

By: Cunningham

H.B. No. 1728

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the release on bail of certain defendants accused of
3 committing a felony offense and the criminal consequences of
4 committing a felony while released on bail for a prior felony;
5 creating a criminal offense; increasing the minimum term of
6 imprisonment for certain felonies; changing eligibility for
7 deferred adjudication community supervision, mandatory
8 supervision, and parole.

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

10 ARTICLE 1. MINIMUM BAIL FOR CERTAIN FELONY OFFENDERS

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

13 (m) Notwithstanding Subsection (a), a magistrate may make a
14 bail decision regarding a defendant who is charged only with a
15 misdemeanor punishable by fine only or a defendant who receives a
16 citation under Article 14.06(c) without considering the factor
17 required by Article 17.15(a)(7) [~~17.15(a)(6)~~].

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

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

24 SECTION 1.03. Article 17.15(a), Code of Criminal Procedure,

1 is amended to read as follows:

2 (a) The amount of bail and any conditions of bail to be
3 required in any case in which the defendant has been arrested are to
4 be regulated by the court, judge, magistrate, or officer taking the
5 bail in accordance with Articles 17.20, 17.21, and 17.22 and are
6 governed by the Constitution and the following rules:

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

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

12 3. The nature of the offense and the circumstances
13 under which the offense was committed are to be considered,
14 including whether the offense:

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

17 (B) involves violence directed against a peace
18 officer.

19 4. The minimum amount of bail for an offense involving
20 violence, as defined by Article 17.03, that is punishable as a
21 felony of the second degree or any higher category of offense is:

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

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

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

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

3 6 [~~5~~]. The future safety of a victim of the alleged
4 offense, law enforcement, and the community shall be considered.

5 7 [~~6~~]. The criminal history record information for the
6 defendant, including information obtained through the statewide
7 telecommunications system maintained by the Department of Public
8 Safety and through the public safety report system developed under
9 Article 17.021, shall be considered, including any acts of family
10 violence, other pending criminal charges, and any instances in
11 which the defendant failed to appear in court following release on
12 bail.

13 8 [~~7~~]. The citizenship status of the defendant shall
14 be considered.

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

17 (c) Notwithstanding Subsection (b), a sheriff, peace
18 officer, or jailer may make a bail decision regarding a defendant
19 who is charged only with a misdemeanor punishable by fine only or a
20 defendant who receives a citation under Article 14.06(c) without
21 considering the factor required by Article 17.15(a)(7)
22 [~~17.15(a)(6)~~].

23 SECTION 1.05. Chapter 17, Code of Criminal Procedure, as
24 amended by this article, applies only to a person who is arrested on
25 or after December 1, 2023. A person arrested before December 1,
26 2023, is governed by the law in effect on the date the person was
27 arrested, and the former law is continued in effect for that

1 purpose.

2 ARTICLE 2. IMPROPER SETTING OF BAIL; LIABILITY; OFFENSE

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

5 CHAPTER 108A. PUBLIC SERVANT LIABILITY

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

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

16 (2) the amount of bail set by the judge or magistrate
17 was less than the minimum amount required under Article
18 17.15(a)(4), Code of Criminal Procedure, for the offense.

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

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

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

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

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

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

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

13 (b) Except as provided by Subsection (c), an offense under
14 this section is a misdemeanor punishable by a fine not to exceed
15 \$4,000.

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

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

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

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

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

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

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

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

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

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

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

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

5 (1) the defendant is charged with an offense:

6 (A) under Section 20A.02, 20A.03, 49.045, 49.05,
7 49.065, 49.07, or 49.08, Penal Code;

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

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

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

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

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

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

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

1 (2) the defendant:

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

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

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

10 (A) Section 21.02, Penal Code; or

11 (B) Section 22.021, Penal Code, that is
12 punishable under Subsection (f) of that section or under Section
13 12.42(c)(3) or (4), Penal Code; or

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

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

22 Art. 42A.518. COMMUNITY SUPERVISION FOR CERTAIN FELONY
23 OFFENSES COMMITTED WHILE ON BAIL. A court granting community
24 supervision to a defendant convicted of an offense for which the
25 court has made an affirmative finding under Article 42.0195 shall
26 require as a term of community supervision that the defendant serve
27 a term of imprisonment in the Texas Department of Criminal Justice

1 of not less than five years.

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

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

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

17 (a) Except as provided by Subsection (a-1) and Section
18 508.149, a parole panel shall order the release of an inmate who is
19 not on parole to mandatory supervision when the actual calendar
20 time the inmate has served plus any accrued good conduct time equals
21 the term to which the inmate was sentenced.

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

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

1 certain felony offenses involving violence and requiring the denial
2 of bail to a person accused of committing a felony while released on
3 bail for a prior felony under most circumstances is approved by the
4 voters. If that amendment is not approved by the voters, Articles 1
5 and 2 of this Act have no effect.