

SUBJECT: Denial of bail in a felony or family violence case

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Peña, Vaught, Riddle, Escobar, Mallory Caraway

0 nays

4 absent — Hodge, Moreno, Pierson, Talton

WITNESSES: For — Catherine Babbitt, Bexar County Criminal District Attorney; Tillmin Welch, Professional Bondsmen of Texas; John McCluskey; (*Registered, but did not testify:* Torie Camp, Texas Association Against Sexual Assault; Celeste Moyers, Safer Online Dating Alliance; Ana Rodriguez, Texas Council on Family Violence)

Against — David Gonzalez, Texas Criminal Defense Lawyers Association

BACKGROUND: When an individual is charged with an offense, other than a capital offense where proof is evident, 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; or
- a violent or sexual offense committed while under the supervision of a criminal justice agency (on probation or parole).

Art. 1, sec. 11b applies to a person who is accused of a felony and released on bail pending the trial. Such a person whose bail subsequently is revoked or forfeited as a result of a violation of a condition of release may, at a subsequent hearing to set or reinstate bail, be denied bail pending trial

if the judge determines that the person violated a condition of release related to the safety of a victim or the community.

DIGEST:

HJR 6 would amend Texas Constitution, Art. 1, sec. 11b by expanding the ability of a judge or magistrate to deny bail at a subsequent hearing to a defendant originally charged with an offense involving family violence and released on bail pending the trial. If the bail of such a person was revoked or forfeited as a result of a violation of a condition of release, the judge would need to find that probable cause existed to believe the defendant violated a condition of release related to the safety of a victim or the community instead of determining that the suspect actually had done so.

HJR 6 also would add Texas Constitution, Art. 1, sec. 11c to allow the Legislature to enact laws allowing for a person to be taken into custody and denied bail if probable cause existed to believe that the person:

- violated an order for emergency protection issued after an arrest for family violence;
- violated an active protective order issued by a court in a family violence case, including a temporary *ex parte* order that had been served on the person; or
- engaged in conduct that constituted an offense of violating an emergency protection order or an *ex parte* order.

The proposal would be presented to the voters at an election on Tuesday, November 6, 2007. The ballot proposal would read: "The constitutional amendment authorizing the denial of bail to a person who violates certain court orders or conditions of release in a felony or family violence case."

SUPPORTERS  
SAY:

HJR 6, and its enabling legislation HB 3692 by Straus, would allow the Legislature to strengthen domestic violence laws in Texas. Most of the violent crime in Texas occurs between people who know one another. HJR 6 and HB 3692 would allow a judge to evaluate the threat a defendant presented to the victim and to the community. If, based on the information before the judge, the defendant was deemed to pose an unacceptable threat, the judge could deny the defendant bail, thus protecting the victim and the community in a way that a bail bond, community monitoring, or even electronic monitoring never could. HJR 6 and HB 3692 are necessary to keep dangerous defendants off the streets and away from their victims.

OPPONENTS  
SAY:

Bail is a constitutional right and should not be removed lightly. Amending the Constitution to remove bail punishes people through confinement before they have been found guilty by a jury. In addition, Texas should not curtail the right to bail because it is an invaluable tool in preventing jail overcrowding.

HJR 6 and HB 3692 would continue the trend in Texas of creating legislation specific to family violence. While abhorrent, family violence is a subcategory of violence against a person, which is dealt with adequately in other sections of the Penal Code. Punishing a crime based on the classification of victims would represent a further retreat from the reforms made to the Penal Code in mid-90s, which emphasized the seriousness of the criminal act, not the status of the victim.

NOTES:

A related measure, HB 3692 by Straus, the enabling legislation for HJR 6, would allow a judge to deny bail to a defendant suspected of violating a condition of bail, violating certain court orders, or committing certain acts of family violence. HB 3692 appears on today's General State Calendar.