

By: Whitmire

S.B. No. 1338

A BILL TO BE ENTITLED

AN ACT

relating to the pretrial release of a defendant and to funding for judicial continuing legal education.

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

1 read as follows:

2 Art. 17.021. DEFINITION OF "PERSONAL BOND OFFICE". (a) A  
3 "personal bond office" means an office established under Article  
4 17.42 to:

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

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

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

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

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

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

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

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

27 (b) A magistrate considering the release on bail of a

1 defendant charged with an offense punishable as a Class B  
2 misdemeanor or any higher category of offense shall order that:

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

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

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

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

21 (1) released on personal bond without conditions;

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

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

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

1           (5) denied pretrial release in accordance with this  
2 chapter.

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

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

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

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

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

1 demonstrates an inability to pay.

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

4 (1) is inconsistent with this article; or

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

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

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

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

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

19 (1) Section 19.02 (murder);

20 (2) Section 19.03 (capital murder);

21 (3) Section 20.03 (kidnapping);

22 (4) Section 20.04 (aggravated kidnapping);

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

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

26 (7) Section 22.011 (sexual assault);

27 (8) Section 22.02 (aggravated assault);

- 1           (9) Section 22.021 (aggravated sexual assault);  
2           (10) Section 22.04 (injury to a child, elderly  
3 individual, or disabled individual);  
4           (11) Section 29.03 (aggravated robbery);  
5           (12) Section 21.02 (continuous sexual abuse of young  
6 child or children); or  
7           (13) Section 20A.03 (continuous trafficking of  
8 persons).

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

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

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

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

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

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

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

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

27           (4) the magistrate determines, in consultation with

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

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

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

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

27 (2) ability to function independently will continue to

1 deteriorate if the defendant is not treated.

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

8 SECTION 4. Chapter 17, Code of Criminal Procedure, is  
9 amended by adding Articles 17.034, 17.035, 17.036, 17.037, and  
10 17.038 to read as follows:

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

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



1 of the offense.

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

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

16 (d) In each criminal case, there is a rebuttable presumption  
17 that monetary bail, conditions of release, or both monetary bail  
18 and conditions of release are sufficient to 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. For purposes of  
21 rebutting the presumption established by this subsection, the court  
22 may consider the results of the defendant's pretrial risk  
23 assessment and any other information presented during the hearing.

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

1       (f) The defendant may present any relevant information at  
2 the pretrial detention hearing, including by testifying,  
3 presenting witnesses, and cross-examining witnesses presented by  
4 the attorney representing the state.

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

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

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

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

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

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

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

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

1 trial of the offense;

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

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

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

22 (7) any other relevant information.

23 (b) The judge shall order the defendant to be released in  
24 accordance with Article 17.028 unless the judge finds by clear and  
25 convincing evidence that monetary bail and conditions of release  
26 are 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) order that the defendant be detained in jail  
4 pending trial; and

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

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

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

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

24 Sec. 3. (a) Provided that whenever, during the course of  
25 the action, the judge or magistrate in whose court the [such] action  
26 is pending or a judge of a court in the county with jurisdiction  
27 over the action finds that the bond is defective, excessive or

1 insufficient in amount, or that the sureties, if any, are not  
2 acceptable, or for any other good and sufficient cause, the [~~such~~]  
3 judge or magistrate may, either in term-time or in vacation, order  
4 the defendant [~~accused~~] to be rearrested, and require the defendant  
5 [~~accused~~] to give another bond in accordance with this chapter in an  
6 [~~such~~] amount or under any conditions [~~as~~] the judge or magistrate  
7 considers [~~may deem~~] proper. When the [~~such~~] bond is [~~so~~] given and  
8 approved, the defendant shall be released from custody. At any time  
9 before trial of the offense for which the defendant is released on  
10 bail, the attorney representing the state may, for any good and  
11 sufficient cause, file a motion to declare the bond defective or  
12 insufficient.

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

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

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

25 Art. 17.1511. RELEASE OF DEFENDANT DETAINED LONGER THAN  
26 POTENTIAL PUNISHMENT. Notwithstanding any other law, a defendant  
27 may not be detained in jail pending trial for a cumulative period

1 that exceeds the maximum term of confinement that may be imposed on  
2 conviction of the offense of which the defendant is accused.

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

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

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

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

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

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

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

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

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

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

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

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

27 Art. 17.251. NOTIFICATION OF CONDITIONS OF RELEASE. (a) A

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

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

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

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

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

- 14           (1) directly communicate with the alleged victim of  
15 the offense; or  
16           (2) go near a residence, school, or other location, as  
17 specifically described in the bond, frequented by the alleged  
18 victim.

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

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

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



1 ~~accused that may have a bearing on whether he will comply with the~~  
2 ~~conditions of a personal bond and report its findings to the court~~  
3 ~~before which the case is pending].~~

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

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

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

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

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

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

- 26 (1) prepare a record containing information about any  
27 defendant ~~[accused person]~~ identified by case number only who,

1 after review by the office, is released by a court on personal bond;

2 (2) update the record on a monthly basis; and

3 (3) file a copy of the record with the district or  
4 county clerk, as applicable based on court jurisdiction over the  
5 categories of offenses addressed in the records, in any county  
6 served by the office.

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

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

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

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

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

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

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

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

26 (1) the office's operating budget;

27 (2) the number of positions maintained for office

1 staff;

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

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

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

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

13 (C) for whom a summons or a warrant of arrest was  
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; or

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

19 SECTION 16. Article 17.43, Code of Criminal Procedure, is  
20 amended to read as follows:

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

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

1 [~~bond~~].

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

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

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

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

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

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

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

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

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

1 charged [~~or~~

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

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

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

8 (2) refuses to:

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

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

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

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

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

1 is indigent or demonstrates an inability to pay.

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

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

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

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

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

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

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

24 Art. 17.46. CONDITIONS FOR A DEFENDANT CHARGED WITH  
25 STALKING. (a) A magistrate may require as a condition of release  
26 [~~on bond~~] that a defendant charged with an offense under Section  
27 42.072, Penal Code, may not:

1           (1) communicate directly or indirectly with the  
2 victim; or

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

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

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

14           Art. 17.47. CONDITIONS REQUIRING SUBMISSION OF SPECIMEN.

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

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

27           SECTION 23. Articles 17.49(b), (d), (e), and (j), Code of

1 Criminal Procedure, are amended to read as follows:

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

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

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

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

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

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

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

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



1 terminate the victim's participation;

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

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

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

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

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

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

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

1 employed by a local law enforcement agency whom the victim may call  
2 to request immediate assistance if the defendant violates a  
3 condition of release [~~bond~~] imposed under this article.

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

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

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

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

24 Art. 17.51. HEARING ON VIOLATION OF CONDITION OF RELEASE.

25 (a) The court must hold a hearing on an alleged violation of a  
26 condition of release before revoking a defendant's bail. The  
27 hearing must be held not later than:

1           (1) the 10th day after the date the defendant is  
2 arrested; or

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

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

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

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

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

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

26           (b) A court that revokes the defendant's bail shall order  
27 that the defendant be immediately returned to custody. Once the

1 defendant is placed in custody, the revocation of the defendant's  
2 bail discharges the sureties on the bail bond, if any, from any  
3 future liability on the bond. A discharge under this subsection  
4 from any future liability on the bail bond does not discharge any  
5 surety from liability for previous forfeitures on the bond.

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

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

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

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

17 SECTION 27. Section 56.003(b), Government Code, is amended  
18 to read as follows:

19 (b) No more than one-third of the funds appropriated for any  
20 fiscal year shall be used for the continuing legal education of  
21 judges of appellate courts, district courts, county courts at law,  
22 county courts performing judicial functions, full-time associate  
23 judges and masters appointed pursuant to Chapter 201, Family Code,  
24 and [~~full-time~~] masters, magistrates, referees, and associate  
25 judges appointed pursuant to Chapter 54 or 54A as required by the  
26 court of criminal appeals under Section 74.025 and of their court  
27 personnel.

1 SECTION 28. Subchapter C, Chapter 72, Government Code, is  
2 amended by adding Section 72.032 to read as follows:

3 Sec. 72.032. AUTOMATED PRETRIAL RISK ASSESSMENT SYSTEM.  
4 For purposes of Article 17.027, Code of Criminal Procedure, the  
5 office shall develop an automated pretrial risk assessment system  
6 and make the system available to judges and magistrates in this  
7 state.

8 SECTION 29. The following provisions of the Code of  
9 Criminal Procedure are repealed:

- 10 (1) Article 17.03;  
11 (2) Article 17.031;  
12 (3) Article 17.15;  
13 (4) Article 17.33;  
14 (5) Article 17.40; and  
15 (6) Sections 5(c) and 6(c), Article 17.42.

16 SECTION 30. Not later than November 1, 2018, the Office of  
17 Court Administration of the Texas Judicial System shall develop the  
18 automated pretrial risk assessment system required by Section  
19 72.032, Government Code, as added by this Act.

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

24 SECTION 32. The change in law made by this Act applies only  
25 to a person who is arrested on or after November 1, 2018. A person  
26 arrested before November 1, 2018, is governed by the law in effect  
27 on the date the person was arrested, and the former law is continued

1 in effect for that purpose.

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

4 (b) Section 1 of this Act takes effect December 1, 2017, but  
5 only if the constitutional amendment proposed by the 85th  
6 Legislature, Regular Session, 2017, is approved by the voters to  
7 authorize the denial of pretrial release of a person accused of a  
8 noncapital offense if necessary to ensure the person's appearance  
9 in court and the safety of the community and the victim of the  
10 alleged offense. If that amendment is not approved by the voters,  
11 Section 1 of this Act has no effect.