

BAIL REFORM: 87TH TEXAS LEGISLATURE (2021) SECOND SPECIAL SESSION

S.B. 6 BILL SUMMARY

TEXAS MUNICIPAL COURTS EDUCATION CENTER

S.B. 6 (the Damon Allen Act) addresses release practices surrounding habitual and violent offenders to better protect the safety of their victims, law enforcement officers, and communities. The bill allows defendants to receive individual assessments and increases data reporting to create a more transparent, accountable system. Below is a section-by-section summary of S.B. 6.

The bill has the following effective dates: January 1, 2022, except Sections 4, 6, 17, 18, 19, 20, and 21 and Articles 17.021, 17.024, 17.15(a), and 17.15(c), Code of Criminal Procedure, as added or amended by this Act, take effect December 2, 2021; Section 7 and Article 17.15(b), Code of Criminal Procedure, as added by this Act, have no effect. The duties imposed under 17.15(a)(6) apply starting April 1, 2022.

Section 2: Right to Bail

S.B. 6 amends Article 1.07 of the Code of Criminal Procedure to require any person to be eligible for bail unless denial of bail is expressly permitted by the Texas Constitution or by other law. It prohibits this provision from being construed to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law. This section of the bill deletes existing text requiring all prisoners to be bailable unless for capital offenses when the proof is evident.

Section 3: Magistration

The bill amends Article 15.17(a) of the Code of Criminal Procedure requiring the magistrate, if applicable, to inform the arrested person that the person is authorized to file the affidavit described by Article 17.028(f), which relates to ability to pay (See Section 5: Bail Decision). This section also requires the magistrate to determine whether the bail decision is subject to Article 17.027 (See Section 5: Release on Bail of Defendant Charged with Felony Offense Committed While on Bail) before admitting the arrestee to bail.

Section 4: Definition of Bail Bond

This section makes a minor change to the definition of bail bond in Article 17.02 of the Code of Criminal Procedure. It adds the phrase if applicable to the provision allowing an administrative fee under Section 117.055 of the Local Government Code to be subtracted from the amount of bail refunded to a defendant that complies with his or her bond conditions.

Section 5: Public Safety Report System, Authority to Release on Bail Certain Defendants, Release on Bail of Defendant Charged with Felony Offense Committed While on Bail, Training on Duties Regarding Bail, and Bail Decision

Public Safety Report System

S.B. 6 adds Article 17.021 of the Code of Criminal Procedure (Public Safety Report System) requiring the Office of Court Administration (OCA) to develop and maintain a public safety report system that is available for use for purposes of Article 17.15 (Rules for Setting Amount of Bail).

Under added Article 17.021(b), the public safety report system must:

- (1) state the requirements for setting bail under Article 17.15 and list each factor provided by Article 17.15(a);
- (2) provide the defendant's name and date of birth or, if impracticable, other identifying information, the cause number of the case, if available, and the offense for which the defendant was arrested;
- (3) provide information on the eligibility of the defendant for a personal bond;
- (4) provide information regarding the applicability of any required or discretionary bond conditions;
- (5) provide, in summary form, the criminal history of the defendant, including information regarding any:
 - (A) previous misdemeanor or felony convictions;
 - (B) pending charges;
 - (C) previous sentences imposing a term of confinement;
 - (D) previous convictions or pending charges for offenses that are offenses involving violence as defined by Article 17.03 (Personal Bond), or offenses involving violence directed against a peace officer; and
 - (E) previous failures of the defendant to appear in court following release on bail; and
- (6) be designed to collect and maintain the information provided on a bail form submitted under Section 72.038 of the Government Code.

This section requires OCA to provide access to the public safety report system to the appropriate officials in each county and each municipality at no cost. The bill prohibits this subsection from being construed to require OCA to provide an official or magistrate with any equipment or support related to accessing or using the public safety report system.

Under added Article 17.021(d), the public safety report system may not:

- (1) be the only item relied on by a judge or magistrate in making a bail decision;

(2) include a score, rating, or assessment of a defendant's risk or make any recommendation regarding the appropriate bail for the defendant; or

(3) include any information other than the information listed in 17.021(b).

Added Article 17.021(e) requires OCA to use the information maintained under 17.021(b)(6) to collect data from the preceding state fiscal year regarding the number of defendants for whom bail was set after arrest, including the number for each category of offense, the number of personal bonds, and the number of monetary bonds.

Under 17.021(f), OCA shall, not later than December 1 of each year, submit a report containing the data described by 17.021(e) to the governor, lieutenant governor, speaker of the Texas House of Representatives (house), and presiding officers of the standing committees of each house of the legislature with primary jurisdiction over the judiciary.

Article 17.021(g) requires the Department of Public Safety (DPS) to assist OCA in implementing the public safety report system established under this article and to provide criminal history record information to OCA in the electronic form necessary for OCA to implement this article.

Added Article 17.021(h) provides that any contract for goods or services between OCA and a vendor that may be necessary or appropriate to develop the public safety report system is exempt from the requirements of Subtitle D (State Purchasing and General Services), Title 10 (General Government) of the Government Code. This subsection expires September 1, 2022.

Public Safety Report

S.B. 6 adds Article 17.022 of the Code of Criminal Procedure (Public Safety Report), which requires 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 to order that:

(1) the personal bond office established under Article 17.42 (Personal Bond Office) for the county in which the defendant is being detained, if a personal bond office has been established for that county, or other suitably trained person including judicial personnel or sheriff's department personnel, use the public safety report system developed under Article 17.021 to prepare a public safety report with respect to the defendant; and

(2) the public safety report prepared under Subdivision (1) be provided to the magistrate as soon as practicable but not later than 48 hours after the defendant's arrest.

This section prohibits a magistrate from, without the consent of the sheriff, ordering a sheriff or sheriff's department personnel to prepare a public safety report under this article.

Notwithstanding 17.022(a), a magistrate may personally prepare a public safety report, before or while making a bail decision, using the public safety report system developed under Article 17.021.

This provision requires the magistrate to:

(1) consider the public safety report before setting bail; and

(2) promptly but not later than 72 hours after the time bail is set, submit the bail form described by Section 72.038 of the Government Code, in accordance with that section.

In the manner described by Article 17.022, a magistrate is authorized, but is not required, to order, prepare, or consider a public safety report in setting bail for a defendant charged only with a misdemeanor punishable by fine only or a defendant who receives a citation under Article 14.06(c) (relating to authorizing a peace officer who is charging a person with committing an offense that is a Class A or B misdemeanor, if the person resides in the county where the offense occurred, instead of taking the person before a magistrate, to issue a citation to the person that contains written notice of the time and place the person is required to appear before a magistrate of this state, the name and address of the person charged, and the offense charged). The report, if ordered, shall be prepared for the time and place for an appearance as indicated in the citation.

A magistrate may set bail for a defendant charged only with an offense punishable as a misdemeanor without ordering, preparing, or considering a public safety report if the public safety report system is unavailable for longer than 12 hours due to a technical failure at OCA.

Authority to Release on Bail in Certain Cases

S.B. 6 adds Article 17.023 of the Code of Criminal Procedure (Authority to Release on Bail in Certain Cases), which only applies to a defendant charged with an offense that is punishable as a felony or a misdemeanor punishable by confinement. Under this article, an applicable defendant, notwithstanding any other law, may be released on bail only by a magistrate who is:

(1) any of the following:

(A) a resident of this state;

(B) a justice of the peace serving under Section 27.054 (Exchange of Benches) or 27.055 (Special and Temporary Justices), Government Code; or

(C) a judge or justice serving under Chapter 74 (Court Administration Act), Government Code; and

(2) in compliance with the training requirements of Article 17.024 (discussed *infra*).

Under Article 17.023(c), a magistrate is not eligible to release on bail a defendant described by 17.023(a) if the magistrate:

(1) has been removed from office by impeachment, by the Supreme Court of Texas, by the governor on address to the legislature, by a tribunal reviewing a recommendation of the State Commission on Judicial Conduct (SCJC), or by the legislature's abolition of the magistrate's court; or

(2) has resigned from office after having received notice that formal proceedings by SCJC have been instituted as provided by Section 33.022 (Investigations and Formal Proceedings) of the Government Code, and before final disposition of the proceedings.

Training on Duties Regarding Setting Bail

S.B. 6 adds Article 17.024 of the Code of Criminal Procedure, requiring OCA, in consultation with the Court of Criminal Appeals, to develop or approve training courses regarding a magistrate's duties, including duties with respect to setting bail in criminal cases. The courses developed must include:

- (1) an eight-hour initial training course that includes the content of the applicable training course described by Article 17.0501; and
- (2) a two-hour continuing education course.

OCA shall provide for a method of certifying that a magistrate has successfully completed a training course required under this article and has demonstrated competency of the course content in a manner acceptable to OCA.

A magistrate is in compliance with the training requirements of this article if:

- (1) not later than the 90th day after the date the magistrate takes office, the magistrate successfully completes the course described by Subsection (a)(1);
- (2) the magistrate successfully completes the course described by Subsection (a)(2) in each subsequent state fiscal biennium in which the magistrate serves; and
- (3) the magistrate demonstrates competency as provided by 17.024(b).

Notwithstanding 17.024(c), a magistrate who is serving on April 1, 2022, is considered to be in compliance if the magistrate successfully completes the training course not later than December 1, 2022. This part of the bill expires May 1, 2023.

Any course developed or approved by OCA under this article may be administered by the Texas Justice Court Training Center, the Texas Municipal Courts Education Center, the Texas Association of Counties, the Texas Center for the Judiciary, or a similar entity.

Release on Bail of Defendant Charged with Felony Offense Committed While on Bail

New Article 17.027 of the Code of Criminal Procedure (Release on Bail of Defendant Charged with Felony Offense Committed While on Bail) provides that, notwithstanding any other law:

- (1) if a defendant is charged with committing an offense punishable as a felony while released on bail in a pending case for another offense punishable as a felony and the subsequent offense was committed in the same county as the previous offense, the defendant is authorized to be released on bail only by:
 - (A) the court before whom the case for the previous offense is pending; or
 - (B) another court designated in writing by the court before whom the case for the previous offense is pending; and

(2) if a defendant is charged with committing an offense punishable as a felony while released on bail for another pending offense punishable as a felony and the subsequent offense was committed in a different county than the previous offense, electronic notice of the charge is required to be promptly given to the appropriate court specified above for purposes of reevaluating the bail decision, determining whether any bail conditions were violated, or taking any other applicable action.

This article does not extend any deadline provided by Article 15.17 (Duties of Arresting Officer and Magistrate).

Bail Decision

S.B. 6 adds Article 17.028 of the Code of Criminal Procedure (Bail Decision), requiring a magistrate, without unnecessary delay but not later than 48 hours after a defendant is arrested, to order, after individualized consideration of all circumstances and of the factors required by Article 17.15(a), that the defendant be granted personal bond with or without conditions, be granted surety or cash bond with or without conditions, or be denied bail in accordance with the Texas Constitution and other law.

Article 17.028 requires the magistrate, in setting bail under this article, to impose the least restrictive conditions, if any, and the personal bond or cash or surety bond necessary to reasonably ensure the defendant's appearance in court as required and the safety of the community, law enforcement, and the victim of the alleged offense.

In each criminal case, unless specifically provided by other law, there is a rebuttable presumption that bail, conditions of release, or both bail and conditions of release are sufficient to reasonably ensure the defendant's appearance in court as required and the safety of the community, law enforcement, and the victim of the alleged offense.

However, the court is not required to hold an evidentiary hearing that is not required by other law.

Article 17.028 prohibits a judge from adopting a bail schedule or entering a standing order related to bail that is inconsistent with this article or that authorizes a magistrate to make a bail decision for a defendant without considering each of the factors in Article 17.15(a).

Under this article, a defendant who is denied bail or who is unable to give bail in the amount required by any bail schedule or standing order related to bail must be provided with the warnings described by Article 15.17.

In addition, a defendant who is charged with an offense punishable as a Class B misdemeanor or any higher category of offense and who is unable to give bail in the amount required by a schedule or order described by 17.028(e), other than a defendant who is denied bail, must be provided with the opportunity to file with the applicable magistrate a sworn affidavit in a certain form. Added 17.028 sets forth the required language of the affidavit.

A defendant filing an affidavit under 17.028(f) must complete a form to allow a magistrate to assess information relevant to the defendant's financial situation. The form must be the form used to request appointment of counsel under Article 26.04 (Procedures for Appointing Counsel) or a form promulgated by OCA that collects, at a minimum and to the best of the defendant's knowledge, the information a court is authorized to consider under Article 26.04(m).

Article 17.028 requires the magistrate making the bail decision under Subsection (a), if applicable, to inform the defendant of the defendant's right to file an affidavit under Subsection (f) and to ensure that the defendant receives reasonable assistance in completing the affidavit described by Subsection (f) and the form described by Subsection (g).

Under 17.028(h), a defendant described by Subsection 17.028(f) may file an affidavit under Subsection (f) at any time before or during the bail proceeding under Subsection (a). A defendant who files an affidavit under Subsection (f) is entitled to a prompt review by the magistrate on the bail amount. The review may be conducted by the magistrate making the bail decision under Subsection (a) or occur as a separate pretrial proceeding. The magistrate shall consider the facts presented and the factors established by Article 17.15(a) to set the defendant's bail. If the magistrate does not set the defendant's bail in an amount below the amount required by the schedule or order described by 17.028(e), the magistrate must issue written findings of fact supporting the bail decision.

Article 17.028(i) requires the judges of the courts trying criminal cases and other magistrates in a county to report to OCA each defendant for whom a review under 17.028(h) was not held within 48 hours of the defendant's arrest. If a delay occurs that will cause the review under 17.028(h) to be held later than 48 hours after the defendant's arrest, the magistrate or an employee of the court or of the county in which the defendant is confined, shall provide notice of the delay to the defendant's counsel or to the defendant, if the defendant does not have counsel.

The magistrate may enter an order or take other action authorized by Article 16.22 (Early Identification of Defendant Suspected of Having Mental Illness or Intellectual Disability) with respect to a defendant who does not appear capable of executing an affidavit under 17.028(f).

The filing of an affidavit is not required before a magistrate considers the defendant's ability to make bail under Article 17.15.

Article 17.028 authorizes a written or oral statement obtained under this article or evidence derived from the statement to be used only to determine whether the defendant is indigent, to impeach the direct testimony of the defendant, or to prosecute the defendant for an offense under Chapter 37 (Perjury and Other Falsification), Penal Code.

A magistrate may, notwithstanding 17.028(a), make a bail decision regarding a defendant who is charged only with a misdemeanor punishable by fine only or a defendant who receives a citation under Article 14.06(c) without considering the factor required by Article 17.15(a)(6), related to the defendant's criminal history.

Section 6: Release on Personal Bond (effective December 2, 2021) (Note: Section 7, an identical provision as Section 6, would have made this section take effect immediately but did not receive the requisite vote and thus, has no effect.)

S.B. 6 amends Article 17.03(b) of the Code of Criminal Procedure (Personal Bond) and adds Subsections (b-2) and (b-3). It deletes existing text authorizing only the court before whom the case is pending to release on personal bond a defendant who is charged with an offense under Section 19.03 (Capital Murder), Section 20.04 (Aggravated Kidnapping), Section 22.021 (Aggravated Sexual Assault), Section 22.03 (Deadly Assault on Law Enforcement or Corrections Officer, Member or Employee of Board of Pardons and Paroles, or Court Participant), Section 22.04 (Injury to a Child, Elderly Individual, or Disabled Individual), Section 29.03

(Aggravated Robbery), Section 21.02 (Continuous Sexual Abuse of Young Child or Disabled Individual), or Section 20A.03 (Continuous Trafficking of Persons).

Added (b-2) prohibits a defendant, except as provided by Articles 15.21 (Release on Personal Bond If Not Timely Demanded), 17.033 (Release on Bond of Certain Persons Arrested Without a Warrant), and 17.151 (Release Because of Delay), from being released on personal bond if the defendant:

(1) is charged with an offense involving violence; or

(2) while released on bail or community supervision for an offense involving violence, is charged with committing:

(A) any offense punishable as a felony; or

(B) an offense under the following provisions of the Penal Code:

(i) Section 22.01(a)(1) (relating to providing that a person commits an offense if the person intentionally, knowingly, or recklessly causes bodily injury to another);

(ii) Section 22.05 (Deadly Conduct);

(iii) Section 22.07 (Terroristic Threat); or

(iv) Section 42.01(a)(7) (relating to providing that a person commits an offense if the person intentionally or knowingly discharges a firearm in a public place other than a public road or a sport shooting range) or (8) (relating to providing that a person commits an offense if the person intentionally or knowingly displays a firearm or other deadly weapon in a public place in a manner calculated to alarm).

Added (b-3) defines “controlled substance” and “offense involving violence” for purposes of Article 17.03.

Section 8: DPS Training Related to the Use of the Statewide Telecommunications System

S.B. 6 adds Article 17.0501, which requires DPS to develop training courses that relate to the use of the statewide telecommunications system maintained by DPS and that are directed to each magistrate, judge, sheriff, peace officer, or jailer required to obtain criminal history record information under Chapter 17 (Bail), as necessary to enable the person to fulfill those requirements.

Section 9: Charitable Bail Organizations

S.B. 6 adds Article 17.071 to the Code of Criminal Procedure (Charitable Bail Organizations). A charitable bail organization means a “person who accepts and uses donations from the public to deposit money with a court in the amount of a defendant’s bail bond.” The term does not include:

(1) a person accepting donations with respect to a defendant who is a member of the person’s family, as determined under Section 71.003 (Family), Family Code; or

(2) a nonprofit corporation organized for a religious purpose.

Article 17.071 does not apply to a charitable bail organization that pays a bail bond for not more than three defendants in any 180-day period.

A person may not act as a charitable bail organization for the purpose of paying a defendant's bail bond in a county unless the person:

(1) is a nonprofit organization exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code; and

(2) has been issued a certificate under Subsection (d) with respect to that county.

A county clerk shall issue to a charitable bail organization a certificate authorizing the organization to pay bail bonds in the county if the clerk determines the organization is a nonprofit organization described by 17.071(c) (1) and is current on all filings required by the Internal Revenue Code.

This section requires a charitable bail organization to file in the office of the county clerk of each county where the organization intends to pay bail bonds an affidavit designating the individuals authorized to pay bonds on behalf of the organization.

It also requires a charitable bail organization, not later than the 10th day of each month, to submit to the sheriff of each county in which the organization files an affidavit under 17.071(e), a report that includes certain information for each defendant for whom the organization paid a bail bond in the preceding calendar month.

A sheriff who receives a report under 17.071(f) must provide a copy of the report to OCA.

Article 17.071 prohibits a charitable bail organization from paying a bail bond for a defendant at any time the organization is considered to be out of compliance with the reporting requirements of this article.

It authorizes the sheriff of a county to suspend a charitable bail organization from paying bail bonds in the county for a period not to exceed one year if the sheriff determines the organization has paid one or more bonds in violation of this article and the organization has received a warning from the sheriff in the preceding 12-month period for another payment of bond made in violation of this article. The sheriff must report the suspension to OCA.

Chapter 22 (Forfeiture of Bail) applies to a bail bond paid by a charitable bail organization.

This article prohibits a charitable bail organization from accepting a premium or compensation for paying a bail bond for a defendant.

OCA, not later than December 1 of each year, must prepare and submit, to the governor, lieutenant governor, speaker of the house, and presiding officers of the standing committees of each house of the legislature with primary jurisdiction over the judiciary, a report regarding the information submitted to OCA under (f-1) and (h) for the preceding state fiscal year.

Section 10: Rules for Setting Amount of Bail

S.B. 6 changed the heading of Article 17.15 of the Code of Criminal Procedure to Rules for Setting Bail (instead of fixing bail). The bill amends 17.15 by creating Subsection (a) in part from existing text. That subsection provides that the amount of bail and any conditions of bail to be required in any case in which the defendant has been arrested are to be regulated by the court, judge, magistrate, or officer taking the bail in accordance with Articles 17.20 (Bail in Misdemeanor), 17.21 (Bail in Felony), and 17.22 (May Take Bail in Felony) and are governed by the Constitution and seven rules provided in this subsection. The bill amends the rules as follows:

(1) Bail and any conditions of bail (rather than the bail) shall be sufficient to give reasonable assurance that the undertaking will be complied with.

(2) The bill made nonsubstantive changes to this rule.

(3) Provides that the nature of the offense and the circumstances under which the offense was committed are to be considered, including whether the offense is an offense involving violence as defined by Article 17.03 or involves violence directed against a peace officer.

(4) Requires that the ability to make bail be considered and authorizes proof to be taken on this point. The bill made other nonsubstantive changes.

(5) Requires that the future safety of a victim of the alleged offense, law enforcement, and the community be considered.

(6) The bill adds this rule, which requires that the criminal history record information for the defendant, including information obtained through the statewide telecommunications system maintained by DPS and through the public safety report system developed under Article 17.021, be considered, including any acts of family violence, other pending criminal charges, and any instances in which the defendant failed to appear in court following release on bail.

The bill adds (a-1), which provides that notwithstanding any other law, the duties imposed by Subsection (a) (6) with respect to obtaining and considering information through the public safety report system do not apply until April 1, 2022. This subsection expires June 1, 2022.

(7) This is also a new rule that requires that the citizenship status of the defendant be considered.

New Subsection (c) defines “family violence” for Article 17.15.

Section 11: Bail in Misdemeanor

S.B. 6 amends Article 17.20 of the Code of Criminal Procedure (Bail in Misdemeanor) by adding Subsections (b), (c), and (d). Added Subsection (b) requires the sheriff, peace officer, or jailer, before taking bail under this article, to obtain the defendant’s criminal history record information through the statewide telecommunications system maintained by DPS and through the public safety report system developed under Article 17.021.

Subsection (c) authorizes a sheriff, peace officer, or jailer, notwithstanding Subsection (b), to make a bail decision regarding a defendant who is charged only with a misdemeanor punishable by fine only or a defendant who receives a citation under Article 14.06(c) without considering the factor required by Article 17.15(a)(6).

Subsection (d) provides that if the defendant is charged with or has previously been convicted of an offense involving violence as defined by Article 17.03, the sheriff, officer, or jailer are prohibited from setting the amount of the defendant's bail but are authorized to take the defendant's bail in the amount set by the court.

Section 12: Bail in Felony

S.B. 6 amends Article 17.22 (May Take Bail in Felony) by creating Subsection (a), which authorizes the sheriff or other peace officer, or a jailer licensed under Chapter of the Occupations Code 1701 (Law Enforcement Officers), who has the defendant in custody, in a felony case, if the court before which the case is pending is not in session in the county where the defendant is in custody, to take the defendant's bail in the amount set by the court or magistrate, or if no amount has been set, then in any amount that the officer considers reasonable and that is in compliance with Article 17.15. It deletes existing text authorizing the sheriff or other peace officer, or a jailer licensed under Chapter 1701 of the Occupations Code, who has the defendant in custody, in a felony case, if the court before which the same is pending is not in session in the county where the defendant is in custody, to take the defendant's bail bond in such amount as may have been fixed by the court or magistrate, or if no amount has been fixed, then in such amount as such officer may consider reasonable.

Added Subsection (b) requires the sheriff, peace officer, or jailer, before taking bail under this article, to obtain the defendant's criminal history record information through the statewide telecommunications system maintained by DPS and through the public safety report system developed under Article 17.021.

New Subsection (c) prohibits the sheriff, officer, or jailer, if the defendant is charged with or has previously been convicted of an offense involving violence as defined by Article 17.03, from setting the amount of the defendant's bail but authorizes those individuals to take the defendant's bail in the amount set by the court.

Section 13: Conditions of Release and Procedures and Forms Related to Monetary Bond

Amends Chapter 17, Code of Criminal Procedure, by adding Articles 17.51, 17.52, and 17.53.

Article 17.51 (Notice of Conditions) requires the clerk of the court, as soon as practicable but not later than the next business day after the date a magistrate issues an order imposing a condition of release on bond for a defendant or modifying or removing a condition previously imposed, to send a copy of the order to the appropriate attorney representing the state and to the sheriff of the county where the defendant resides. It also authorizes a clerk of the court to delay sending a copy of the order under 17.51(a) only if the clerk lacks information necessary to ensure service and enforcement.

Article 17.51 requires the clerk of the court, if an order described by 17.51(a) prohibits a defendant from going to or near a childcare facility or school, to send a copy of the order to the child care facility or school. It authorizes the copy of the order and any related information to be sent electronically or in another manner that can be accessed by the recipient.

This article requires the magistrate or the magistrate's designee to provide written notice to the defendant of the conditions of release on bond and of the penalties for violating a condition of release.

It also requires the magistrate to make a separate record of the notice provided to the defendant under 17.51(e).

Finally, Article 17.51 requires OCA to promulgate a form for use by a magistrate or a magistrate's designee in providing notice to the defendant under 17.51(e). The form must include the relevant statutory language from the provisions of this chapter under which a condition of release on bond is authorized to be imposed on a defendant.

Article 17.52 (Reporting of Conditions) requires a chief of police or sheriff who receives a copy of an order described by Article 17.51(a), or the chief's or sheriff's designee, to, as soon as practicable but not later than the 10th day after the date the copy is received, enter information relating to the condition of release into the appropriate database of the statewide law enforcement information system maintained by DPS or modify or remove information, as appropriate.

New Article 17.53 (Procedures and Forms Related to Monetary Bond) requires OCA to develop statewide procedures and prescribe forms to be used by a court to facilitate:

- (1) the refund of any cash funds paid toward a monetary bond, with an emphasis on refunding those funds to the person in whose name the receipt described by Article 17.02 was issued; and
- (2) the application of those cash funds to the defendant's outstanding court costs, fines, and fees.

Section 14: Criminal History System Information

S.B. 6 amends Article 66.102(c) of the Code of Criminal Procedure by adding Subsection (7), which requires that information in the computerized criminal history system relating to an arrest include, for an offender released on bail, whether a warrant was issued for any subsequent failure of the offender to appear in court.

Section 15: Removal of a Justice of a Peace

The bill amends Section 27.005(a) of the Government Code and adds Subsection (c). Amended Subsection (a) provides that, for purposes of removal under Chapter 87 of the Local Government Code (Removal of County Officers from Office; Filling of Vacancies), "incompetency" in the case of a justice of the peace includes the failure of the justice to successfully complete (in addition to the existing requirements):

- (1) within one year after the date the justice is first elected the course described by Article 17.024(a)(1) of the Code of Criminal Procedure; and
- (2) each following state fiscal biennium, the course described by Article 17.024(a)(2), Code of Criminal Procedure.

Added Subsection (c) authorizes a course described by Subsection (a)(1)(A) to include a course described by Subsection (a)(1)(B).

Section 16: Bail and Pretrial Release Information

S.B. 6 adds Section 71.0351 of the Government Code (Bail and Pretrial Release Information) requiring the clerk of each court setting bail in criminal cases, as a component of the official monthly report submitted to OCA under Section 71.035, to report:

- (1) the number of defendants for whom bail was set after arrest, including the number for each category of offense, the number of personal bonds, and the number of surety or cash bonds;
- (2) the number of defendants released on bail who subsequently failed to appear;
- (3) the number of defendants released on bail who subsequently violated a condition of release; and
- (4) the number of defendants who committed an offense while released on bail or community supervision.

New Section 71.0351 requires OCA to post the information in a publicly accessible place on OCA's website without disclosing any personal information of any defendant, judge, or magistrate.

It also requires OCA, not later than December 1 of each year, to submit a report containing the data collected under this section during the previous state fiscal year to the governor, lieutenant governor, speaker of the house, and presiding officers of the standing committees of each house of the legislature with primary jurisdiction over the judiciary.

Section 17: Bail Form

S.B. 6 adds Section 72.038 of the Government Code (Bail Form) requiring OCA to promulgate a form to be completed by a magistrate, judge, sheriff, peace officer, or jailer who sets bail under Chapter 17, Code of Criminal Procedure, for a defendant charged with an offense punishable as a Class B misdemeanor or any higher category of offense. OCA must incorporate the completed forms into the public safety report system developed under Article 17.021 of the Code of Criminal Procedure.

The form must:

- (1) state the cause number of the case, if available, the defendant's name and date of birth, and the offense for which the defendant was arrested;
- (2) state the name and the office or position of the person setting bail;
- (3) require the person setting bail to:
 - (A) identify the bail type, the amount of the bail, and any conditions of bail;
 - (B) certify that the person considered each factor provided by Article 17.15(a), Code of Criminal Procedure; and
 - (C) certify that the person considered the information provided by the public safety report system; and

(4) be electronically signed by the person setting the bail.

Subsection 71.038(c) requires the person setting bail, an employee of the court that set the defendant's bail, or an employee of the county in which the defendant's bail was set, on completion of the form required under this section, to promptly but not later than 72 hours after the time the defendant's bail is set provide the form electronically to OCA through the public safety report system.

Subsection (d) requires OCA to publish the information from each form submitted under this section in a database that is publicly accessible on OCA's website. Any identifying information or sensitive data, as defined by Rule 21c of the Texas Rules of Civil Procedure, regarding the victim of an offense and any person's address or contact information is required to be redacted and is prohibited from being published under this subsection.

Section 18: Dissemination of Criminal History Record Information (effective December 2, 2022)

S.B. 6 amends Section 411.083 authorizing DPS to disseminate criminal history record information under Subsection (b)(8) (relating to requiring DPS to grant access to criminal history record information to OCA) only to the extent necessary for OCA to perform a duty imposed by law, including the development and maintenance of the public safety report system as required by Article 17.021 of the Code of Criminal Procedure, or to compile court statistics or prepare reports. It authorizes OCA to disclose criminal history record information obtained from DPS under Subsection (b)(8) in a public safety report prepared under Article 17.022 of the Code of Criminal Procedure.

Section 19: County Expenses Paid from Fees

The bill amends Subsection 117.055(a) of the Local Government Code and adds Subsections (a-1) and (a-2). Amended Subsection (a) requires the clerk, except as provided by Subsection (a-1), to compensate the county for the accounting and administrative expenses incurred in handling the registry funds that have not earned interest, including funds in a special or separate account, to at the time of withdrawal, deduct from the amount of the withdrawal a fee in an amount equal to five percent of the withdrawal but prohibits the amount from exceeding \$50.

New Subsection (a-1) prohibits a clerk from deducting a fee under Subsection (a) from a withdrawal of funds generated by the collection of a cash bond or cash bail bond if in the case for which the bond was taken:

- (1) the defendant was found not guilty after a trial or appeal; or
- (2) the complaint, information, or indictment was dismissed without a plea of guilty or nolo contendere being entered.

Added Subsection (a-2) requires the clerk, on the request of a person to whom withdrawn funds generated by the collection of a cash bond or cash bail bond were disbursed, to refund to the person the amount of the fee deducted under Subsection (a) if:

- (1) subsequent to the deduction, a court makes or enters an order or ruling in the case for which the bond was taken; and

(2) had the court made or entered the order or ruling before the withdrawal of funds occurred, the deduction under Subsection (a) would have been prohibited under Subsection (a-1).

Section 20: Repeal of Article 17.03(f)

S.B. 6 repeals the former definition of “controlled substance” in Subsection (f), which was replaced by Section 6 of the bill.

Section 21: Development of the Public Safety Report System by OCA

This section requires OCA, as soon as practicable but not later than April 1, 2022, to create the public safety report system developed under Article 17.021, Code of Criminal Procedure, as added by this Act, and any related forms and materials and to provide to the appropriate officials in each county access to the system, forms, and materials at no cost. Requires OCA, if those items are made available before April 1, 2022, to notify each court clerk, judge or other magistrate, and office of an attorney representing the state.

Section 22: Development of Forms and Training by OCA

This section requires OCA, as soon as practicable but not later than April 1, 2022, to:

(1) promulgate the forms required by Articles 17.028(g) and 17.51(g) of the Code of Criminal Procedure, as added by this Act, and by Section 72.038 of the Government Code, as added by this Act; and

(2) develop or approve and make available the training courses and certification method as described by Article 17.024 of the Code of Criminal Procedure, as added by this Act, and develop the procedures and prescribe the forms required by Article 17.53 of the Code of Criminal Procedure, as added by this Act.

If the items described by Subsection (a) of this section are made available before April 1, 2022, OCA must notify each court clerk, judge or other magistrate, and office of an attorney representing the state.

Teen Court Workshop



TMCEC, in conjunction with the Georgetown Municipal Court, Teen Court Association of Texas, and TxDOT, is proud to offer the Teen Court Workshop on **April 18-19, 2022**. This unique event gives municipal courts the knowledge and tools to launch or enhance a teen court program with a focus on improving traffic safety. **There is no fee to register.** For attorneys who attend, TMCEC will report CLE credit to the State Bar of Texas with no additional fee (CLE hours TBD).

Eligible attendees will receive one night of lodging at no cost. Travel reimbursement is available! Municipal judges, clerks, prosecutors, and juvenile case managers are invited to attend. For more information, please visit <https://www.tmcec.com/mtsi/teen-court/>.