

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. Article 17.40(b), Code of Criminal Procedure, is  
7 amended to read as follows:

8 (b) At a hearing limited to determining whether the  
9 defendant violated a condition of bond imposed under Subsection  
10 (a), the magistrate may revoke the defendant's bond only if the  
11 magistrate finds that probable cause exists to believe [~~by a~~  
12 ~~preponderance of the evidence~~] that the violation occurred.

13 SECTION 2. The heading to Section 25.07, Penal Code, is  
14 amended to read as follows:

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

18 SECTION 3. Section 25.07(a), Penal Code, is amended to read  
19 as follows:

20 (a) A person commits an offense if, in violation of a  
21 condition of bond set in a family violence case and related to the  
22 safety of the victim or the safety of the community, an order issued  
23 under Article 17.292, Code of Criminal Procedure, an order issued  
24 under Section 6.504, Family Code, Chapter 83, Family Code, if the

1 temporary ex parte order has been served on the person, or Chapter  
2 85, Family Code [~~, under Article 17.292, Code of Criminal~~  
3 ~~Procedure~~], or an order issued by another jurisdiction as provided  
4 by Chapter 88, Family Code, the person knowingly or intentionally:

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

7 (2) communicates:

8 (A) directly with a protected individual or a  
9 member of the family or household in a threatening or harassing  
10 manner;

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

13 (C) in any manner with the protected individual  
14 or a member of the family or household except through the person's  
15 attorney or a person appointed by the court, if the order or  
16 condition of bond prohibits any communication with a protected  
17 individual or a member of the family or household;

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

20 (A) the residence or place of employment or  
21 business of a protected individual or a member of the family or  
22 household; or

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

26 (4) possesses a firearm.

27 SECTION 4. 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) A person who commits an offense under Section 25.07,  
7 Penal Code, related to a violation of a condition of bond set in a  
8 family violence case and whose bail in the case under Section 25.07,  
9 Penal Code, or in the family violence case is revoked or forfeited  
10 for a violation of a condition of bond may be taken into custody  
11 and, pending trial or other court proceedings, denied release on  
12 bail on a determination by a judge or magistrate following a hearing  
13 that probable cause exists to believe the person violated a  
14 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) A person who commits an offense under Section 25.07,  
20 Penal Code, other than an offense related to a violation of a  
21 condition of bond set in a family violence case, may be taken into  
22 custody and, pending trial or other court proceedings, denied  
23 release on bail on a determination by a judge or magistrate  
24 following a hearing that probable cause exists to believe the  
25 person committed the offense.

26 (d) In determining whether to deny release on bail under  
27 this article, the judge or magistrate may consider:

1           (1) the order or condition of bond;

2           (2) the nature and circumstances of the alleged  
3 offense;

4           (3) the relationship between the accused and the  
5 victim, including the history of that relationship;

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

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

10           (e) A person arrested for committing an offense under  
11 Section 25.07, Penal Code, shall without unnecessary delay and  
12 after reasonable notice is given to the attorney representing the  
13 state, but not later than 48 hours after the person is arrested, be  
14 taken before a magistrate in accordance with Article 15.17. At that  
15 time, the magistrate shall conduct the hearing and make the  
16 determination required by this article.

17           SECTION 5. This Act applies only to an offense committed on  
18 or after the effective date of this Act. An offense committed  
19 before the effective date of this Act is governed by the law in  
20 effect at the time the offense was committed, and the former law is  
21 continued in effect for that purpose. For purposes of this section,  
22 an offense was committed before the effective date of this Act if  
23 any element of the offense was committed before that date.

24           SECTION 6. This Act takes effect January 1, 2008, but only  
25 if the constitutional amendment proposed by the 80th Legislature,  
26 Regular Session, 2007, authorizing the denial of bail to a person  
27 who violates certain court orders or conditions of release in a

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1 felony or family violence case is approved by the voters. If that  
2 constitutional amendment is not approved by the voters, this Act  
3 has no effect.