

BILL ANALYSIS

Senate Research Center

C.S.H.B. 3692
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Criminal Justice
5/21/2007
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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.

C.S.H.B. 3692 amends the Penal Code relating to the denial of bail to a person who violates an emergency protective order issued by a judge or magistrate after an arrest for an offense involving family violence or who violates an active protective order, including a temporary ex parte order, that has been served on the person.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Section 25.07, Penal Code, to read as follows:

Sec. 25.07. VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN A FAMILY VIOLENCE CASE.

SECTION 2. Amends Sections 25.07(a) and (g), Penal Code, as follows:

(a) Provides 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 of the community, an order issued under Article 17.292 (Magistrates Order for Emergency Protection), Code of Criminal Procedure, an order issued under Section 6.504 (Protective Orders), Chapter 83, Family Code, if the temporary ex parte order has been served on the person, or Chapter 85 (Issuance of Protective Order), Family Code, or an order issued by another jurisdiction, the person knowingly or intentionally commits certain acts.

(g) Provide that an offense under this section is a Class A misdemeanor unless it is shown on the trial of the offense that the defendant has previously been convicted under this section two or more time or has violated the order, or condition of bond by committing an assault or the offense of stalking, in which event the offense is a third degree felony.

SECTION 3. Amends Chapter 17, Code of Criminal Procedure, by adding Article 17.152, as follows:

Art. 17.152. DENIAL OF BAIL FOR VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN A FAMILY VIOLENCE CASE. (a) Defines "family violence."

(b) Authorizes a person who commits an offense under Section 25.07, Penal Code, related to a violation of a condition of bond set in a family violence case and whose bail in the case under that section or in the family violence case is revoked or forfeited for a violation of a condition of bond to be taken into custody and, pending trial or other court proceedings, denied release on bail if following a

hearing a judge or magistrate determines by a preponderance of the evidence that the person violated a certain condition of bond.

(c) Authorizes a person who commits an offense 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, except as otherwise provided by Subsection (d), to be taken into custody and, pending trial or other court proceedings, denied release on bail if following a hearing a judge or magistrate determines by a preponderance of the evidence that the person committed the offense.

(d) Authorizes a person who commits an offense under Section 25.07(a)(3), Penal Code, to be held without bail under Subsection (b) or (c), as applicable, only if following a hearing the judge or magistrate determines by a preponderance of the evidence that the person went to or near the place described in the order or condition of bond with the intent to commit or threaten to commit certain offenses.

(e) Authorizes the judge or magistrate, in determining whether to deny release on bail under this article, to consider certain information.

(f) Requires a person arrested for committing an offense under Section 25.07, Penal Code, without unnecessary delay and after reasonable notice is given to the attorney representing the state, but not later than 48 hours after the person is arrested, to be taken before a magistrate in accordance with Article 15.17 (Duties of Arresting Officer and Magistrate). Requires the magistrate, at that time, to conduct the hearing and make the determination required by this article.

SECTION 4. Amends Article 17.40(b), Code of Criminal Procedure, to require the magistrate, if the magistrate finds that the violation occurred, to revoke the defendant's bond and order that the defendant be immediately returned to custody. Provides that, once the defendant is placed in custody, the revocation of the defendant's bond discharges the sureties on the bond, if any, from any future liability on the bond. Provides that a discharge under this subsection from any future liability on the bond does not discharge any surety from liability for previous forfeitures on the bond.

SECTION 5. Repealer: Article 22.021 (Forfeiture After Violating Treatment Condition), Code of Criminal Procedure.

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: January 1, 2008, contingent upon passage of the 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.