

- SUBJECT:** Allowing bail denial to defendants violating conditions of release
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 7 ayes — Keel, Riddle, Denny, Escobar, Hodge, Pena, Raymond
0 nays
2 absent — P. Moreno, Reyna
- WITNESSES:** For — Elmer Beckworth; Shannon Edmonds, Texas District and County Attorneys Association; William Hubbarth, Justice for All
Against — Carol Oeller, Harris County Pretrial Services
- BACKGROUND:** When an individual is charged with an offense, the judge may release the individual on bail. The purpose of bail is to ensure that the defendant appears for trial. When setting bail, a judge considers the nature of the offense and the circumstances under which it was committed, the safety of the victim and the community, and the defendant's ability to make bail.
- Under Texas Constitution, Art. 1, sec. 11a., a district judge has the discretion to deny bail if the defendant is accused of:
- a felony and has been convicted of two prior felonies;
 - a felony committed while on bail for a prior felony for which the defendant has been indicted;
 - a felony involving the use of a deadly weapon after being convicted of a prior felony;
 - a violent or sexual offense committed while under the supervision of a criminal justice agency (on probation or parole); or
 - a capital offense when proof is evident.
- DIGEST:** HJR 56 would add Art. 1, sec. 11b to the Texas Constitution, stating that a person accused of a felony who was released on bail pending a trial and whose bail subsequently was revoked or forfeited due to a violation of a condition of release, could be denied bail by a district judge pending trial

if the person had violated a condition of release related to the safety of the victim or the community.

The proposal would be presented to the voters at an election on Tuesday, November 8, 2005. The ballot proposal would read: "The constitutional amendment authorizing the denial of bail to a criminal defendant who violates a condition of the defendant's release pending trial."

**SUPPORTERS
SAY:**

CSHJR 56 would give judges discretion to deny bail when a defendant posed a threat to a victim or the community. This especially would be important to protect victims of domestic violence. In such cases, it is not uncommon for a defendant to be arrested for violating a restraining order and after release on bail to cause the victim further injury or even death. Studies have shown that family violence victims are in greatest danger of violent attack from the offender after seeking help or filing charges.

Under current law, when a defendant violates conditions of bail and bail is revoked, if the defendant files a writ of habeas corpus the judge must again set bail. This renders the initial terms of bail virtually worthless. By enabling a judge to deny bail in this circumstance, CSHJR 56 would strengthen a judge's ability to enforce the initial terms of bail.

CSHJR 56 is narrowly tailored so as not to deny the defendant guaranteed protections. The additional discretion of a judge to deny bail would be limited to circumstances in which the defendant had shown an unwillingness to follow the terms of bail and posed a threat to the community or the victim.

**OPPONENTS
SAY:**

The breadth of the language in this resolution would enable a judge to deny bail in virtually any situation in which an individual charged with a felony violated a condition of bail. "Safety of the victim" or "safety of the community" could be interpreted to include almost any circumstance. If a defendant is to be detained prior to trial, the conditions for detention should be very narrowly limited to preserve the defendant's due process rights. It is a longstanding principle of Texas and federal law that bail cannot be used as an instrument of oppression. Giving the judge the discretion to deny bail in such broad circumstances would violate this fundamental principle.

NOTES:

The committee substitute would allow a judge to deny bail only if the violated condition of release was related to the safety of the victim or the community.

The companion joint resolution, SJR 17 by Staples, was adopted by the Senate by 25-0 on April 7 and was reported favorably, without amendment, by the House Criminal Jurisprudence Committee on May 3, making it eligible to be considered in lieu of HJR 56.

HB 1662 by Gattis, which would amend the Code of Criminal Procedure, art. 17.151, to allow a judge to deny bail to a defendant after a delay in prosecution if the defendant was detained for a violation of the conditions of a previous release if those conditions related to the safety of a victim of the alleged offense or to the safety of the community, was postponed until today's calendar to allow consideration of its Senate-passed companion, SB 599 by Staples.