

Editorial: On Texas voting rules, the fear is the point

By American-Statesman Editorial Board

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Make a mistake at the polls and you could go to jail.

Potentially for years.

Still feel like voting?

For all of the attention on Texas Republicans' efforts to limit late-night voting or voting by mail, the GOP's assault on voting rights is also a campaign of fear. The voting restriction bills proposed in the Legislature this year define new crimes and enhanced penalties for voting mishaps that could be honest mistakes: a person failing to sign a written oath when helping someone else vote by mail, or a voter impeding the view of a partisan poll-watcher, or an elections official who provides a vote-by-mail application to someone who didn't request it. All are crimes under House Bill 3, a bill so rife with problems that House Democrats busted quorum and fled the state this week to try to stop it.

And lest there's any doubt that Attorney General Ken Paxton and other officials are ready to pounce on instances of voter error and send people to jail, we have the recent arrest of Hervis Rogers.

Rogers became a hero overnight last year after dutifully waiting in line six hours — until 1:30 a.m. — to cast his presidential primary ballot at a Houston polling place. But it turns out his wait wasn't long enough. Under Texas law Rogers shouldn't have voted until his probation was up, nearly four months after the March 2020 election. Rogers also voted in 2018.

It's absurd to think Rogers would draw attention to his efforts to vote, speaking to reporters last year about his hours-long wait, if he knew he was breaking the law. Surely Rogers, who left prison in 2004 after serving nine years for a burglary conviction, has no desire to go back. But Paxton is trying to send him there. On the eve of the Legislature's special session to address "election integrity," Rogers was charged with two counts of illegal voting, second-degree felonies that could carry prison terms of anywhere from two to 20 years.

Notably, Paxton exploited a loophole in state law allowing him to file the charges not where the alleged crime occurred, but in a neighboring county — putting Rogers, a Black man from heavily Democratic Harris County, into the court system of Montgomery County, a conservative stronghold where the jury pool would be overwhelmingly white. The very act of venue-shopping is a tell. Prosecutors play these games when cases hinge more on politics than the law.

But that venue-shopping paid off early: Paxton secured a punitive \$100,000 bail for Rogers, far greater than the bail amounts routinely set for people accused of stalking, deadly conduct with a firearm or other violent crimes. Rogers, 62, obtained his release with the help of the nonprofit Bail Project.

Rogers' case carries echoes of Crystal Mason, the Fort Worth woman sentenced in 2018 to five years in prison for casting a provisional ballot — which wasn't even counted — while on probation. Like Rogers, Mason has said she didn't realize she wasn't eligible to vote.

Indeed, Texas does a poor job of clarifying the matter. Then-Gov. Rick Perry vetoed a 2003 bill requiring a public campaign to explain voters' rights, including information on eligibility for those with a criminal record; and in 2007 Perry vetoed a bill ordering the Texas Department of Criminal Justice to send notices to people when their probation is up, explaining they are now eligible to register to vote. Adding to the confusion: Voting while on probation is legal in 23 other states.

Texas' threat of years in prison for such an offense is even more outrageous when you consider the kinds of punishments other states hand out for voting violations.

A Colorado woman who submitted two mail-in ballots in last year's primary was ordered to pay a \$500 fine plus court costs. A Michigan man who forged his daughter's signature on an absentee ballot last year got 90 days of probation and a \$1,000 fine. A Pennsylvania man who cast an absentee ballot in his dead mother's name, and sought another ballot on behalf of his deceased mother-in-law, got five years of probation. They broke the law and they are paying for it — but not with years of their lives.

What's happening in Texas isn't about justice. The criminalization of mistakes, the exorbitant bail for Rogers, the specter of years in prison — it's all designed to stir fear so just enough voters decide to stay home instead. Lawful voters who already finished their probation might still be afraid of a misunderstanding at the polls. Those who assist elderly or disabled voters, or

the elections workers who draw the ire of overzealous poll-watchers, might worry a misstep will land them in jail.

That's not election integrity. It's intimidation.