

By: _____ .B. No. _____

Substitute the following for ____B. No. _____:

By: _____ C.S.____.B. No. _____

A BILL TO BE ENTITLED

1 AN ACT

2 relating to bail proceedings and related duties of a magistrate in a
3 criminal case.

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

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

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

14 (b) A person charged with an offense listed in Article
15 42A.054 may be denied bail pending trial if a judge or magistrate
16 determines by clear and convincing evidence that requiring bail and
17 conditions of release is insufficient to reasonably ensure:

18 (1) the person's appearance in court as required; or

19 (2) the safety of the community or the victim of the
20 alleged offense.

21 SECTION 2. Chapter 17, Code of Criminal Procedure, is
22 amended by adding Articles 17.027, 17.028, 17.034, 17.035, 17.036,
23 and 17.037 to read as follows:

24 Art. 17.027. DENIAL OF BAIL. A magistrate who denies a

1 defendant's bail as authorized by Article 1.07(b) shall inform the
2 defendant that the defendant is entitled to a bail review hearing
3 under Article 17.034 and, as soon as practicable but not later than
4 24 hours after denying bail, issue a written order of denial that
5 includes findings of fact and a statement of the magistrate's
6 reasons for the denial.

7 Art. 17.028. BAIL SCHEDULE. A judge may not adopt a bail
8 schedule or enter a standing order related to bail that is
9 inconsistent with the laws of this state.

10 Art. 17.034. BAIL REVIEW HEARING REQUIRED. (a) As soon as
11 practicable after a defendant's bail is denied, but not later than
12 the 10th day after the date the magistrate issues the written order
13 denying bail as described by Article 17.027, the court in which the
14 defendant's case is pending shall conduct a hearing regarding
15 whether to detain the defendant pending the trial of the offense.

16 (b) A defendant may voluntarily and intelligently waive in
17 writing the defendant's right to a bail review hearing. The court
18 or the attorney representing the state may not direct or encourage
19 the defendant to waive the defendant's right to a bail review
20 hearing. A waiver under this subsection shall be filed with and
21 become part of the record of the proceedings. A waiver obtained in
22 violation of this subsection is presumed invalid. A defendant may
23 withdraw a waiver under this subsection at any time.

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

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

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

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

8 (f) A defendant may not use a bail review 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 (g) At any time during the period occurring after the bail
13 review hearing concludes and before the trial of the offense
14 commences, and regardless of whether the defendant was released or
15 confined as a result of that hearing, the court may reopen the bail
16 review hearing based on new information that the court determines
17 is material to the issue of whether monetary bail or conditions of
18 release will reasonably ensure the defendant's appearance in court
19 as required and the safety of the community and the victim of the
20 alleged offense.

21 Art. 17.035. BAIL REVIEW HEARING: FINDING AND ORDER. (a)

22 In a bail review 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
6 conduct, criminal history including any prior offenses involving
7 peace officers, history relating to drug or alcohol abuse, and
8 history of attendance at court proceedings; and

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

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

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

20 (6) the results of any pretrial risk assessment of the
21 defendant; and

22 (7) any other relevant information.

23 (b) After the bail review hearing, the judge shall authorize
24 the defendant's release on bail unless the judge finds by clear and
25 convincing evidence that requiring bail and conditions of release
26 is insufficient to reasonably ensure the defendant's appearance in
27 court as required or the safety of the community or the victim of

1 the alleged offense. If the judge makes the finding described by
2 this subsection, the judge shall:

3 (1) deny the defendant's bail; and

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

7 Art. 17.036. BAIL REVIEW HEARING: CONTINUANCE. Except for
8 good cause shown, the court may not authorize a continuance for more
9 than five days, excluding weekends and legal holidays.

10 Art. 17.037. BAIL REVIEW HEARING: APPEAL. A defendant is
11 entitled to appeal a denial of bail. The defendant shall be
12 detained in jail pending the appeal. The court of criminal appeals
13 shall adopt rules accelerating the disposition by the appellate
14 court and the court of criminal appeals of an appeal under this
15 article.

16 SECTION 3. Chapter 17, Code of Criminal Procedure, is
17 amended by adding Article 17.251 to read as follows:

18 Art. 17.251. NOTIFICATION OF CONDITIONS OF RELEASE. (a) A
19 magistrate authorizing a defendant's release on bail shall, if
20 applicable, provide written notice to the defendant of:

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

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

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

27 SECTION 4. The change in law made by this Act applies only

1 to a person who is arrested on or after September 1, 2020. A person
2 arrested before September 1, 2020, is governed by the law in effect
3 immediately before the effective date of this Act, and the former
4 law is continued in effect for that purpose.

5 SECTION 5. (a) Except as provided by Subsection (b) of this
6 section, this Act takes effect September 1, 2019.

7 (b) Sections 1 and 2 of this Act take effect December 1,
8 2019, but only if the constitutional amendment proposed by the 86th
9 Legislature, Regular Session, 2019, is approved by the voters to
10 authorize the denial of bail to an accused person if necessary to
11 ensure the person's appearance in court and the safety of the
12 community and the victim of the alleged offense. If that amendment
13 is not approved by the voters, Sections 1 and 2 of this Act have no
14 effect.