

By: Murr

H.B. No. 3738

A BILL TO BE ENTITLED

AN ACT

relating to the pretrial release of a defendant.

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

SECTION 1. Article 1.07, Code of Criminal Procedure, is amended to read as follows:

Art. 1.07. RIGHT TO PRETRIAL RELEASE [~~BAIL~~]. (a) Except as provided by Subsection (b) or Chapter 17, any person [All prisoners] shall be eligible for pretrial release, whether on a bail bond or a personal bond, [bailable] unless the person is accused of a [for] capital offense for which [offenses when] the proof is evident. This provision shall not be [so] construed [as] to prevent pretrial release [~~bail~~] after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

(b) A person may be denied pretrial release if a judge or magistrate determines by clear and convincing evidence that requiring bail and conditions of pretrial release are insufficient to reasonably ensure:

- (1) the person's appearance in court as required; or
- (2) the safety of the community or the victim of the alleged offense.

SECTION 2. Chapter 17, Code of Criminal Procedure, is amended by adding Articles 17.021, 17.027, 17.028, and 17.029 to read as follows:

1 Art. 17.021. DEFINITION OF "PERSONAL BOND OFFICE". (a) A
2 "personal bond office" means an office established under Article
3 17.42 to:

4 (1) gather and review any information that may have a
5 bearing on whether a defendant charged with an offense will comply
6 with the conditions of a personal bond; and

7 (2) report any findings to the court before which the
8 defendant's case is pending.

9 (b) The term "personal bond office" includes a pretrial
10 services office or a pretrial release office.

11 Art. 17.027. PRETRIAL RISK ASSESSMENT. (a) The district
12 judges with criminal jurisdiction in each judicial district shall
13 adopt an instrument to be used in conducting a pretrial risk
14 assessment of a defendant charged with an offense in that district.
15 The instrument adopted must be the automated pretrial risk
16 assessment system developed under Section 72.032, Government Code,
17 or another instrument that is:

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

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

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

24 (B) danger to the community or the victim of the
25 alleged offense as a result of the defendant's pretrial release.

26 (b) A magistrate considering the release on bail of a
27 defendant charged with an offense punishable as a Class B

1 misdemeanor or any higher category of offense shall order that:

2 (1) the personal bond office for the county in which
3 the defendant is being detained, or other suitable person, use the
4 instrument adopted under Subsection (a) to conduct a pretrial risk
5 assessment with respect to the defendant; and

6 (2) the results of the assessment be provided to the
7 magistrate without unnecessary delay to ensure that the magistrate
8 is able to make a pretrial release decision under Article 17.028
9 within the period required by Subsection (a) of that article.

10 (c) The magistrate must consider the results of the pretrial
11 risk assessment before making a pretrial release decision under
12 Article 17.028.

13 Art. 17.028. PRETRIAL RELEASE DECISION. (a) Without
14 unnecessary delay but not later than 48 hours after a defendant is
15 arrested, a magistrate shall order, after considering all
16 circumstances, the results of the pretrial risk assessment
17 conducted under Article 17.027, and any credible information
18 provided by the defendant or the attorney representing the state,
19 that the defendant be:

20 (1) released on personal bond without conditions;

21 (2) released on personal bond with any condition the
22 magistrate determines necessary;

23 (3) released on a monetary bail bond without
24 conditions;

25 (4) released on a monetary bail bond with any
26 condition the magistrate determines necessary; or

27 (5) denied pretrial release in accordance with this

1 chapter.

2 (b) A magistrate may release a defendant arrested pursuant
3 to a warrant that was issued in a county other than the county in
4 which the defendant was arrested if the magistrate would have had
5 jurisdiction over the matter had the warrant been issued in the
6 county of arrest. If applicable, the magistrate shall forward a
7 copy of the pretrial release order to a personal bond office in the
8 county in which the arrest warrant was issued.

9 (c) In making a decision under this article, the magistrate
10 shall impose, as applicable, the least restrictive conditions and
11 the minimum amount or type of bail necessary to reasonably ensure
12 the defendant's appearance in court as required and the safety of
13 the community and the victim of the alleged offense.

14 (d) A magistrate may not require a defendant to provide a
15 monetary bail bond for the sole purpose of preventing the
16 defendant's pretrial release.

17 (e) A magistrate who denies a defendant's pretrial release
18 shall inform the defendant that the defendant is entitled to a
19 pretrial detention hearing under Article 17.035 and, as soon as
20 practicable but not later than 24 hours after denying the release,
21 issue a written order of denial that includes findings of fact and a
22 statement of the magistrate's reasons for denying the release.

23 (f) Any costs related to a condition of a defendant's
24 pretrial release shall be assessed as court costs or ordered paid
25 directly by a defendant as a condition of release, unless the
26 magistrate determines that the defendant is indigent or
27 demonstrates an inability to pay.

1 (g) A judge may not adopt a bail schedule or enter a standing
2 order related to bail that:

3 (1) is inconsistent with this article; or

4 (2) authorizes a magistrate or other officer to make a
5 pretrial release decision for a defendant without considering the
6 results of the defendant's pretrial risk assessment.

7 Art. 17.029. DEFENDANT APPEARING IN RESPONSE TO CITATION.

8 A defendant who appears before a magistrate as ordered by citation
9 may not be temporarily detained for purposes of conducting a
10 pretrial risk assessment or for a magistrate to issue a pretrial
11 release decision. The magistrate, after performing the duties
12 imposed by Article 15.17, shall release the defendant on personal
13 bond, unless the defendant is lawfully detained on another matter.

14 SECTION 3. Articles 17.032(a), (b), (c), and (d), Code of
15 Criminal Procedure, are amended to read as follows:

16 (a) In this article, "violent offense" means an offense
17 under the following sections of the Penal Code:

18 (1) Section 19.02 (murder);

19 (2) Section 19.03 (capital murder);

20 (3) Section 20.03 (kidnapping);

21 (4) Section 20.04 (aggravated kidnapping);

22 (5) Section 21.11 (indecent with a child);

23 (6) Section 22.01(a)(1) (assault), if the offense
24 involves family violence as defined by Section 71.004, Family Code;

25 (7) Section 22.011 (sexual assault);

26 (8) Section 22.02 (aggravated assault);

27 (9) Section 22.021 (aggravated sexual assault);

1 (10) Section 22.04 (injury to a child, elderly
2 individual, or disabled individual);

3 (11) Section 29.03 (aggravated robbery);

4 (12) Section 21.02 (continuous sexual abuse of young
5 child or children); or

6 (13) Section 20A.03 (continuous trafficking of
7 persons).

8 (b) Notwithstanding a bail schedule or any standing order
9 entered by a judge, a [A] magistrate shall release a defendant on
10 personal bond unless good cause is shown otherwise if [the]:

11 (1) the defendant is not charged with and has not been
12 previously convicted of a violent offense;

13 (2) the defendant is examined by the local mental
14 health [~~or mental retardation~~] authority, local intellectual and
15 developmental disability authority, or another mental health or
16 intellectual disability expert under Article 16.22 [~~of this code~~];

17 (3) the applicable expert, in a written assessment
18 submitted to the magistrate under Article 16.22, [+

19 [~~(A)~~] concludes that the defendant:

20 (A) has a mental illness or is a person with an
21 intellectual disability; [~~mental retardation~~] and

22 (B) requires treatment that is not available in
23 the jail [~~is nonetheless competent to stand trial~~]; [~~and~~

24 [~~(B) recommends mental health treatment for the~~
25 ~~defendant, and]~~

26 (4) the magistrate determines, in consultation with
27 the local mental health [~~or mental retardation~~] authority or local

1 intellectual and developmental disability authority, that
2 appropriate community-based mental health or intellectual
3 disability [~~mental retardation~~] services for the defendant are
4 available in accordance with [~~through the Texas Department of~~
5 ~~Mental Health and Mental Retardation under~~] Section 534.053 or
6 534.103, Health and Safety Code, or through a another mental
7 health or intellectual disability [~~mental retardation~~] services
8 provider as otherwise permitted by law; and

9 (5) the magistrate finds, after considering all the
10 circumstances, the results of the pretrial risk assessment
11 conducted under Article 17.027, and any other credible information
12 provided by the defendant or the attorney representing the state,
13 that release on personal bond would reasonably ensure the
14 defendant's appearance in court as required and the safety of the
15 community and the victim of the alleged offense.

16 (c) The magistrate, unless good cause is shown for not
17 requiring treatment, shall require as a condition of release [~~on~~
18 ~~personal bond~~] under this article that the defendant submit to
19 outpatient or inpatient mental health or intellectual disability
20 [~~mental retardation~~] treatment as recommended by the local mental
21 health [~~or mental retardation~~] authority, local intellectual and
22 developmental disability authority, or another qualified mental
23 health or intellectual disability expert if the defendant's:

24 (1) mental illness or intellectual disability [~~mental~~
25 ~~retardation~~] is chronic in nature; or

26 (2) ability to function independently will continue to
27 deteriorate if the defendant is not treated.

1 (d) In addition to a condition of release imposed under
2 Subsection (c) of this article, the magistrate may require the
3 defendant to comply with other conditions that are reasonably
4 necessary to ensure the defendant's appearance in court as required
5 and the safety of [~~protect~~] the community and the victim of the
6 alleged offense.

7 SECTION 4. Chapter 17, Code of Criminal Procedure, is
8 amended by adding Articles 17.034, 17.035, 17.036, 17.037, and
9 17.038 to read as follows:

10 Art. 17.034. RELEASE OF DEFENDANT ARRESTED FOR FAILURE TO
11 APPEAR. A magistrate shall release on personal bond a defendant
12 arrested on a warrant issued for the defendant's failure to appear
13 as ordered if the defendant shows good cause for the failure to
14 appear. If good cause is not shown, a magistrate may release the
15 defendant in accordance with Article 17.028. If the magistrate
16 releases the defendant on a monetary bail bond, the magistrate must
17 set the amount of bail at the minimum amount that the magistrate
18 determines is necessary to reasonably ensure the defendant's
19 appearance in court as required and the safety of the community and
20 the victim of the alleged offense.

21 Art. 17.035. PRETRIAL DETENTION HEARING REQUIRED. (a) As
22 soon as practicable after a defendant's pretrial release is denied
23 under Article 17.028, but not later than the 10th day after the date
24 the magistrate issues the written order denying the release, the
25 court in which the defendant's case is pending shall conduct a
26 hearing regarding whether to detain the defendant pending the trial
27 of the offense.

1 (b) A defendant may voluntarily and intelligently waive in
2 writing the defendant's right to a pretrial detention hearing. The
3 court or the attorney representing the state may not direct or
4 encourage the defendant to waive the defendant's right to a
5 pretrial detention hearing. A waiver under this subsection shall be
6 filed with and become part of the record of the proceedings. A
7 waiver obtained in violation of this subsection is presumed
8 invalid. A defendant may withdraw a waiver under this subsection at
9 any time.

10 (c) The attorney representing the state must establish
11 probable cause that the defendant committed the offense for which
12 the defendant is being detained. The attorney representing the
13 state may satisfy the requirement of this subsection by providing
14 to the court an information or indictment for the offense.

15 (d) In each criminal case, there is a rebuttable presumption
16 that monetary bail, conditions of release, or both monetary bail
17 and conditions of release are sufficient to reasonably ensure the
18 defendant's appearance in court as required and the safety of the
19 community and the victim of the alleged offense. For purposes of
20 rebutting the presumption established by this subsection, the court
21 may consider the results of the defendant's pretrial risk
22 assessment and any other information presented during the hearing.

23 (e) A defendant is entitled to be represented by counsel at
24 a pretrial detention hearing, and an indigent defendant is entitled
25 to have counsel appointed to represent the defendant for that
26 purpose.

27 (f) The defendant may present any relevant information at

1 the pretrial detention hearing, including by testifying,
2 presenting witnesses, and cross-examining witnesses presented by
3 the attorney representing the state.

4 (g) The rules of evidence applicable to criminal trials do
5 not apply to a pretrial detention hearing. The defendant or the
6 attorney representing the state may request a proffer of a
7 witness's testimony before the witness is presented.

8 (h) A defendant may not use a pretrial detention hearing to:

9 (1) seek discovery or conduct an examining trial; or
10 (2) harass a victim of or witness to the alleged
11 offense.

12 (i) At any time during the period occurring after the
13 pretrial detention hearing concludes and before the trial of the
14 offense commences, and regardless of whether the defendant was
15 released or confined as a result of that hearing, the court may
16 reopen the pretrial detention hearing based on new information that
17 the court determines is material to the issue of whether monetary
18 bail or conditions of release will reasonably ensure the
19 defendant's appearance in court as required and the safety of the
20 community and the victim of the alleged offense.

21 Art. 17.036. PRETRIAL DETENTION HEARING: FINDING AND ORDER.

22 (a) In a pretrial detention hearing, the court shall consider:

23 (1) the nature and circumstances of the offense
24 charged;

25 (2) the weight of the evidence against the defendant,
26 including whether the evidence is likely to be admissible in the
27 trial of the offense;

1 (3) the history and characteristics of the defendant,
2 including:

3 (A) the defendant's character, physical and
4 mental condition, family ties, employment, financial resources,
5 length of residence in and other ties to the community, past conduct
6 including criminal history, history relating to drug or alcohol
7 abuse, and history of attendance at court proceedings; and

8 (B) whether, at the time of the offense, the
9 defendant was on community supervision, parole, or mandatory
10 supervision or was otherwise released pending trial, sentencing, or
11 appeal for any offense, including an offense under federal law or
12 the law of another state;

13 (4) the nature and seriousness of the danger to the
14 community or the victim of the alleged offense as a result of the
15 defendant's pretrial release, if applicable;

16 (5) the nature and seriousness of the risk of
17 obstruction to the criminal justice process as a result of the
18 defendant's pretrial release, if applicable;

19 (6) the results of the defendant's pretrial risk
20 assessment; and

21 (7) any other relevant information.

22 (b) The judge shall order the defendant to be released in
23 accordance with Article 17.028 unless the judge finds by clear and
24 convincing evidence that monetary bail and conditions of release
25 are insufficient to reasonably ensure the defendant's appearance in
26 court as required or the safety of the community or the victim of
27 the alleged offense. If the judge makes the finding described by

1 this subsection, the judge shall:

2 (1) order that the defendant be detained in jail
3 pending trial; and

4 (2) issue a written order that includes findings of
5 fact and a statement of the judge's reasons for ordering the
6 pretrial detention.

7 Art. 17.037. PRETRIAL DETENTION HEARING: CONTINUANCE. A
8 defendant may request a continuance of a pretrial detention
9 hearing. Except for good cause shown, the court may not, based on a
10 defendant's request, authorize a continuance for more than five
11 days, excluding weekends and legal holidays. The attorney
12 representing the state may not request a continuance of a pretrial
13 detention hearing.

14 Art. 17.038. PRETRIAL DETENTION HEARING: APPEAL. A
15 defendant is entitled to appeal an order requiring that the
16 defendant be detained in jail pending trial. The defendant shall be
17 detained in jail pending the appeal. The court of criminal appeals
18 shall adopt rules accelerating the disposition by the appellate
19 court and the court of criminal appeals of an appeal under this
20 article.

21 SECTION 5. Section 3, Article 17.09, Code of Criminal
22 Procedure, is amended to read as follows:

23 Sec. 3. (a) Provided that whenever, during the course of
24 the action, the judge or magistrate in whose court ~~the~~ the ~~[such]~~ action
25 is pending or a judge of a court in the county with jurisdiction
26 over the action finds that the bond is defective, excessive or
27 insufficient in amount, or that the sureties, if any, are not

1 acceptable, or for any other good and sufficient cause, the [~~such~~]
2 judge or magistrate may, either in term-time or in vacation, order
3 the defendant [~~accused~~] to be rearrested, and require the defendant
4 [~~accused~~] to give another bond in accordance with this chapter in an
5 [~~such~~] amount or under any conditions [~~as~~] the judge or magistrate
6 considers [~~may deem~~] proper. When the [~~such~~] bond is [~~so~~] given and
7 approved, the defendant shall be released from custody. At any time
8 before trial of the offense for which the defendant is released on
9 bail, the attorney representing the state may, for any good and
10 sufficient cause, file a motion to declare the bond defective or
11 insufficient.

12 (b) The judge or magistrate may order the defendant to be
13 rearrested and require the defendant to give another bond in a
14 higher amount only after providing notice to each party to the
15 action and, on request of a party, an opportunity for a hearing.

16 SECTION 6. Chapter 17, Code of Criminal Procedure, is
17 amended by adding Articles 17.142 and 17.1511 to read as follows:

18 Art. 17.142. APPLICATION FOR BAIL REDUCTION. A defendant
19 who is unable to give bail in the amount ordered under this chapter
20 may submit an application for a bail reduction to the judge in whose
21 court the action is pending or a judge of a court in the county with
22 jurisdiction over the action. The judge shall promptly hold a
23 hearing regarding the application.

24 Art. 17.1511. RELEASE OF DEFENDANT DETAINED LONGER THAN
25 POTENTIAL PUNISHMENT. Notwithstanding any other law, a defendant
26 may not be detained in jail pending trial for a cumulative period
27 that exceeds the maximum term of confinement that may be imposed on

1 conviction of the offense of which the defendant is accused.

2 SECTION 7. Article 17.20, Code of Criminal Procedure, is
3 amended to read as follows:

4 Art. 17.20. BAIL IN MISDEMEANOR. Notwithstanding a bail
5 schedule or any standing order entered by a judge, in [In] cases of
6 misdemeanor when the defendant is in the custody of the officer or
7 jailer, the sheriff or other peace officer[7] or a jailer licensed
8 under Chapter 1701, Occupations Code, after considering the results
9 of the defendant's pretrial risk assessment, may, whether during
10 the term of the court or in vacation, [where the officer has a
11 defendant in custody,7] take [of] the bail of the defendant in
12 accordance with Article 17.028 [a bail bond].

13 SECTION 8. Article 17.21, Code of Criminal Procedure, is
14 amended to read as follows:

15 Art. 17.21. BAIL IN FELONY. (a) Notwithstanding a bail
16 schedule or any standing order entered by a judge, in [In] cases of
17 felony, when the defendant [accused] is in the custody of a [the]
18 sheriff or other peace officer or a jailer licensed under Chapter
19 1701, Occupations Code, and the court before which the prosecution
20 is pending is in session in the county where the defendant [accused]
21 is in custody, the court shall make a pretrial release decision in
22 accordance with Article 17.028. After approving the bail, the [fix
23 the amount of bail, if it is a bailable case and determine if the
24 accused is eligible for a personal bond, and the sheriff or other
25 peace] officer[, unless it be the police of a city,7] or [a] jailer
26 may [licensed under Chapter 1701, Occupations Code, is authorized
27 to] take the [a] bail [bond] of the defendant [accused in the

1 ~~amount]~~ as ordered [~~fixed~~] by the court. On taking the bail, the
2 ~~to be approved by such]~~ officer or jailer shall [~~taking the same,~~
3 ~~and will thereupon]~~ discharge the defendant [~~accused~~] from custody.

4 (b) The defendant and the defendant's sureties are not
5 required to appear in court.

6 (c) This article does not apply to a peace officer employed
7 by a municipality.

8 SECTION 9. Article 17.22, Code of Criminal Procedure, is
9 amended to read as follows:

10 Art. 17.22. MAY TAKE BAIL IN FELONY. In a felony case, if
11 the court before which the case [~~same~~] is pending is not in session
12 in the county where the defendant is in custody, the sheriff or
13 other peace officer~~]~~ or a jailer licensed under Chapter 1701,
14 Occupations Code, who has the defendant in custody:

15 (1) may take the defendant's bail if bail has [~~bond in~~
16 ~~such amount as may have]~~ been ordered [~~fixed~~] by the court or
17 magistrate under Article 17.028;~~]~~ or

18 (2) notwithstanding a bail schedule or any standing
19 order entered by a judge, may, after considering the results of the
20 defendant's pretrial risk assessment, take the defendant's bail in
21 accordance with Article 17.028 if bail [~~no amount~~] has not been
22 ordered [~~fixed, then in such amount as such officer may consider~~
23 ~~reasonable]~~.

24 SECTION 10. Chapter 17, Code of Criminal Procedure, is
25 amended by adding Article 17.251 to read as follows:

26 Art. 17.251. NOTIFICATION OF CONDITIONS OF RELEASE. (a) A
27 magistrate authorizing a defendant's release on bail shall, if

1 applicable, provide written notice to the defendant of:

2 (1) the conditions of the defendant's release; and

3 (2) the penalties of violating a condition of release,
4 including the defendant's arrest.

5 (b) The notice under Subsection (a) must be provided in a
6 manner that is sufficiently clear and specific to serve as a guide
7 for the defendant's conduct while released.

8 SECTION 11. Articles 17.41(b) and (c), Code of Criminal
9 Procedure, are amended to read as follows:

10 (b) Subject to Subsections (c) and (d), a magistrate shall
11 require as a condition of release [~~bond~~] for a defendant charged
12 with an offense described by Subsection (a) that the defendant not:

13 (1) directly communicate with the alleged victim of
14 the offense; or

15 (2) go near a residence, school, or other location, as
16 specifically described in the bond, frequented by the alleged
17 victim.

18 (c) A magistrate who imposes a condition of release [~~bond~~]
19 under this article may grant the defendant supervised access to the
20 alleged victim.

21 SECTION 12. Section 1, Article 17.42, Code of Criminal
22 Procedure, is amended to read as follows:

23 Sec. 1. Any county, or any judicial district with
24 jurisdiction in more than one county, with the approval of the
25 commissioners court of each county in the district, may establish a
26 personal bond office [~~to gather and review information about an~~
27 ~~accused that may have a bearing on whether he will comply with the~~

1 ~~conditions of a personal bond and report its findings to the court~~
2 ~~before which the case is pending].~~

3 SECTION 13. Section 4, Article 17.42, Code of Criminal
4 Procedure, is amended by amending Subsection (a) and adding
5 Subsection (a-1) to read as follows:

6 (a) If a court releases a defendant ~~[an accused]~~ on personal
7 bond on the recommendation of a personal bond office, the court
8 shall assess a personal bond fee of \$20 or three percent of the
9 amount of the bail fixed for the accused, whichever is greater. The
10 court may waive the fee or assess a lesser fee if the court
11 determines that the defendant is indigent or demonstrates an
12 inability to pay or if other good cause is shown. The court or
13 jailer may not refuse to release a defendant solely because the
14 defendant is unable to pay the fee if the court determines that the
15 defendant is indigent or demonstrates an inability to pay the fee.

16 (a-1) The court may require that any fee assessed under
17 Subsection (a) be paid:

- 18 (1) before the defendant is released;
19 (2) as a condition of release; or
20 (3) as court costs.

21 SECTION 14. Sections 5(a) and (b), Article 17.42, Code of
22 Criminal Procedure, are amended to read as follows:

23 (a) A personal bond ~~[pretrial release]~~ office established
24 under this article shall:

- 25 (1) prepare a record containing information about any
26 defendant ~~[accused person]~~ identified by case number only who,
27 after review by the office, is released by a court on personal bond;

- 1 (2) update the record on a monthly basis; and
2 (3) file a copy of the record with the district or
3 county clerk, as applicable based on court jurisdiction over the
4 categories of offenses addressed in the records, in any county
5 served by the office.

6 (b) In preparing a record under Subsection (a), the office
7 shall include in the record a statement of:

8 (1) the offense with which the defendant [~~person~~] is
9 charged;

10 (2) the dates of any court appearances scheduled in
11 the matter that were previously unattended by the defendant
12 [~~person~~];

13 (3) whether a summons or a warrant of arrest has been
14 issued as a result of [~~for~~] the defendant's [~~person's arrest for~~]
15 failure to appear in accordance with the terms of [~~the person's~~]
16 release;

17 (4) whether the defendant [~~person~~] has failed to
18 comply with conditions of release [~~on personal bond~~]; and

19 (5) the presiding judge or magistrate who authorized
20 the personal bond.

21 SECTION 15. Section 6(b), Article 17.42, Code of Criminal
22 Procedure, is amended to read as follows:

23 (b) In preparing an annual report under Subsection (a), the
24 office shall include in the report a statement of:

25 (1) the office's operating budget;

26 (2) the number of positions maintained for office
27 staff;

1 (3) the number of defendants [~~accused persons~~] who,
2 after review by the office, were released by a court on personal
3 bond; and

4 (4) the number of defendants [~~persons~~] described by
5 Subdivision (3):

6 (A) who were convicted of the same offense or of
7 any felony within the six years preceding the date on which charges
8 were filed in the matter pending during the defendant's [~~person's~~]
9 release;

10 (B) who failed to attend a scheduled court
11 appearance;

12 (C) for whom a summons or a warrant of arrest was
13 issued as a result of [~~for~~] the defendant's [~~person's arrest for~~]
14 failure to appear in accordance with the terms of [~~the person's~~]
15 release; or

16 (D) who were arrested for any other offense while
17 on the personal bond.

18 SECTION 16. Article [17.43](#), Code of Criminal Procedure, is
19 amended to read as follows:

20 Art. 17.43. HOME CURFEW AND ELECTRONIC MONITORING AS
21 CONDITION. (a) A magistrate may require as a condition of release
22 [~~on personal bond~~] that the defendant submit to home curfew and
23 electronic monitoring under the supervision of an agency designated
24 by the magistrate.

25 (b) Cost of monitoring may be assessed as court costs or
26 ordered paid directly by the defendant as a condition of release
27 [~~bond~~].

1 SECTION 17. The heading to Article 17.44, Code of Criminal
2 Procedure, is amended to read as follows:

3 Art. 17.44. HOME CONFINEMENT, ELECTRONIC MONITORING,
4 ALCOHOL OR [AND] DRUG TESTING, OR TREATMENT AS CONDITION.

5 SECTION 18. Article 17.44, Code of Criminal Procedure, is
6 amended by amending Subsections (a), (c), and (e) and adding
7 Subsections (a-1) and (a-2) to read as follows:

8 (a) A magistrate may require as a condition of release [~~on~~
9 ~~bond~~] that the defendant submit to [+

10 [~~(1)~~] home confinement and electronic monitoring
11 under the supervision of an agency designated by the magistrate.

12 (a-1) On reasonable belief that a defendant is under the
13 influence of alcohol or a controlled substance or on the finding
14 that alcohol or a controlled substance related to the offense for
15 which the defendant is charged, a magistrate may, if the magistrate
16 determines that the condition will serve to reasonably ensure the
17 defendant's appearance in court as required or the safety of the
18 community or the victim of the alleged offense, require as a
19 condition of release that the defendant:

20 (1) submit to testing for alcohol or a controlled
21 substance in the defendant's body; or

22 (2) participate in an alcohol or drug abuse treatment
23 or education program.

24 (a-2) The attorney representing the state may not use the
25 results of any test conducted under this chapter in a criminal
26 proceeding arising out of the offense for which the defendant is
27 charged [~~+~~]

1 ~~[(2) testing on a weekly basis for the presence of a~~
2 ~~controlled substance in the defendant's body].~~

3 (c) The magistrate may revoke the bond and order the
4 defendant arrested if the defendant:

5 (1) violates a condition of home confinement and
6 electronic monitoring;

7 (2) refuses to:

8 (A) submit to a test for alcohol or controlled
9 substances; or

10 (B) participate in an alcohol or drug abuse
11 treatment or education program;

12 (3) submits to a test for alcohol or controlled
13 substances and the test indicates the presence of alcohol or a
14 controlled substance in the defendant's body; or

15 (4) ~~[(3)]~~ fails to pay the costs of monitoring, ~~[or]~~
16 testing for alcohol or controlled substances, or participating in a
17 treatment or education program, if payment is ordered under
18 Subsection (e) as a condition of release ~~[bond]~~ and the magistrate
19 determines that the defendant is not indigent and is financially
20 able to make the payments as ordered.

21 (e) The cost of electronic monitoring, ~~[or]~~ testing for
22 alcohol or controlled substances, or participating in a treatment
23 or education program under this article may be assessed as court
24 costs or ordered paid directly by the defendant as a condition of
25 release ~~[bond]~~. A magistrate may reduce or waive a cost described by
26 this subsection if the magistrate determines that the defendant is
27 indigent or demonstrates an inability to pay.

1 SECTION 19. Article 17.441(a), Code of Criminal Procedure,
2 is amended to read as follows:

3 (a) Except as provided by Subsection (b), a magistrate shall
4 require as a condition of [~~on~~] release that a defendant charged with
5 a subsequent offense under Sections 49.04-49.06, Penal Code, or an
6 offense under Section 49.07 or 49.08 of that code:

7 (1) have installed on the motor vehicle owned by the
8 defendant or on the vehicle most regularly driven by the defendant,
9 a device that uses a deep-lung breath analysis mechanism to make
10 impractical the operation of a motor vehicle if ethyl alcohol is
11 detected in the breath of the operator; and

12 (2) not operate any motor vehicle unless the vehicle
13 is equipped with that device.

14 SECTION 20. Article 17.45, Code of Criminal Procedure, is
15 amended to read as follows:

16 Art. 17.45. CONDITIONS REQUIRING AIDS AND HIV INSTRUCTION.
17 A magistrate may require as a condition of release [~~bond~~] that a
18 defendant charged with an offense under Section 43.02, Penal Code,
19 receive counseling or education, or both, relating to acquired
20 immune deficiency syndrome or human immunodeficiency virus.

21 SECTION 21. Article 17.46, Code of Criminal Procedure, is
22 amended to read as follows:

23 Art. 17.46. CONDITIONS FOR A DEFENDANT CHARGED WITH
24 STALKING. (a) A magistrate may require as a condition of release
25 [~~on bond~~] that a defendant charged with an offense under Section
26 42.072, Penal Code, may not:

27 (1) communicate directly or indirectly with the

1 victim; or

2 (2) go to or near the residence, place of employment,
3 or business of the victim or to or near a school, day-care facility,
4 or similar facility where a dependent child of the victim is in
5 attendance.

6 (b) If the magistrate requires the prohibition contained in
7 Subsection (a)(2) of this article as a condition of release [~~on~~
8 ~~bond~~], the magistrate shall specifically describe the prohibited
9 locations and the minimum distances, if any, that the defendant
10 must maintain from the locations.

11 SECTION 22. Article 17.47, Code of Criminal Procedure, is
12 amended to read as follows:

13 Art. 17.47. CONDITIONS REQUIRING SUBMISSION OF SPECIMEN.

14 (a) A magistrate may require as a condition of release [~~on bail or~~
15 ~~bond of a defendant~~] that a [~~the~~] defendant provide to a local law
16 enforcement agency one or more specimens for the purpose of
17 creating a DNA record under Subchapter G, Chapter 411, Government
18 Code.

19 (b) For [~~A magistrate shall require as a condition of~~
20 ~~release on bail or bond of~~] a defendant described by Section
21 411.1471(a), Government Code, a magistrate shall require as a
22 condition of release that the defendant provide to a local law
23 enforcement agency one or more specimens for the purpose of
24 creating a DNA record under Subchapter G, Chapter 411, Government
25 Code.

26 SECTION 23. Articles 17.49(b), (d), (e), and (j), Code of
27 Criminal Procedure, are amended to read as follows:

1 (b) A magistrate may require as a condition of release [~~on~~
2 ~~bond~~] that a defendant charged with an offense involving family
3 violence:

4 (1) refrain from going to or near a residence, school,
5 place of employment, or other location, as specifically described
6 in the bond, frequented by an alleged victim of the offense;

7 (2) carry or wear a global positioning monitoring
8 system device and, except as provided by Subsection (h), pay the
9 costs associated with operating that system in relation to the
10 defendant; or

11 (3) except as provided by Subsection (h), if the
12 alleged victim of the offense consents after receiving the
13 information described by Subsection (d), pay the costs associated
14 with providing the victim with an electronic receptor device that:

15 (A) is capable of receiving the global
16 positioning monitoring system information from the device carried
17 or worn by the defendant; and

18 (B) notifies the victim if the defendant is at or
19 near a location that the defendant has been ordered to refrain from
20 going to or near under Subdivision (1).

21 (d) Before imposing a condition described by Subsection
22 (b)(3), a magistrate must provide to an alleged victim information
23 regarding:

24 (1) the victim's right to participate in a global
25 positioning monitoring system or to refuse to participate in that
26 system and the procedure for requesting that the magistrate
27 terminate the victim's participation;

1 (2) the manner in which the global positioning
2 monitoring system technology functions and the risks and
3 limitations of that technology, and the extent to which the system
4 will track and record the victim's location and movements;

5 (3) any locations that the defendant is ordered to
6 refrain from going to or near and the minimum distances, if any,
7 that the defendant must maintain from those locations;

8 (4) any sanctions that the court may impose on the
9 defendant for violating a condition of release [~~bond~~] imposed under
10 this article;

11 (5) the procedure that the victim is to follow, and
12 support services available to assist the victim, if the defendant
13 violates a condition of release [~~bond~~] or if the global positioning
14 monitoring system equipment fails;

15 (6) community services available to assist the victim
16 in obtaining shelter, counseling, education, child care, legal
17 representation, and other assistance available to address the
18 consequences of family violence; and

19 (7) the fact that the victim's communications with the
20 court concerning the global positioning monitoring system and any
21 restrictions to be imposed on the defendant's movements are not
22 confidential.

23 (e) In addition to the information described by Subsection
24 (d), a magistrate shall provide to an alleged victim who
25 participates in a global positioning monitoring system under this
26 article the name and telephone number of an appropriate person
27 employed by a local law enforcement agency whom the victim may call

1 to request immediate assistance if the defendant violates a
2 condition of release [~~bond~~] imposed under this article.

3 (j) A magistrate that imposes a condition described by
4 Subsection (b)(1) or (2) shall order the entity that operates the
5 global positioning monitoring system to notify the court and the
6 appropriate local law enforcement agency if a defendant violates a
7 condition of release [~~bond~~] imposed under this article.

8 SECTION 24. Chapter 17, Code of Criminal Procedure, is
9 amended by adding Articles 17.50, 17.51, and 17.52 to read as
10 follows:

11 Art. 17.50. VIOLATION OF CONDITION OF RELEASE. (a) A court
12 may, on its own motion or on the motion of the attorney representing
13 the state, issue a summons or a warrant of arrest for a defendant if
14 there is reason to believe that the defendant has violated a
15 condition of release. A summons must order the defendant to appear
16 before the court for a hearing on the violation on the date
17 specified in the summons, which may not be later than the 30th day
18 after the date the summons is issued.

19 (b) An attorney representing the state may not file a motion
20 requesting the issuance of a summons or warrant under Subsection
21 (a) based solely on the defendant's alleged commission of an
22 offense punishable by a fine only.

23 Art. 17.51. HEARING ON VIOLATION OF CONDITION OF RELEASE.
24 (a) The court must hold a hearing on an alleged violation of a
25 condition of release before revoking a defendant's bail. The
26 hearing must be held not later than:

27 (1) the 10th day after the date the defendant is

1 arrested; or

2 (2) the 30th day after the date a summons is issued for
3 the defendant.

4 (b) If the court, on its own motion or on the motion of the
5 attorney representing the state, announces its intention to revoke
6 the bail of a defendant who is in custody on the underlying case,
7 the defendant is entitled to a hearing not later than the 10th day
8 after the date the court announces its intention.

9 (c) If a revocation hearing is held following the filing of
10 a motion by the attorney representing the state under Article
11 17.50(a), the attorney representing the state must establish by a
12 preponderance of the evidence that the defendant violated a
13 condition of release.

14 Art. 17.52. REVOCATION OF BAIL. (a) After a hearing under
15 Article 17.51, the court may revoke the defendant's bail if the
16 court finds:

17 (1) by a preponderance of the evidence that the
18 defendant violated a condition of release; and

19 (2) by clear and convincing evidence that, considering
20 all relevant circumstances, including the nature and seriousness of
21 the alleged violation, monetary bail and conditions of release are
22 insufficient to reasonably ensure the defendant's appearance in
23 court as required or the safety of the community or the victim of
24 the alleged offense.

25 (b) A court that revokes the defendant's bail shall order
26 that the defendant be immediately returned to custody. Once the
27 defendant is placed in custody, the revocation of the defendant's

1 bail discharges the sureties on the bail bond, if any, from any
2 future liability on the bond. A discharge under this subsection
3 from any future liability on the bail bond does not discharge any
4 surety from liability for previous forfeitures on the bond.

5 SECTION 25. Subchapter B, Chapter 22, Government Code, is
6 amended by adding Section 22.113 to read as follows:

7 Sec. 22.113. DUTIES REGARDING BAIL. The court of criminal
8 appeals may adopt rules as necessary to implement Chapter 17, Code
9 of Criminal Procedure.

10 SECTION 26. Section 54.737(c), Government Code, is amended
11 to read as follows:

12 (c) The rules must provide that a criminal law magistrate
13 judge may only release a defendant under Article 17.028(b)
14 [~~17.031~~], Code of Criminal Procedure, under guidelines established
15 by the council of judges.

16 SECTION 27. Subchapter C, Chapter 72, Government Code, is
17 amended by adding Section 72.032 to read as follows:

18 Sec. 72.032. AUTOMATED PRETRIAL RISK ASSESSMENT SYSTEM.
19 For purposes of Article 17.027, Code of Criminal Procedure, the
20 office shall develop an automated pretrial risk assessment system
21 and make the system available to judges and magistrates in this
22 state.

23 SECTION 29. The following provisions of the Code of
24 Criminal Procedure are repealed:

25 (1) Article 17.03;

26 (2) Article 17.031;

27 (3) Article 17.15;

1 (4) Article 17.33;

2 (5) Article 17.40; and

3 (6) Sections 5(c) and 6(c), Article 17.42.

4 SECTION 30. Not later than November 1, 2018, the Office of
5 Court Administration of the Texas Judicial System shall develop the
6 automated pretrial risk assessment system required by Section
7 72.032, Government Code, as added by this Act.

8 SECTION 31. Not later than November 1, 2018, each judicial
9 district shall adopt the pretrial risk assessment instrument
10 required by Article 17.027, Code of Criminal Procedure, as added by
11 this Act.

12 SECTION 32. The change in law made by this Act applies only
13 to a person who is arrested on or after November 1, 2018. A person
14 arrested before November 1, 2018, is governed by the law in effect
15 on the date the person was arrested, and the former law is continued
16 in effect for that purpose.

17 SECTION 33. (a) Except as provided by Subsection (b) of this
18 section, this Act takes effect September 1, 2017.

19 (b) Section 1 of this Act takes effect December 1, 2017, but
20 only if the constitutional amendment proposed by the 85th
21 Legislature, Regular Session, 2017, is approved by the voters to
22 authorize the denial of pretrial release of a person accused of a
23 noncapital offense if necessary to ensure the person's appearance
24 in court and the safety of the community and the victim of the
25 alleged offense. If that amendment is not approved by the voters,
26 Section 1 of this Act has no effect.