

## **SB 6 – BAIL REFORM THE DAMON ALLEN ACT**

### **History behind The Damon Allen Act.**

On Thanksgiving Day, 2017, Department of Public Safety Trooper Damon Allen pulled over Dabrett Black for speeding. As Trooper Allen sat in his vehicle, running a driver's license check, Mr. Black exited his vehicle, stood beside the driver side door of his vehicle and fired multiple shots with a rifle. When Trooper Allen attempted to exit his vehicle, he was shot in the head and died at the scene. He never had a chance to draw his weapon.

Mr. Black was a violent criminal, and he fired his weapon again that day, when confronted by law enforcement. Thankfully, no one was injured. He was also out on a \$15,000 felony bond despite having previously been convicted for assaulting a public servant and having been arrested for evading arrest and aggravated assault on a public servant.

In response to this crime, Governor Abbot made bail reform an emergency item during the 87<sup>th</sup> Legislative Session and signed Senate Bill 6 on September 13, 2021.

### **What reforms were made in this bill?**

***Public Safety Report, Tex. Code Criminal Procedure Arts. 17.021: Orders to Office of Court Administration (OCA) to create a "Public Safety Report System" (by no later than 4-1-2022) and mandates the use of "public safety reports" generated via that system. Specifically, per Art. 17.022:***

***\*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 **MUST** order that the public safety report be***

*prepared or prepare the report personally, and **MUST** consider the report before setting bail. See Art. 17.022(a)(1), (c).*

*\*The public safety report **MUST** be provided to the magistrate as soon as practicable but not later than 48 hours after the defendant's arrest. See Art. 17.022(a)(2).*

*\*A magistrate **MAY NOT**, without the consent of the sheriff, order a sheriff or sheriff's department personnel to prepare a public safety report. See Art. 17.022(b).*

*\*A magistrate may, 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. See Art. 17.022(e).*

*\*The report may not be the only item relied on in making bail decision and may not include a score, rating, or assessment of a defendant's risk or make any recommendation regarding the appropriate bail for the defendant. See Art. 17.02(d)(1)-(2).*

***Release on Bail – Previous Pending Offenses, Texas Code Criminal Procedure, Art. 17.027 (effective 1-1-2022):***

***\*Only the court before whom the case for the previous offense punishable as a felony is pending MAY release the defendant on bail (notwithstanding any other law). See Art. 17.027(a)(1)(A).***

*If a defendant is charged with committing an offense punishable as a felony while released on bail for another offense punishable as a felony and the subsequent offense was committed in a different county than the previous offense, electronic notice of the charge **MUST** be promptly given to the court before whom that case is pending for purposes of reevaluating the bail decision, determining whether any bail conditions were violated, or taking any other applicable action. See Art. 17.027(a)(2).*

***Personal Bonds, Texas Code Criminal Procedure Art. 17.03 (effective 12-2-21):***

***Defendants who MAY BE released on personal bonds by the court before whom the case is pending:***

*\*Those who have been charged under the Penal Code with either of the following offenses: Burglary (30.02), or Engaging in Organized Criminal Activity (71.02). See Art. 17.039b)(1).*

*\*Those who have been charged under either Chapter 481 or Section 495.033 of the Health and Safety Code with a felony punishable within certain parameters. See Art. 17.03(b)(2).*

*\*Those who either do not submit to testing for controlled substances, or do submit to testing and the test shows evidence of a controlled substance. See Art. 17.03(b)(3).*

***Defendants who MAY NOT be released on personal bonds:***

*\*Those who have been charged under the Penal Code with any offense classified as an "offense involving violence," which are: Murder (19.02); Capital Murder (19.03); Kidnapping (20.03); Aggravated Kidnapping (20.04); Trafficking of Persons (20A.02); Continuous Trafficking of Persons (20A.03); Continuous Sexual Abuse of Young Child or Disabled Individual (21.02); Indecency with a Child (21.11); Assault (22.02(a)(1)), punishable as 2d degree, or felony with family violence; Sexual Assault (22.011); Aggravated Assault (22.02); Aggravated Sexual Assault (22.021); Injury to a Child, Elderly Individual, or Disabled Individual (22.04); Repeated violation of certain court orders or conditions of bond in family violence, child abuse or neglect, sexual assault or abuse, indecent assault, stalking, or trafficking case (25.072); Continuous Violence Against the Family (24.11); Aggravated Robbery (29.03); Taking or attempting to take a weapon from a police officer, federal special investigator, employee or official of correctional facility, parole officer, community supervision or corrections department officer, or commissioned security officer (38.14); Aggravated Promotion of Prostitution (43.04); if the defendant is not alleged to have engaged in conduct constituting an offense under Section 43.0(a); Compelling Prostitution (43.05); or Sexual Performance by a Child (43.25). See Art. 17.03(b-2)(1), (b-3)(2).*

*\*Those who, while released on bail or community supervision for an "offense involving violence," are charged with: ANY offense punishable as a felony; or*

*Under the Texas Penal Code, any of the following offenses: Assault (22.01(a)(1); Deadly Conduct (22.05); Terroristic Threat (22.07); or Disorderly Conduct Involving a Firearm (42.01(a)(7) or (8)). See Art. 17.03(b-2)(2)(a)0(b).*

***Modified Rules for Setting Amount of Bail, Texas Code Criminal Procedure Art. 17.15 (effective 12-2-21):*** Below is a non-exhaustive list of the rules, notwithstanding any other law of the Constitution, that must be followed when setting the amount of bail and any conditions of bail to be required:

*\*The nature of the offense and the circumstances under which the offense was committed are to be considered, including whether the offense: (A) is an offense involving violence as defined by Art. 17.03, or (B) involves violence directed against a peace officer. Art. 17.05(a)(3).*

*\*The ability to make bail shall be considered, and proof may be taken on this point. Art. 17.15(a)(4).*

*\*The future safety of a victim of the alleged offense, law enforcement, and the community shall be considered. Art. 17.15(a)(5).*

*\*The criminal history record information for the defendant, including information obtained through the statewide telecommunications system maintained by the Department of Public Safety and through the public safety report system developed under Article 17.021, shall 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. Art. 17.15(a)(6). Family violence has the meaning assigned by Section 71.004, Family Code. See Art. 17.15(c).*

*\*The citizenship status of the defendant shall be considered. Art. 17.15(a)(7).*

*\*Art. 17.15(b) states that: "For purposes of determining whether clear and convincing evidence exists to deny a person bail under Section 11d, Article I, Texas Constitution, a magistrate shall consider all information relevant to the factors listed in Subsection (a)." This provision only goes into effect on 6-1-22 if the voters approve a requisite constitutional*

*amendment regarding violent offenses, sexual offenses, and continuous trafficking.*

***Bail Decision, Texas Code Criminal Procedure Art. 17.028 (effective 1-1-21):***

*\*Without unnecessary delay but not later than 48 hours after defendant is arrested, a magistrate shall order, after **individualized** consideration of all circumstances and of the factors required by Art. 17.15(a), that the defendant be:*

- granted personal bond with or without conditions;*
- granted surety or cash bond with or without conditions; or*
- denied bail in accordance with the Texas Constitution and other Law. See Art. 17.028(a).*

*\*In setting bail under this article, the magistrate shall impose the least restrictive conditions, if any, and the personal bond or monetary 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. Art. 17.028(b).*

*\*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. For purposes of setting bail or rebutting the presumption, the court may not consider testimonial evidence. Art. 17.028(c).*

*\*A judge **MAY NOT** adopt a bail schedule or enter a standing order related to bail that:*

- is inconsistent with this article; or*
- authorizes a magistrate to make a bail decision for a defendant without considering each of the factors in Art. 17.15(a), the majority of which are outlined in the Modified Rules for Setting Amount of Bail section of this document. See Art. 17.028(d).*

*\*A defendant who is denied bail or who is unable to make bail in the amount required by any bail schedule or standing order related to bail*

*shall be provided with the warnings described by Art. 15.17. See Art. 17.028(e).*

*\*The statute adds data reporting requirements and directs the OCA to devise required forms to be used to assess a defendant's financial situation for appointment of counsel. See Art. 17.029(g), (i).*

***Training on Duties Regarding Bail, Texas Code Criminal Procedure Art. 17.024 (effective 12-2-21): Magistrates **MUST** successfully complete specific training courses developed or approved by the OCA. These courses concern, among other duties, a magistrate's duties with respect to setting bail in criminal cases. See Art. 17.024(a).***

*There are at least two different courses: an eight-hour initial training course and a two-hour continuing education course. See Art. 17.024(a)(1)-(2):*

*\*A magistrate **MUST** complete the **initial training course** no later than the 90<sup>th</sup> day after the date he or she takes office. See Art. 17.02(c)(1).*

*\*A magistrate who is serving on April 1, 2022, however, **MUST** complete the **initial training course** no later than December 1, 2022. See Art. 17.024(c-1).*

*\*Regarding the **continuing education course**, a magistrate **MUST** complete it "in each subsequent state fiscal biennium in which the magistrate serves." See Art. 17.024(c)(2).*

Above "information" prepared by the Office of Judicial Staff Counsel & Special Magistrations, Tarrant County.

## **Review of the Public Safety Report System (PSRS).**

Senate Bill 6 requires the implementation of a standardized public safety report system for statewide use and instructed OCA to produce the public safety report and create a bail form.

Magistrates **MUST** consider the PSRS for defendants charged with a Class B misdemeanor or higher offense.

The PSRS is designed to capture bail related data for the entire state.

The system will provide a summary report of criminal history for magistrates to consider.

PSRS Entry requirements:

- Defendant is entered into the PSRS.
- User entering defendant must have TLETS access.
- TLETS is queried for Criminal History Record Information (CHRI).
- Public Safety Report is produced.

PSR:

- Defendant's PSR is presented to the magistrate (or magistrate prepares report).
- Magistrate will access the PSR and full CHRI from the PSRS (in the system itself or through a printed copy).
- Note: the PSRS may NOT be the only item relied on when making a bail decision.

Bail Type, Amount and Conditions Entered in PSRS:

- Magistration is complete and bail decisions are made.
- The bail type, amount, and conditions are entered in the PSRS.
- After bail decisions are entered in the PSRS, the magistrate, or an individual of their choice will certify the information that was provided.
- Upon certification, the Bail Form is produced, and the defendant record is closed.
- Bail Form MUST be completed within 72 hours after the bail was set.

OCA Publishes Bail Form:

- SB6 requires that the bail form is publicly available.
- OCA will retrieve the bail form from the PSRS and post on a public website.
- The following information will be published:
  - Defendant information, name and DOB
  - Cause number (if available)

- Offense(s) leading to arrest
- Name, office/position of person setting bail
- Bail type, amount, and conditions.

Who Is Responsible for Preparing/Completion of Form?:

- Could be:
  - Local Law Enforcement
  - Jail
  - Magistrate
  - Court Staff
- Note: currently, there is not any integration with other case management systems (i.e., Odyssey).
- Magistrate MUST submit a new bail form reflecting any new bonds/conditions set due to surrender or revocation of bond.

### **Burnet County Magistration Considerations.**

The Burnet County Jail is not a typical rural county jail because out-of-county inmates are housed here. This significantly increases the number of inmates housed in our jail, beyond the norm for other rural county jails. Many of these out-of-county “holds” require some degree of interaction with the magistrate. Just in the last three months, the number of people booked were:

|          |     |
|----------|-----|
| December | 323 |
| January  | 278 |
| February | 296 |

Although, not all out-of-county holds require the services of a magistrate, some inmates (local and out-of-county) require multiple interactions with the magistrate. These interactions will, most likely, require that information be entered into the PSRS.

Additionally, for those arrested on subsequent felony offenses, the District Judges will now be required to perform magistration duties. Many of the out-of-county holds are charged with felony offenses.

There is a trend of counties sending their inmates to us where they are “partially” magistrated. This has required that the magistrate, and those covering magistration, perform unpaid magistration duties for these counties. In turn, this will require that the District Judges start providing these services.

Of all the unfunded mandate burdens, operating a county jail costs counties the most. The unintended consequence of SB6 has the potential to substantially increase the cost.

For those of us that handle magistration (Burnet County Criminal Magistrate, Justices of the Peace, Marble Falls Municipal Court Judge), we are concerned about the additional time requirement that SB6 places on top of our current duties. We look to the Burnet County Commissioners’ Court for discussion and solutions.

As always, if you require additional information, please do not hesitate to contact us.