

By: Straus

H.B. No. 3692

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the denial of bail to a person who violates certain
3 court orders or conditions of bond related to victim or community
4 safety.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. The heading to Section 25.07, Penal Code, is
7 amended to read as follows:

8 Sec. 25.07. VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS
9 OF BOND IN A FAMILY VIOLENCE CASE [~~PROTECTIVE ORDER OR MAGISTRATE'S~~
10 ~~ORDER~~].

11 SECTION 2. Sections 25.07(a) and (g), Penal Code, are
12 amended to read as follows:

13 (a) A person commits an offense if, in violation of a
14 condition of bond set in a family violence case and related to the
15 safety of the victim or the safety of the community, an order issued
16 under Article 17.292, Code of Criminal Procedure, an order issued
17 under Section 6.504, Family Code, Chapter 83, Family Code, if the
18 temporary ex parte order has been served on the person, or Chapter
19 85, Family Code[~~, under Article 17.292, Code of Criminal~~
20 ~~Procedure~~], or an order issued by another jurisdiction as provided
21 by Chapter 88, Family Code, the person knowingly or intentionally:

22 (1) commits family violence or an act in furtherance
23 of an offense under Section 42.072;

24 (2) communicates:

1 (A) directly with a protected individual or a
2 member of the family or household in a threatening or harassing
3 manner;

4 (B) a threat through any person to a protected
5 individual or a member of the family or household; or

6 (C) in any manner with the protected individual
7 or a member of the family or household except through the person's
8 attorney or a person appointed by the court, if the violation is of
9 an order described by this subsection and the order prohibits any
10 communication with a protected individual or a member of the family
11 or household;

12 (3) goes to or near any of the following places as
13 specifically described in the order or condition of bond:

14 (A) the residence or place of employment or
15 business of a protected individual or a member of the family or
16 household; or

17 (B) any child care facility, residence, or school
18 where a child protected by the order or condition of bond normally
19 resides or attends; or

20 (4) possesses a firearm.

21 (g) An offense under this section is a Class A misdemeanor
22 unless it is shown on the trial of the offense that the defendant
23 has previously been convicted under this section two or more times
24 or has violated the [~~protective~~] order or condition of bond by
25 committing an assault or the offense of stalking, in which event the
26 offense is a third degree felony.

27 SECTION 3. Chapter 17, Code of Criminal Procedure, is

1 amended by adding Article 17.152 to read as follows:

2 Art. 17.152. DENIAL OF BAIL FOR VIOLATION OF CERTAIN COURT
3 ORDERS OR CONDITIONS OF BOND IN A FAMILY VIOLENCE CASE. (a) In this
4 article, "family violence" has the meaning assigned by Section
5 71.004, Family Code.

6 (b) Except as otherwise provided by Subsection (d), a person
7 who commits an offense under Section 25.07, Penal Code, related to a
8 violation of a condition of bond set in a family violence case and
9 whose bail in the case under Section 25.07, Penal Code, or in the
10 family violence case is revoked or forfeited for a violation of a
11 condition of bond may be taken into custody and, pending trial or
12 other court proceedings, denied release on bail if following a
13 hearing a judge or magistrate determines by a preponderance of the
14 evidence that the person violated a condition of bond related to:

15 (1) the safety of the victim of the offense under
16 Section 25.07, Penal Code, or the family violence case, as
17 applicable; or

18 (2) the safety of the community.

19 (c) Except as otherwise provided by Subsection (d), a person
20 who commits an offense under Section 25.07, Penal Code, other than
21 an offense related to a violation of a condition of bond set in a
22 family violence case, may be taken into custody and, pending trial
23 or other court proceedings, denied release on bail if following a
24 hearing a judge or magistrate determines by a preponderance of the
25 evidence that the person committed the offense.

26 (d) A person who commits an offense under Section
27 25.07(a)(3), Penal Code, may be held without bail under Subsection

1 (b) or (c), as applicable, only if following a hearing the judge or
2 magistrate determines by a preponderance of the evidence that the
3 person went to or near the place described in the order or condition
4 of bond with the intent to commit or threaten to commit:

5 (1) family violence; or

6 (2) an act in furtherance of an offense under Section
7 42.072, Penal Code.

8 (e) In determining whether to deny release on bail under
9 this article, the judge or magistrate may consider:

10 (1) the order or condition of bond;

11 (2) the nature and circumstances of the alleged
12 offense;

13 (3) the relationship between the accused and the
14 victim, including the history of that relationship;

15 (4) any criminal history of the accused; and

16 (5) any other facts or circumstances relevant to a
17 determination of whether the accused poses an imminent threat of
18 future family violence.

19 (f) A person arrested for committing an offense under
20 Section 25.07, Penal Code, shall without unnecessary delay and
21 after reasonable notice is given to the attorney representing the
22 state, but not later than 48 hours after the person is arrested, be
23 taken before a magistrate in accordance with Article 15.17. At that
24 time, the magistrate shall conduct the hearing and make the
25 determination required by this article.

26 SECTION 4. This Act applies only to an offense committed on
27 or after the effective date of this Act. An offense committed

1 before the effective date of this Act is governed by the law in
2 effect at the time the offense was committed, and the former law is
3 continued in effect for that purpose. For purposes of this section,
4 an offense was committed before the effective date of this Act if
5 any element of the offense was committed before that date.

6 SECTION 5. This Act takes effect January 1, 2008, but only
7 if the constitutional amendment proposed by the 80th Legislature,
8 Regular Session, 2007, authorizing the denial of bail to a person
9 who violates certain court orders or conditions of release in a
10 felony or family violence case is approved by the voters. If that
11 constitutional amendment is not approved by the voters, this Act
12 has no effect.