.104, 17B.105, 17B.106, and 17B.107 to determine whether to issue an order of pretrial detention or continue, amend, or eliminate a restrictive condition that has resulted in continued detention of the detained individual. If failure to satisfy a secured appearance bond or pay a fee is the only reason the individual continues to be detained, the fact of detention is prima facie evidence that the individual is unable to satisfy the bond or pay the fee.

(b)  The court at a detention hearing may issue an order of pretrial detention or continue a restrictive condition of release that results in detention only if the detained individual is charged with a covered offense and the court determines by clear and convincing evidence that it is likely that the individual will abscond, obstruct justice, violate a protective order, or cause significant harm to a reasonably identifiable individual and no less restrictive condition is sufficient to address satisfactorily the relevant risk the court identifies under Article 17B.103.

(c)  If under Subsection (b) the court issues an order of pretrial detention or continues a restrictive condition of release that results in detention, the court shall state its reasons in a record, including why no less restrictive condition or combination of conditions is sufficient.

SUBCHAPTER E. MODIFYING OR VACATING ORDER

Art. 17B.201.  MODIFYING OR VACATING BY AGREEMENT. By agreement of the attorney representing the state and an individual subject to an order under Subchapter C or D, the court may:

(1)  modify an order of pretrial release;

(2)  vacate an order of pretrial detention and issue an order of pretrial release; or

(3)  issue an order of pretrial detention.

Art. 17B.202.  MOTION TO MODIFY. On its own or on motion of a party, the court may modify an order of pretrial release or detention using the procedures and standards in Subchapters C and D. The court may consider new information relevant to the order, including information that the individual subject to the order has violated a condition of release or has demonstrated a history of compliance with the conditions of release.

SECTION 2.  This Act applies to an arrest made, a citation issued, or a release or detention hearing held on or after the effective date of this Act, including a hearing to enforce, modify, or vacate a release or detention order issued before the effective date of this Act.

SECTION 3.  This Act takes effect September 1, 2023.