

## **MODEL POLICY: CREATING A PRETRIAL PUBLIC SAFETY REPORT SYSTEM (PSR) AND MANDATORY JUDICIAL TRAINING TO INFORM PRETRIAL DECISION-MAKING**

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**SUMMARY:** This legislation is modeled upon Texas Senate Bill 6, which passed the 2021 Second Special Session.

In particular, the section of this bill was named after Texas Trooper Damon Allen. Trooper Allen was killed by a repeat offender, who was unfortunately released on low bail.<sup>1</sup> This was caused by an unfortunate lack of criminal history information. The judge who released Trooper Allen's killer was unaware that he was already out on bond for assaulting a police officer.<sup>2</sup> Closing the gaps in the criminal history reporting system and providing complete reports is essential. Some states and local jurisdictions already have robust systems, where others are lacking. This legislation will require court administration to create a standardized uniform, state-wide criminal history report to inform judicial decision-making. This legislation could also be implemented as a local legislative or judicial policy or county ordinance mandating the uniform reports.

While there has been much criticism of pretrial risk assessments and use of demographic factors, use of prior criminal history and prior appearance in court are touchstone factors that date to settled law that predates nationhood. Giving the judges the *actual information*, rather than scoring it and providing a summary, better informs the case-by-case balancing act in which judges are required to engage when setting bail pursuant to requirements of the Eighth Amendment and the various state constitutional provisions.

Second, this legislation requires robust judicial training on bail and bail setting. Bail is often ignored despite the fact that initial custodial decisions are crucial for all parties involved, the People, the community and victims of the crime, and the accused. Unfortunately, the prevailing view over the last decade is that defendants enjoy a near absolute presumption of innocence and thus they should not have to suffer any pretrial deprivations of liberty. To the contrary, the U.S. Supreme Court said ...<sup>3</sup> We do however respect the presumption of innocence, as the Court said, it is "axiomatic," but, as the Supreme Court also said judges are task with setting a bail that meets the purposes of bail, and no higher.<sup>4</sup>

Unfortunately, as one study found, the average defendant who stays in jail for want of bail has typically six prior arrests and four prior failures to appear in court.<sup>5</sup> The presumption of innocence does not excuse prior conduct for purposes of setting bail—in nearly all states judges are already required to consider it.

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<sup>1</sup> <https://www.cbs19.tv/article/news/crime/judge-explains-low-bond-for-trooper-murder-suspect/501-495020245>

<sup>2</sup> <https://www.dps.texas.gov/news/dps-trooper-dies-line-duty-shooting>

<sup>3</sup> <https://www.law.cornell.edu/supremecourt/text/156/432>

<sup>4</sup> <https://supreme.justia.com/cases/federal/us/342/1/>

<sup>5</sup> <https://www.youtube.com/watch?v=QbfGxvphI5A&t=5s>

Recent cases also stand for the position that more expedient hearings that do consider the defendant's ability to pay are required. These expedient hearings reduce the chances that persons will be detained *solely* because they cannot afford bail.

Judges need to understand the recent developments in the case law, have unbiased information presented to them, and have continuing education on bail setting.

Creating a uniform pretrial Public Safety Report (PSR) and training judges on how to set bail on a recurring basis is essential to better public safety decision-making.

#### BILL LANGUAGE:

##### Section 1: PUBLIC SAFETY REPORT SYSTEM.

(a) The Office of Court Administration of the Texas Judicial System shall develop and maintain a public safety report system that is available for use for purposes of Section 2.

(b) The public safety report system must:

- (1) 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;
- (2) provide information on the eligibility of the defendant for a personal recognizance bond;
- (3) provide information regarding the applicability of any required or discretionary bond conditions;
- (4) 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:
    - (i) offenses that are offenses involving violence as defined [section]; or
    - (ii) offenses involving violence directed against a peace officer; and
  - (E) previous failures of the defendant to appear in court following release on bail; and
- (5) be designed to collect and maintain information designed to report to the legislature and the public on the bail system.

(c) The office shall provide access to the public safety report system to the appropriate officials in each county and each municipality at no cost. This subsection may not be construed to require the office to provide an official or magistrate with any equipment or support related to accessing or using the public safety report system.

(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 the 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 Subsection (b).

## Section 2. JUDICIAL OFFICER TO CONSIDER PUBLIC SAFETY REPORT.

- (a) A judicial officer at first appearance considering the release on bail of a defendant charged with an offense punishable as a [category] misdemeanor or felony offense shall consider the public safety report system developed under to prepare a public safety report with respect to the defendant.
- (b) The public safety report prepared under Subdivision (1) be provided to the judicial officer setting bail and conditions of release as soon as practicable but not later than 48 hours after the defendant's arrest.
- (c) A judicial officer may not, without the consent of the sheriff, order a sheriff or sheriff's department personnel to prepare a public safety report under this article.
- (d) Notwithstanding Subsection (a), a judicial may personally prepare a public safety report, before or while making a bail decision, using the public safety report system developed under Section 1.
- (e) Notwithstanding The judicial officer shal consider the public safety report before setting bail and conditions of release.
- (f) In the manner described by this article, a judicial 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 or a defendant who receives a Citation. If ordered, the report shall be prepared for the time and place for an appearance as indicated in the citation.

## Section 3. TRAINING ON DUTIES REGARDING BAIL.

- (a) The Office of Court Administration shall develop or approve training courses regarding a judicial officer duties, including duties with respect to setting bail in criminal cases. The courses developed must include: (1) an eight-hour initial training course; and (2) a two-hour continuing education course.
- (b) The office shall provide for a method of certifying that a judicial officer has successfully completed a training course required under this article, including an annual continuing education course, and has demonstrated competency of the course content in a manner acceptable to the office.
- (c) Any training course developed by the Office of Court Administration shall be made available to all judicial officers remotely and free of charge.