

BILL ANALYSIS

H.B. 3692
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Current law provides for detention without bond in felony cases under certain circumstances, but not in certain circumstances involving misdemeanors. However, in certain instances the accused violates the condition of a bond or a protective order or commits certain misdemeanor offenses relating to the safety of the victim or the safety to the community. House Bill 3692 is intended to provide increased protection to victims of family violence in cases where there is a violation of a protective order or a violation of conditions of bail by authorizing the denial of bail.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

House Bill 3692 amends the Code of Criminal Procedure to provide that at a hearing to determine whether the defendant violated the condition of bond the magistrate may revoke the defendant's bond only if it is found that probable cause exists to believe that the violation occurred.

The bill amends Sections 25.07, Penal Code, by changing the title of the section to read, "Violation of Certain Court Orders or Conditions of Bond in a Family Violence Case."

The bill adds that a person commits an offense if, in violation of a condition of bond set in a family violence case and related to the safety of the victim or the community, an order issued under Article 17.292, Code of Criminal Procedure (Magistrate's Order for Emergency Protection), an order issued under Chapter 83, Family Code (Temporary Ex Parte Orders), if the temporary ex parte order has been served on the person, or other certain issued orders, the person knowingly or intentionally commits certain actions.

H.B. 3692 provides that a person who commits an offense under Section 25.07, Penal Code (Violation of Protective Order or Magistrate's Order), related to a violation of a condition of bond set in a family violence case and whose bail is forfeited or revoked for violating the condition of bond may be taken into custody and, pending trial or other court proceedings, denied release on bail if a judge or magistrate determines following a hearing that probable cause exists to believe that the person violated a condition of bond related to the safety of the victim of family violence or the safety of the community.

The bill also provides that a person who violates a protective order or magistrate's order under Section 25.07, Penal Code, other than an offense related to a violation of a condition of bond set in a family violence case, may be taken into custody and, pending trial or other court proceeding, denied release on bail if the judge or magistrate following a hearing determines that probable cause exists to believe the person committed the offense.

The judge or magistrate, in determining whether to deny release on bail under Article 17.152, Code of Criminal Procedure, may consider the order or condition of bond, the nature and circumstances of the alleged offense, the relationship between the accused and the victim, including the history of the relationship, any criminal history of the accused, and any other facts or circumstances relevant to determining whether the accused poses an imminent threat of future family violence.

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The bill provides that a person arrested for violating a protective order or magistrate's order is required to be taken before a magistrate without unnecessary delay and after reasonable notice is given to the state's attorney, but not later the 48 hours after the arrest. At that time the magistrate is required to conduct a hearing and make a determination required by Article 17.152, Code of Criminal Procedure. The bill also states that for purposes of this article, "family violence" has the meaning assigned by Section 71.004, Family Code.

Makes application of this Act prospective.

EFFECTIVE DATE

January 1, 2008, but only if the proposed constitutional amendment proposed by the 80th Legislature, Regular Session, 2007, authorizing the denial of bail to a person who violates certain court orders or conditions of release in a felony or family violence case is approved by the voters. If the proposed constitutional amendment is not approved by the voters, this Act has no effect.