

## **BILL ANALYSIS**

Senate Research Center

H.B. 20  
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Jurisprudence  
5/5/2021  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

It has been suggested that despite the presumption of innocence, many criminal defendants in Texas are detained in jail before and during trial because they cannot post monetary bail. There have been calls for revisions to bail practices in Texas with the goal of increasing public safety, decreasing costs of caring for pretrial detention populations, and minimizing the adverse impacts of extended pretrial detention for those who are a low risk to society. H.B. 20 seeks to address these issues by implementing various reforms regarding a person's right to bail.

H.B. 20 amends current law relating to the release of defendants on bail.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Authorizes this Act to be cited as the Damon Allen Act.

SECTION 2. Amends Article 1.07, Code of Criminal Procedure, as follows:

Art. 1.07. RIGHT TO BAIL. Requires any person, except as provided by Article 1.07 (Right to Bail) or by Chapter 17 (Bail), to be eligible for bail unless denial of bail is expressly permitted by the Texas Constitution. Deletes existing text requiring all prisoners to be bailable unless for capital offenses when the proof is evident.

SECTION 3. Amends Chapter 17, Code of Criminal Procedure, by adding Articles 17.021, 17.022, 17.023, 17.024, and 17.028, as follows:

Art. 17.021. PUBLIC SAFETY REPORT SYSTEM. (a) Requires the Office of Court Administration of the Texas Judicial System (OCA) to develop and maintain a validated public safety report system that is standardized for statewide use, that is available for use for purposes of Article 17.15 (Rules for Fixing Bail Amount), and that:

- (1) is objective, validated for its intended use, and standardized;
- (2) is based on an analysis of empirical data and factors relevant to:
  - (A) the likelihood of a defendant intentionally failing to appear in court as required; and
  - (B) the safety of the community, law enforcement, and the victim of the alleged offense if the defendant is released;
- (3) does not consider factors that disproportionately affect persons who are members of racial or ethnic minority groups or who are socioeconomically disadvantaged;

(4) has been demonstrated to produce results that are unbiased with respect to the race or ethnicity of defendants and does not produce a disproportionate outcome; and

(5) is designed to function in a transparent manner with respect to the public and each defendant with respect to whom a public safety report is prepared.

(b) Requires OCA to provide access to the public safety report system to the appropriate officials in each county at no cost. Prohibits this subsection from being construed to require OCA to provide a county official or magistrate with any equipment or support related to accessing or using the public safety report system.

(c) Requires OCA to collect data relating to the use and efficiency of the public safety report system. Requires OCA to consider that data, along with other relevant information, and to, not later than November 1 of each even-numbered year, make appropriate changes or updates to the public safety report system to ensure compliance with this article. Requires OCA, not later than December 1 of each even-numbered year, to submit a report containing the data collected and describing any changes or updates made to the public safety report system to the governor, the lieutenant governor, the speaker of the House of Representatives of the State of Texas, and the presiding officers of the standing committees of each house of the legislature with jurisdiction over the judiciary.

(d) Requires OCA to create and post on OCA's public Internet website a sample result that could occur through the use of the public safety report system and to include an explanation of the data used for preparing a public safety report.

Art. 17.022. PUBLIC SAFETY REPORT. (a) Requires 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 to order that:

(1) the personal bond office established under Article 17.42 (Personal Bond Office) for the county in which the defendant is being detained, or other suitably trained person, use the validated public safety report system developed under Article 17.021 to prepare a public safety report, or another public safety report approved by OCA, 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) Prohibits a magistrate from, without the consent of the sheriff, ordering a sheriff or sheriff's department personnel to prepare a public safety report under Subsection (a).

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

(d) Requires the magistrate to consider the public safety report before making a bail decision.

Art. 17.023. AUTHORITY TO RELEASE ON BAIL IN CERTAIN CASES. (a) Provides that this article applies only to a defendant charged with an offense that is punishable as a felony or a misdemeanor punishable by confinement.

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

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

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

(c) Provides that 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 (SCJC), 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 SCJC have been instituted as provided by Section 33.022 (Investigations and Formal Proceedings), Government Code, and before final disposition of the proceedings.

Art. 17.024. TRAINING ON DUTIES REGARDING BAIL. (a) Requires OCA, in consultation with the court of criminal appeals, to develop or approve training courses regarding a magistrate's duties, including duties under Article 17.022 and duties with respect to setting bail in criminal cases. Requires that the courses developed include:

(1) a 16-hour initial training course; and

(2) a four-hour continuing education course.

(b) Requires OCA to 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 OCA.

(c) Provides that 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 in a manner acceptable to OCA.

(c-1) Provides that notwithstanding Subsection (c), a magistrate who is serving on December 1, 2021, is considered to be in compliance with Subsection (c)(1) if the magistrate successfully completes the training course not later than June 1, 2022. Provides that this subsection expires January 1, 2023.

(d) Authorizes any course developed or approved by the office under this article to 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. 17.028. BAIL DECISION. (a) Requires a magistrate, without unnecessary delay but not later than 48 hours after a defendant is arrested, to order, after individualized

consideration of all circumstances and of the factors required by Article 17.15, that the defendant be:

- (1) granted personal bond with or without conditions;
- (2) granted monetary bond with or without conditions; or
- (3) denied bail in accordance with the Texas Constitution and other law.

(b) Requires the magistrate, in making a bail decision under this article, to impose, as applicable, the least restrictive conditions, if any, and minimum amount of bail, if any, whether 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) Provides that 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. Provides that for purposes of setting bail or rebutting the presumption, the court is not required to hold an evidentiary hearing.

(d) Prohibits a judge from adopting a bail schedule or entering 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 the factors in Article 17.15.

(e) Requires that 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 be provided with the warnings described by Article 15.17 (Duties of Arresting Officer and Magistrate).

(f) Authorizes a defendant who is unable to give bail in an amount required by any bail schedule or standing order related to bail to file with the applicable magistrate a sworn affidavit declaring the maximum amount that the defendant would be able to pay or provide as security within 24 hours of arrest for purposes of obtaining a bail bond. Requires that the affidavit set out sufficient facts to clearly establish that amount, given the totality of the defendant's circumstances.

(g) Entitles a defendant who files an affidavit under Subsection (f) to a hearing before the magistrate on the bail amount. Requires the magistrate, at the hearing or a review, to consider the facts stated in the affidavit and the rules established by Article 17.15 and set the defendant's bail. Authorizes the magistrate to deviate from any bail schedule or standing order related to bail in setting a defendant's bail under this subsection. Requires the magistrate to issue oral or written findings of fact supporting the decision.

(h) Provides that this article does not prohibit a sheriff or other peace officer, or a jailer licensed under Chapter 1701 (Law Enforcement Officers), Occupations Code, from accepting bail under Article 17.20 (Bail in Misdemeanor) or 17.22 (May Take Bail in Felony) before a public safety report has been prepared with respect to the defendant or before a bail decision has been made by a magistrate under this article.

(i) Authorizes a magistrate, in making a bail decision under this article, to direct either of the following to monitor the defendant's compliance with a condition of bond set by the magistrate:

(1) the personal bond office established under Article 17.42 for the county in which the defendant is being detained; or

(2) the community supervision and corrections department established under Section 76.002 (Establishment of Departments), Government Code, for the county in which the defendant is being detained.

SECTION 4. Amends Article 17.03, Code of Criminal Procedure, by amending Subsection (b) and adding Subsection (b-2), as follows:

(b) Deletes existing text authorizing only the court before whom the case is pending to release on personal bond a defendant who is charged with an offense under certain sections of the Penal Code, including Section 19.03 (Capital Murder), Section 22.021 (Aggravated Sexual Assault), Section 22.03 (Deadly Assault on Law Enforcement or Corrections Officer, Member or Employee of Board of Pardons and Paroles, or Court Participant), Section 21.02 (Continuous Sexual Abuse of Young Child or Children), or Section 20A.03 (Continuous Trafficking of Persons). Makes nonsubstantive changes.

(b-2) Prohibits a defendant, notwithstanding any other law, from being released on personal bond if the defendant is charged with an offense under the following provisions of the Penal Code:

(1) Section 19.02 (Murder);

(2) Section 19.03 (Capital Murder);

(3) Section 20A.02 (Trafficking of Persons);

(4) Section 20A.03 (Continuous Trafficking of Persons);

(5) Section 21.02 (Continuous Sexual Abuse of Young Child or Children);

(6) Section 21.11 (Indecency with a Child);

(7) Section 22.021 (Aggravated Sexual Assault);

(8) Section 43.04 (Aggravated Promotion of Prostitution), if the defendant is not alleged to have engaged in conduct constituting an offense under Section 43.02(a) (relating to committing an offense if a person knowingly offers or agrees to receive a fee from another to engage in sexual conduct);

(9) Section 43.05 (Compelling Prostitution); or

(10) Section 43.25 (Sexual Performance by a Child).

SECTION 5. Amends Article 17.15, Code of Criminal Procedure, as follows:

Art. 17.15. New heading: RULES FOR SETTING AMOUNT OF BAIL. (a) Creates this subsection from existing text. Provides that the amount of bail and the associated conditions of bail to be required in any case 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) Requires that the amount of bail, if any, and associated conditions of bail, if any, be sufficient, rather than requires that bail be sufficiently high,

to give reasonable assurance that the undertaking will be complied with. Makes a nonsubstantive change.

(2) Makes a nonsubstantive change to this subdivision.

(3) Provides that the nature of the offense, the circumstances under which the offense was committed, and the defendant's criminal history, including acts of family violence, are required to be considered, except that a misdemeanor or an offense under Chapter 481 (Texas Controlled Substances Act), Health and Safety Code, that occurred more than 10 years before the current offense is prohibited from being considered unless the previous offense involved the manufacture or delivery of a controlled substance or caused bodily injury, as defined by Section 1.07 (Definitions), Penal Code, to another, or unless good cause otherwise exists for considering that offense. Makes nonsubstantive changes.

(4) Provides that the ability to make bail is required to be considered, and proof is authorized to be taken upon this point. Makes nonsubstantive changes.

(5) Requires that the future safety of a victim of the alleged offense, law enforcement, and the community be considered, rather than requiring that the future safety of a victim of the alleged offense and the community be considered. Makes a nonsubstantive change.

(6) Requires that any public safety report prepared using the validated public safety report system developed under Article 17.021 be considered.

(7) Authorizes any other relevant facts or circumstances to be considered.

(b) Defines, for purposes of Article 17.15, "family violence."

SECTION 6. Amends Chapter 17, Code of Criminal Procedure, by adding Articles 17.50, 17.51, and 17.52, as follows:

Art. 17.50. NOTICE OF CONDITIONS. (a) Requires the clerk of the court, 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, to send a copy of the order to:

(1) the appropriate attorney representing the state; and

(2) either the chief of police in the municipality where the defendant resides, if the defendant resides in a municipality, or the sheriff of the county where the defendant resides, if the defendant does not reside in a municipality.

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

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

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

(e) Requires the magistrate or the magistrate's designee to provide written notice to the defendant of the conditions of release on bond and the penalties for violating a condition of release.

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

(g) Provides that OCA is required to promulgate a form for use by a magistrate in providing notice to the defendant under Subsection (e). Requires that the form include the relevant statutory language from the provisions of Chapter 17 under which a condition of release on bond is authorized to be imposed on a defendant.

Art. 17.51. REPORTING OF CONDITIONS. Requires a chief of police or sheriff who receives a copy of an order under Article 17.50(a), or the chief's or sheriff's designee, as soon as practicable but not later than the 10th day after the date the copy is received, to enter information relating to the condition of release into the appropriate database of the statewide law enforcement information system maintained by DPS or modify or remove information, as appropriate.

Art. 17.52. PROCEDURES AND FORMS RELATED TO CASH BAIL BOND. Requires OCA to develop statewide procedures and prescribe forms to be used by a court to facilitate:

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

(2) the application of a cash bail bond paid by a person other than a defendant to the defendant's outstanding court costs and fees.

SECTION 7. (a) Amends Article 17.02, Code of Criminal Procedure, as follows:

Art. 17.02. DEFINITION OF "BAIL BOND". Requires that any cash funds deposited under this article 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, rather than be refunded in the amount shown on the face of the receipt less the administrative fee authorized by Section 117.055, Local Government Code, after the defendant complies with the conditions of the defendant's bond, to certain individuals.

(b) Amends Section 117.055, Local Government Code, by amending Subsection (a) and adding Subsections (a-1) and (a-2), as follows:

(a) Adds an exception as provided by Subsection (a-1) to the requirement that the clerk, 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, 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 not to exceed \$50.

(a-1) Prohibits a clerk from deducting 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) Requires the clerk, on the request of a person to whom withdrawn funds generated by the collection of a cash bond or cash bail bond were disbursed, to 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).

(c) Makes application of Section 117.055, Local Government Code, as amended by this section, prospective to September 1, 2021.

(d) Provides that this section takes effect September 1, 2021.

SECTION 8. Requires OCA, as soon as practicable but not later than December 1, 2021, to create and provide access to the appropriate officials in each county the validated public safety report system developed under Article 17.021, Code of Criminal Procedure, as added by this Act, and any related forms and materials, at no cost. Requires OCA, if those items are made available before December 1, 2021, to notify each court clerk, judge or other magistrate, and office of an attorney representing the state.

SECTION 9. (a) Requires OCA, as soon as practicable but not later than December 1, 2021, to:

(1) promulgate the form required by Article 17.50(g), Code of Criminal Procedure, 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 17.52, Code of Criminal Procedure, as added by this Act.

(b) Requires OCA, if the items described by Subsection (a) of this section are made available before December 1, 2021, to notify each court clerk, judge or other magistrate, and office of an attorney representing the state.

SECTION 10. Makes application of this Act prospective.

SECTION 11. (a) Provides that except as provided by Subsection (b) of this section, this Act takes effect December 1, 2021.

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