

All Prefiled Amendments for: SB 1849

Murr

Amendment

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FLOOR AMENDMENT No. _____

BY: MURR

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Amend S.B. No. 1849 (house committee report) ^{HOUSE OF REPRESENTATIVES} by adding the following appropriately numbered SECTIONS to the bill and

renumbering subsequent SECTIONS of the bill accordingly:

SECTION ____ . Chapter 17, Code of Criminal Procedure, is amended by adding Articles 17.027, 17.028, 17.029, and 17.034 to read as follows:

Art. 17.027. PRETRIAL RISK ASSESSMENT. (a) The judges of the county courts, statutory county courts, and district courts trying criminal cases in each county shall adopt an instrument to be used in conducting a pretrial risk assessment of a defendant charged with an offense in that county. The instrument adopted must be the automated pretrial risk assessment system developed under Section 72.032, Government Code, or another instrument that is:

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

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

(A) the risk of a defendant failing to appear in court as required;

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

(C) the lawful immigration status of the defendant.

(b) 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 shall order that:

(1) the personal bond office for the county in which the defendant is being detained, or other suitably trained

person, use the instrument adopted under Subsection (a) to conduct a pretrial risk assessment with respect to the defendant; and

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

(c) A magistrate may not, without the consent of the sheriff, order a sheriff or sheriff's department personnel to conduct a pretrial risk assessment under Subsection (b).

(d) Notwithstanding Subsection (b), a magistrate may personally conduct a pretrial risk assessment using an instrument adopted under Subsection (a).

(e) The magistrate must consider the results of the pretrial risk assessment before making a bail decision under Article 17.028.

Art. 17.028. BAIL DECISION. (a) Without unnecessary delay but not later than 48 hours after a defendant is arrested, a magistrate shall order, after considering all circumstances and the results of the pretrial risk assessment conducted under Article 17.027, that, unless otherwise prohibited by law, the defendant be released on:

(1) personal bond or monetary bail bond without conditions; or

(2) personal bond or monetary bail bond with any condition the magistrate determines necessary.

(b) A magistrate may release a defendant arrested pursuant to a warrant that was issued in a county other than the county in which the defendant was arrested if a bail decision has not previously been made by another magistrate and if the magistrate

would have had jurisdiction over the matter had the warrant been issued in the county of arrest. If applicable, the magistrate shall forward a copy of the bail order to a personal bond office in the county in which the arrest warrant was issued.

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

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

(e) If the magistrate determines that a defendant is not indigent and is able to pay any costs related to a condition of the defendant's bail, the magistrate shall assess the costs as court costs or order the costs to be paid directly by the defendant as a condition of release.

(f) A judge may not adopt a bail schedule or enter 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 results of the defendant's pretrial risk assessment.

(g) This article does not prohibit a sheriff or other peace officer, or a jailer licensed under Chapter 1701, Occupations Code, from accepting bail under Article 17.20 or 17.22 before a pretrial risk assessment has been conducted with respect to the defendant or before a bail decision has been made by a magistrate under this article.

Art. 17.029. DEFENDANT APPEARING IN RESPONSE TO CITATION.

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

Art. 17.034. RELEASE OF DEFENDANT ARRESTED FOR FAILURE TO APPEAR. A magistrate shall release on personal bond a defendant who was released on personal bond and subsequently arrested on a warrant issued for the defendant's failure to appear as ordered if the defendant shows good cause for the failure to appear. If good cause is not shown, a magistrate may release the defendant in accordance with Article 17.028.

SECTION ____ . Section 4, Article 17.09, Code of Criminal Procedure, is amended to read as follows:

Sec. 4. (a) Notwithstanding any other provision of this article, the judge or magistrate in whose court a criminal action is pending may not order the accused to be rearrested or require the accused to give another bond in a higher amount because the accused:

(1) withdraws a waiver of the right to counsel; [~~or~~]

(2) requests the assistance of counsel, appointed or retained; or

(3) is formally charged with the same offense for which the accused was initially arrested and bond was given, except as provided by Subsection (b).

(b) The judge or magistrate may order the accused to be rearrested or require the accused to give another bond in a

higher amount based on the circumstance described by Subsection (a)(3) only after providing notice to each party to the action and, on request of any party, an opportunity for a hearing.

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

Art. 17.20. BAIL IN MISDEMEANOR. In cases of misdemeanor when the defendant is in the custody of the officer or jailer, the sheriff or other peace officer~~[r]~~ or a jailer licensed under Chapter 1701, Occupations Code, may, whether during the term of the court or in vacation, ~~[where the officer has a defendant in custody,~~] take ~~[of]~~ the bail of the defendant as the officer or jailer may consider reasonable ~~[a bail bond]~~.

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

Art. 17.21. BAIL IN FELONY. (a) In cases of felony, when the defendant ~~[accused]~~ is in the custody of a [the] sheriff or other peace officer or a jailer licensed under Chapter 1701, Occupations Code, and the court before which the prosecution is pending is in session in the county where the defendant ~~[accused]~~ is in custody, the court shall make a bail decision in accordance with Article 17.028. After approving the bail, the ~~[fix the amount of bail, if it is a bailable case and determine if the accused is eligible for a personal bond; and the sheriff or other peace]~~ officer, unless it be the police of a city, or [a] jailer may ~~[licensed under Chapter 1701, Occupations Code, is authorized to]~~ take the ~~[a]~~ bail ~~[bond]~~ of the defendant ~~[accused in the amount]~~ as ordered ~~[fixed]~~ by the court under Article 17.028. On taking the bail, the ~~[, to be approved by such]~~ officer or jailer shall ~~[taking the same, and will thereupon]~~ discharge the defendant ~~[accused]~~ from custody.

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

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

Art. 17.22. MAY TAKE BAIL IN FELONY. In a felony case, if the court before which the case [~~same~~] is pending is not in session in the county where the defendant is in custody, the sheriff or other peace officer[~~r~~] or a jailer licensed under Chapter 1701, Occupations Code, who has the defendant in custody may take the defendant's bail [~~bond in such amount~~] as ordered [~~may have been fixed~~] by the court or magistrate under Article 17.028[~~r~~] or, if bail [~~no amount~~] has not been ordered [~~fixed~~], [~~then in such amount~~] as the [~~such~~] officer or jailer may consider reasonable.

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

Art. 17.251. NOTIFICATION OF CONDITIONS OF RELEASE.

(a) A magistrate authorizing a defendant's release on bail shall, if applicable, provide written notice to the defendant of:

(1) the conditions of the defendant's release; and
(2) the penalties of violating a condition of release, including the defendant's arrest.

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

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

(a) If a court releases a defendant [~~an accused~~] on

personal bond on the recommendation of a personal bond office, the court shall assess a personal bond fee of \$20 or three percent of the amount of the bail fixed for the defendant [~~accused~~], whichever is greater. The court may waive the fee or assess a lesser fee if the court determines that the defendant is indigent or demonstrates an inability to pay or if other good cause is shown. The court may require that any fee assessed under this subsection be paid:

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

(a-1) Notwithstanding Subsection (a), the court or jailer may not refuse to release a defendant based solely on the defendant's failure to pay a personal bond fee if the defendant is indigent or demonstrates an inability to pay the fee.

SECTION ____ . Article 17.43(a), Code of Criminal Procedure, is amended to read as follows:

(a) A magistrate may require as a condition of release [~~on personal bond~~] that the defendant submit to home curfew and electronic monitoring under the supervision of an agency designated by the magistrate.

SECTION ____ . Article 17.44(e), Code of Criminal Procedure, is amended to read as follows:

(e) The cost of electronic monitoring or testing for controlled substances under this article may be assessed as court costs or ordered paid directly by the defendant as a condition of bond. A magistrate may reduce or waive a cost described by this subsection if the magistrate determines that the defendant is indigent or demonstrates an inability to pay.

SECTION ____ . Section 54.737(c), Government Code, is

amended to read as follows:

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

SECTION ____ . Section 56.003, Government Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) In addition to the uses described by Subsection (b), funds appropriated for any fiscal year may be used to provide continuing legal education regarding bail practices to any master, magistrate, referee, or associate judge appointed pursuant to Chapter 54 or 54A as required by the court of criminal appeals under Section 74.025.

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

Sec. 72.032. AUTOMATED PRETRIAL RISK ASSESSMENT SYSTEM; PRETRIAL RISK ASSESSMENT INSTRUMENTS. For purposes of Article 17.027, Code of Criminal Procedure, the office shall develop an automated pretrial risk assessment system and make the system available to judges and other magistrates in this state at no cost to a county, municipality, or magistrate. The office shall also make available nonautomated pretrial risk assessment instruments to judges and other magistrates in this state at no cost to a county, municipality, or magistrate.

SECTION ____ . The following provisions of the Code of Criminal Procedure are repealed:

- (1) Article 17.03(g);
- (2) Article 17.031; and
- (3) Sections 5(c) and 6(c), Article 17.42.

SECTION ____ . Not later than January 1, 2019, the Office of

Court Administration of the Texas Judicial System shall develop the automated pretrial risk assessment system and make available automated or nonautomated pretrial risk assessment instruments as required by Section 72.032, Government Code, as added by this Act.

SECTION _____. Not later than January 1, 2019, the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county shall adopt a pretrial risk assessment instrument as required by Article 17.027, Code of Criminal Procedure, as added by this Act.

SECTION _____. The change in law made by Sections ____ to ____ applies only to a person who is arrested on or after January 1, 2019. A person arrested before January 1, 2019, is governed by the law in effect on the date the person was arrested, and the former law is continued in effect for that purpose.