

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 the release of defendants on bail.

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

4 SECTION 1. This Act may be cited as the Damon Allen Act.

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

7 Art. 17.021. BAIL ADVISORY COMMISSION. (a) The Bail
8 Advisory Commission is established to develop recommendations for
9 the Texas Judicial Council regarding a validated pretrial risk
10 assessment tool that is standardized for statewide use and
11 regarding best practices for personal bond offices. The
12 recommendations must include a validated pretrial risk assessment
13 tool that is developed as described by Subsection (h).

14 (b) The commission is composed of 11 members appointed as
15 follows:

16 (1) three members with an interest in criminal justice
17 who are appointed by the governor, including:

18 (A) one person with at least 10 years of law
19 enforcement experience;

20 (B) one attorney licensed to practice law in this
21 state who has practiced primarily in the area of criminal defense
22 for at least 10 years; and

23 (C) one attorney licensed to practice law in this
24 state who has practiced criminal law in the office of an attorney

1 representing the state for at least 10 years;

2 (2) the presiding officer of the Senate Committee on
3 Criminal Justice;

4 (3) two members of the senate who are appointed by the
5 lieutenant governor;

6 (4) the presiding officer of the House Committee on
7 Criminal Jurisprudence;

8 (5) two members of the house of representatives who
9 are appointed by the speaker of the house of representatives;

10 (6) one member appointed by the chief justice of the
11 supreme court; and

12 (7) one member appointed by the presiding judge of the
13 court of criminal appeals.

14 (c) In making appointments under Subsections (b)(1), (3),
15 and (5), the governor, lieutenant governor, and speaker of the
16 house of representatives shall coordinate to ensure that the
17 membership of the commission reflects, to the extent possible, the
18 ethnic, racial, and geographic diversity of this state.

19 (d) The governor shall designate the presiding officer of
20 the commission.

21 (e) The commission shall meet at the call of the presiding
22 officer and may hold public meetings as necessary to fulfill its
23 duties under this article.

24 (f) A member of the commission is not entitled to
25 compensation for service on the commission but is entitled to
26 reimbursement for actual and necessary expenses incurred in
27 performing commission duties.

1 (g) The Office of Court Administration of the Texas Judicial
2 System shall provide administrative support for the commission.
3 Funding for the administrative and operational expenses of the
4 commission, including any contracts or other engagements necessary
5 for the development of a recommended validated pretrial risk
6 assessment tool as described by Subsection (h)(1), shall be
7 provided through an appropriation to the Office of Court
8 Administration for that purpose.

9 (h) The commission shall, in coordination with the Office of
10 Court Administration of the Texas Judicial System:

11 (1) develop a recommended validated pretrial risk
12 assessment tool that is standardized for statewide use, that is
13 available for use for purposes of Article 17.15(a)(6), and that:

14 (A) is objective, validated for its intended use,
15 and standardized;

16 (B) is based on an analysis of empirical data and
17 risk factors relevant to:

18 (i) the risk of a defendant failing to
19 appear in court as required; and

20 (ii) the safety of the community or the
21 victim of the alleged offense if the defendant is released; and

22 (C) does not consider factors that
23 disproportionately affect persons who are members of racial or
24 ethnic minority groups or who are socioeconomically disadvantaged;

25 (2) develop recommendations regarding best practices
26 for personal bond offices to use for pretrial services authorized
27 by Article 17.42;

1 (3) collect and analyze information related to
2 pretrial release practices and distribute the analyses and
3 information as a resource to courts, personal bond offices, and
4 other relevant organizations; and

5 (4) collect information relating to defendants
6 released on bail, including the rate of failure to appear,
7 commission of new offenses, and other relevant information.

8 (i) Not later than March 1, 2020, the commission shall
9 prepare a report containing the recommendations of the commission
10 developed under this article, including the commission's
11 recommended validated pretrial risk assessment tool, and shall
12 deliver the report to the governor, the lieutenant governor, each
13 member of the legislature, the chief justice of the supreme court,
14 the presiding judge of the court of criminal appeals, and the Texas
15 Judicial Council.

16 (j) The Texas Judicial Council shall review the report and
17 may recommend to the commission changes to the tool consistent with
18 the requirements of Subsection (h)(1). Any recommended changes
19 must be submitted to the commission not later than June 1, 2020. If
20 the council recommends changes to the tool, the commission shall
21 revise the tool in accordance with the recommendations, prepare a
22 report containing the recommended tool as revised, and deliver the
23 report to the persons and entities listed in Subsection (i) not
24 later than August 1, 2020.

25 (k) Not later than August 31, 2020, the Texas Judicial
26 Council shall adopt either the validated pretrial risk assessment
27 tool recommended by the commission under Subsection (i) or the

1 revised tool recommended by the commission under Subsection (j).

2 (l) The Office of Court Administration of the Texas Judicial
3 System shall provide the validated pretrial risk assessment tool
4 adopted under Subsection (k) to magistrates in this state at no
5 cost.

6 (m) Not later than January 1, 2023, the commission shall
7 prepare a report regarding the implementation and use of the
8 validated pretrial risk assessment tool adopted under Subsection
9 (k) and its effect on pretrial recidivism rates and the rates at
10 which defendants failed to appear in court as required and shall
11 deliver the report to the governor, the lieutenant governor, each
12 member of the legislature, the chief justice of the supreme court,
13 the presiding judge of the court of criminal appeals, and the Texas
14 Judicial Council.

15 (n) The commission is abolished effective September 1,
16 2023.

17 Art. 17.027. AUTHORITY TO RELEASE ON BAIL IN CERTAIN CASES.

18 (a) Notwithstanding any other law and except as provided by Article
19 17.03(b), only a magistrate who meets the qualifications described
20 by Subsection (b) may release on bail a defendant charged with an
21 offense:

22 (1) punishable as a felony; or

23 (2) under Chapter 21 or 22, Penal Code, that is
24 punishable as a Class B misdemeanor or any higher category of
25 offense.

26 (b) To qualify to release on bail a defendant described by
27 Subsection (a), a magistrate must:

1 (1) be a resident of this state and one of the counties
2 in which the magistrate serves;

3 (2) have been licensed to practice law in this state
4 for at least four years;

5 (3) not have been removed from office by impeachment,
6 by the supreme court, by the governor on address to the legislature,
7 by a tribunal reviewing a recommendation of the State Commission on
8 Judicial Conduct, or by the legislature's abolition of the
9 magistrate's court; and

10 (4) not have resigned from office after having
11 received notice that formal proceedings by the State Commission on
12 Judicial Conduct had been instituted as provided by Section 33.022,
13 Government Code, and before final disposition of the proceedings.

14 SECTION 3. Chapter 17, Code of Criminal Procedure, is
15 amended by adding Article 17.028 to read as follows:

16 Art. 17.028. PRETRIAL RISK ASSESSMENT. (a) A magistrate
17 considering the release on bail of a defendant charged with an
18 offense punishable as a Class B misdemeanor or any higher category
19 of offense shall order that:

20 (1) the personal bond office established under Article
21 17.42 for the county in which the defendant is being detained, or
22 other suitably trained person, use the validated pretrial risk
23 assessment tool described by Article 17.15(a)(6) to conduct a
24 pretrial risk assessment with respect to the defendant; and

25 (2) the results of the assessment be provided to the
26 magistrate within 48 hours of the defendant's arrest.

27 (b) A magistrate may not, without the consent of the

1 sheriff, order a sheriff or sheriff's department personnel to
2 conduct a pretrial risk assessment under Subsection (a).

3 (c) Notwithstanding Subsection (a), a magistrate may
4 personally conduct a pretrial risk assessment using the validated
5 pretrial risk assessment tool described by Article 17.15(a)(6).

6 (d) The magistrate shall consider the results of the
7 pretrial risk assessment before making a bail decision.

8 SECTION 4. Article 17.15, Code of Criminal Procedure, is
9 amended to read as follows:

10 Art. 17.15. RULES FOR SETTING [~~FIXING~~] AMOUNT OF BAIL. (a)
11 The amount of bail to be required in any case is to be regulated by
12 the court, judge, magistrate, or officer taking the bail in
13 accordance with Articles 17.20, 17.21, and 17.22 and is [~~they are~~
14 ~~to be~~] governed [~~in the exercise of this discretion~~] by the
15 Constitution and [~~by~~] the following rules:

16 (1) [1.] The bail shall be sufficiently high to give
17 reasonable assurance that the undertaking will be complied with.

18 (2) [2.] The power to require bail is not to be so used
19 as to make it an instrument of oppression.

20 (3) [3.] The nature of the offense, [~~and~~] the
21 circumstances under which the offense [~~it~~] was committed, and the
22 defendant's criminal history, including acts of family violence,
23 shall [~~are to~~] be considered.

24 (4) [4.] The ability to make bail shall [~~is to~~] be
25 considered [~~regarded~~], and proof may be taken upon this point.

26 (5) [5.] The future safety of a victim of the alleged
27 offense, peace officers, and the community shall be considered.

1 (6) The results of a pretrial risk assessment
2 conducted using the validated pretrial risk assessment tool adopted
3 for statewide use under Article 17.021(k) shall be considered.

4 (7) Any other relevant facts or circumstances may be
5 considered.

6 (b) In this article, "family violence" has the meaning
7 assigned by Section 71.004, Family Code.

8 SECTION 5. As soon as practicable but not later than
9 September 1, 2020, the Office of Court Administration of the Texas
10 Judicial System shall make available on the office's Internet
11 website the validated pretrial risk assessment tool adopted under
12 Article 17.021(k), Code of Criminal Procedure, as added by this
13 Act, and any related forms and materials. If those items are made
14 available before September 1, 2020, the office shall notify each
15 court clerk, judge or other magistrate, and office of an attorney
16 representing the state.

17 SECTION 6. (a) Except as provided by Subsection (b) of
18 this section, the changes in law made by this Act apply only to a
19 person who is arrested on or after September 1, 2020.

20 (b) Article 17.027, Code of Criminal Procedure, as added by
21 this Act, applies to a person who is arrested on or after September
22 1, 2019.

23 SECTION 7. (a) Except as provided by Subsection (b) of
24 this section, this Act takes effect September 1, 2020.

25 (b) Sections 2, 5, and 6 of this Act take effect September 1,
26 2019.