

1-1 By: Straus (Senate Sponsor - Wentworth) H.B. No. 3692
1-2 (In the Senate - Received from the House May 8, 2007;
1-3 May 10, 2007, read first time and referred to Committee on Criminal
1-4 Justice; May 21, 2007, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;
1-6 May 21, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 3692 By: Hinojosa

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the denial or revocation of bail for a person who
1-11 violates certain court orders or conditions of bond related to
1-12 victim or community safety.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. The heading to Section 25.07, Penal Code, is
1-15 amended to read as follows:

1-16 Sec. 25.07. VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS
1-17 OF BOND IN A FAMILY VIOLENCE CASE [~~PROTECTIVE ORDER OR MAGISTRATE'S~~
1-18 ~~ORDER~~].

1-19 SECTION 2. Sections 25.07(a) and (g), Penal Code, are
1-20 amended to read as follows:

1-21 (a) A person commits an offense if, in violation of a
1-22 condition of bond set in a family violence case and related to the
1-23 safety of the victim or the safety of the community, an order issued
1-24 under Article 17.292, Code of Criminal Procedure, an order issued
1-25 under Section 6.504, Family Code, Chapter 83, Family Code, if the
1-26 temporary ex parte order has been served on the person, or Chapter
1-27 85, Family Code [~~, under Article 17.292, Code of Criminal~~
1-28 ~~Procedure~~], or an order issued by another jurisdiction as provided
1-29 by Chapter 88, Family Code, the person knowingly or intentionally:

1-30 (1) commits family violence or an act in furtherance
1-31 of an offense under Section 42.072;

1-32 (2) communicates:

1-33 (A) directly with a protected individual or a
1-34 member of the family or household in a threatening or harassing
1-35 manner;

1-36 (B) a threat through any person to a protected
1-37 individual or a member of the family or household; or

1-38 (C) in any manner with the protected individual
1-39 or a member of the family or household except through the person's
1-40 attorney or a person appointed by the court, if the violation is of
1-41 an order described by this subsection and the order prohibits any
1-42 communication with a protected individual or a member of the family
1-43 or household;

1-44 (3) goes to or near any of the following places as
1-45 specifically described in the order or condition of bond:

1-46 (A) the residence or place of employment or
1-47 business of a protected individual or a member of the family or
1-48 household; or

1-49 (B) any child care facility, residence, or school
1-50 where a child protected by the order or condition of bond normally
1-51 resides or attends; or

1-52 (4) possesses a firearm.

1-53 (g) An offense under this section is a Class A misdemeanor
1-54 unless it is shown on the trial of the offense that the defendant
1-55 has previously been convicted under this section two or more times
1-56 or has violated the [~~protective~~] order or condition of bond by
1-57 committing an assault or the offense of stalking, in which event the
1-58 offense is a third degree felony.

1-59 SECTION 3. Chapter 17, Code of Criminal Procedure, is
1-60 amended by adding Article 17.152 to read as follows:

1-61 Art. 17.152. DENIAL OF BAIL FOR VIOLATION OF CERTAIN COURT
1-62 ORDERS OR CONDITIONS OF BOND IN A FAMILY VIOLENCE CASE. (a) In this
1-63 article, "family violence" has the meaning assigned by Section

2-1 71.004, Family Code.

2-2 (b) Except as otherwise provided by Subsection (d), a person
 2-3 who commits an offense under Section 25.07, Penal Code, related to a
 2-4 violation of a condition of bond set in a family violence case and
 2-5 whose bail in the case under Section 25.07, Penal Code, or in the
 2-6 family violence case is revoked or forfeited for a violation of a
 2-7 condition of bond may be taken into custody and, pending trial or
 2-8 other court proceedings, denied release on bail if following a
 2-9 hearing a judge or magistrate determines by a preponderance of the
 2-10 evidence that the person violated a condition of bond related to:

2-11 (1) the safety of the victim of the offense under
 2-12 Section 25.07, Penal Code, or the family violence case, as
 2-13 applicable; or

2-14 (2) the safety of the community.

2-15 (c) Except as otherwise provided by Subsection (d), a person
 2-16 who commits an offense under Section 25.07, Penal Code, other than
 2-17 an offense related to a violation of a condition of bond set in a
 2-18 family violence case, may be taken into custody and, pending trial
 2-19 or other court proceedings, denied release on bail if following a
 2-20 hearing a judge or magistrate determines by a preponderance of the
 2-21 evidence that the person committed the offense.

2-22 (d) A person who commits an offense under Section
 2-23 25.07(a)(3), Penal Code, may be held without bail under Subsection
 2-24 (b) or (c), as applicable, only if following a hearing the judge or
 2-25 magistrate determines by a preponderance of the evidence that the
 2-26 person went to or near the place described in the order or condition
 2-27 of bond with the intent to commit or threaten to commit:

2-28 (1) family violence; or

2-29 (2) an act in furtherance of an offense under Section
 2-30 42.072, Penal Code.

2-31 (e) In determining whether to deny release on bail under
 2-32 this article, the judge or magistrate may consider:

2-33 (1) the order or condition of bond;

2-34 (2) the nature and circumstances of the alleged
 2-35 offense;

2-36 (3) the relationship between the accused and the
 2-37 victim, including the history of that relationship;

2-38 (4) any criminal history of the accused; and

2-39 (5) any other facts or circumstances relevant to a
 2-40 determination of whether the accused poses an imminent threat of
 2-41 future family violence.

2-42 (f) A person arrested for committing an offense under
 2-43 Section 25.07, Penal Code, shall without unnecessary delay and
 2-44 after reasonable notice is given to the attorney representing the
 2-45 state, but not later than 48 hours after the person is arrested, be
 2-46 taken before a magistrate in accordance with Article 15.17. At that
 2-47 time, the magistrate shall conduct the hearing and make the
 2-48 determination required by this article.

2-49 SECTION 4. Article 17.40(b), Code of Criminal Procedure, is
 2-50 amended to read as follows:

2-51 (b) At a hearing limited to determining whether the
 2-52 defendant violated a condition of bond imposed under Subsection
 2-53 (a), the magistrate may revoke the defendant's bond only if the
 2-54 magistrate finds by a preponderance of the evidence that the
 2-55 violation occurred. If the magistrate finds that the violation
 2-56 occurred, the magistrate shall revoke the defendant's bond and
 2-57 order that the defendant be immediately returned to custody. Once
 2-58 the defendant is placed in custody, the revocation of the
 2-59 defendant's bond discharges the sureties on the bond, if any, from
 2-60 any future liability on the bond. A discharge under this subsection
 2-61 from any future liability on the bond does not discharge any surety
 2-62 from liability for previous forfeitures on the bond.

2-63 SECTION 5. Article 22.021, Code of Criminal Procedure, is
 2-64 repealed.

2-65 SECTION 6. This Act applies only to an offense committed on
 2-66 or after the effective date of this Act. An offense committed
 2-67 before the effective date of this Act is governed by the law in
 2-68 effect at the time the offense was committed, and the former law is
 2-69 continued in effect for that purpose. For purposes of this section,

3-1 an offense was committed before the effective date of this Act if
3-2 any element of the offense was committed before that date.

3-3 SECTION 7. This Act takes effect January 1, 2008, but only
3-4 if the constitutional amendment proposed by the 80th Legislature,
3-5 Regular Session, 2007, authorizing the denial of bail to a person
3-6 who violates certain court orders or conditions of release in a
3-7 felony or family violence case is approved by the voters. If that
3-8 constitutional amendment is not approved by the voters, this Act
3-9 has no effect.

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