

- SUBJECT:** Denying bail for violating conditions of bail or certain court orders
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 5 ayes — Peña, Vaught, Riddle, Escobar, Mallory Caraway
- 0 nays
- 4 absent — Hodge, Moreno, Pierson, Talton
- WITNESSES:** For — Catherine Babbitt, Bexar County Criminal District Attorney’s Office; John McCluskey; Tillmin Welch, Professional Bondsmen of Texas; (*Registered, but did not testify:* Torie Camp, Texas Association Against Sexual Assault; Amy Mills, Tarrant County District Attorney’s Office; Celeste Moyers, Safer Online Dating Alliance; Ana Rodriguez, Texas Council on Family Violence; Melanie Spratt-Anderson, Upton County Attorney’s Office)
- Against — David Gonzalez, Texas Criminal Defense Lawyers Association; (*Registered, but did not testify:* Dominic Gonzales, Texas Criminal Justice Coalition)
- BACKGROUND:** When an individual is charged with an offense, other than a capital offense where proof is evident, the judge may release the individual on bail. The purpose of bail is to ensure that the defendant appears for trial. When setting bail, a judge considers the nature of the offense and the circumstances under which it was committed, the safety of the victim and the community, and the defendant’s ability to make bail.
- Under Texas Constitution, Art. 1, sec. 11a, a district judge has the discretion to deny bail if the defendant is accused of:
- a felony and has been convicted of two prior felonies;
  - a felony committed while on bail for a prior felony for which the defendant has been indicted;
  - a felony involving the use of a deadly weapon after being convicted of a prior felony;
  - a violent or sexual offense committed while under the supervision of a criminal justice agency (on probation or parole); or
  - a capital offense when proof is evident.

A person commits an offense under Penal Code, sec. 25.07, if in the course of violating certain protective or magistrate's orders, a person knowingly or intentionally:

- commits family violence;
- stalks a person protected by court order (sec. 42.072, Penal Code);
- communicates a threat to a person protected by court order;
- goes to or near a residence or workplace of an individual protected by the order or a member of that person's family or household;
- goes to or near any child care facility, residence, or school of a protected child; or
- possesses a firearm.

A violation of sec. 25.07, Penal Code, is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) unless the defendant previously has been convicted under this section two or more times or has violated the protective order by committing an assault or the offense of stalking, in which event the offense is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).

**DIGEST:**

HB 3692 would allow a judge to deny bail to a defendant suspected of violating a condition of bail, violating certain court orders, or committing certain acts of family violence. The bill also would expand the kinds of court orders a person could violate criminally under Penal Code, sec. 25.07(a).

**Denial of bail.** In the case of a person who committed a family violence offense or a violation of Penal Code, sec. 25.07, subsequently was released on bail, and violated a condition of that bail, HB 3692 would allow a district judge to deny bail to that person pending a subsequent trial following a judge's determination that probable cause existed to believe the person violated the condition of the initial bail related to:

- the safety of the victim of the offense under sec. Penal Code, 25.07 or the victim of the family violence case; or
- the safety of the community.

In determining whether to deny release on bail, the judge or magistrate could consider:

- the order of condition of bond violated;
- the nature and circumstances of the alleged offense;
- the relationship between the accused and the victim, including the history of that relationship;
- any criminal history of the accused; and
- any other facts or circumstances relevant to a determination of whether the accused poses an imminent threat of future family violence.

HB 3692 would amend Code of Criminal Procedure, art. 17.40(b) to change the burden of evidence that a magistrate would use to determine if a defendant violated a condition of bond from a preponderance of the evidence standard to a probable cause standard. Only when a judge had probable cause to believe the defendant violated a condition of bond or release would the judge be able to revoke the defendant's bond.

Under HB 3692, a person arrested for committing an offense under Penal Code, sec. 25.07 would be taken before a magistrate within 48 hours of the arrest in accordance with required practice under Code of Criminal Procedure, art. 15.17. At that time, the magistrate would conduct the hearing and make the determination on whether to release the defendant on bail.

**Expansion of court orders a person could violate criminally.** In addition, HB 3692 would amend Penal Code, sec. 25.07(a) by adding to the types of court orders a person could violate criminally, including conditions of:

- a bond set in a family violence case and related to the safety of the victim or the safety of the community;
- a magistrate's order for emergency protection under Code of Criminal Procedure, art. 17.292; or
- a temporary ex parte order under Family Code, ch. 83 if the temporary ex parte order had been served on the person.

HB 3692 would take effect January 1, 2008, if HJR 6 by Straus, the proposed constitutional amendment that would authorize the changes, were adopted by the Legislature and approved by the voters.

**SUPPORTERS  
SAY:**

HB 3692 would strengthen domestic violence laws in Texas. Most of the violent crime in Texas occurs between people who know one another. HB 3692 — in conjunction with HJR 6 by Straus, the constitutional amendment that would authorize it — would address this by allowing judges to deny bail to dangerous defendants. The bill also would strengthen certain court orders by severely punishing violations of those orders under Penal Code, sec. 25.07. HB 3692 and HJR 6 would allow a judge to evaluate the threat a defendant presented to the victim and to the community. If, based on the information before the judge, the defendant was deemed to pose an unacceptable threat, the judge could deny the defendant bail, thus protecting the victim and the community in a way that a bail bond, community monitoring, or even electronic monitoring never could. HB 3692 and HJR 6 are necessary to keep dangerous defendants off the streets and away from their victims.

**OPPONENTS  
SAY:**

Bail is a constitutional right and should not be removed lightly. Amending the Constitution to remove bail punishes people through confinement before they have been found guilty by a jury. In addition, Texas should not curtail the right to bail because it is an invaluable tool in preventing jail overcrowding. For the same reason, the state should hesitate to create new violations in the Penal Code because the corrections system is operating at capacity and its resources already are stretched.

HB 3692 and HJR 6 would continue the trend in Texas of creating legislation specific to family violence. While abhorrent, family violence is a subcategory of violence against a person, which is dealt with adequately in other sections of the Penal Code. Punishing a crime based on the classification of victims would represent a further retreat from the reforms made to the Penal Code in mid-90s, which emphasized the seriousness of the criminal act, not the status of the victim.

**NOTES:**

HJR 6 by Straus, the constitutional amendment that would authorize HB 3692, appears on today's Constitutional Amendments Calendar.