

**SUBJECT:** Bond and bail for a defendant charged with certain offenses against a child

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 9 ayes — Gallego, Fletcher, Hodge, Kent, Miklos, Moody, Pierson, Vaught, Vo

0 nays

2 absent — Christian, Riddle

**WITNESSES:** For — Amy Mills, Tarrant County District Attorney's Office; Joy Rauls, Children's Advocacy Centers of Texas, Incorporated; Mary Ellen Sherrill, The Children's Assessment Center; (*Registered, but did not testify:* Joe Black, Harrison County District Attorney's Office; Marc Chavez, Lubbock County District Attorney's Office; Katrina Daniels, Bexar County District Attorney Susan Reed; Patricia Hogue, TexProtects; Madeline McClure, TexProtects, The Texas Association for the Protection of Children; Kevin Petroff, Harris County District Attorney's Office; Dan Powers, Children's Advocacy Centers of Texas, Collin County Children's Advocacy Center; Ballard C. Shapleigh, Jaime Esparza District Attorney, 34th Judicial District; Tillman Welch, Professional Bondsmen of Texas)

Against — None

**BACKGROUND:** Under Code of Criminal Procedure, art. 17.41, if a defendant is charged with a sexual or assaultive offense, prohibited sexual contact, or sexual performance of a child, and the victim is 12 years of age or younger, a magistrate may order, as a condition of bond, that the defendant not directly communicate with the alleged victim, or go near a residence, school, or other specified location frequented by the alleged victim.

**DIGEST:** CSHB 3751 would require a magistrate to issue a no-contact order under Code of Criminal Procedure, art. 17.41, as a condition of bond, for a defendant charged with offenses against a child younger than 14.

A defendant who violated a condition of bond set under art. 17.41 and whose bail was revoked for the violation could be taken into custody and denied release on bail pending trial if, following a hearing, a judge or

magistrate determined by a preponderance of the evidence that the defendant violated a condition of bond related to the safety of the victim or of the community. If the magistrate found a violation, the magistrate could revoke the defendant's bond and order the defendant returned to custody.

Once the defendant was placed in custody, the bond revocation would discharge any sureties on the bond from future liability on the bond, but not from liability for previous forfeitures on the bond.

CSHB 3751 would take effect September 1, 2009, and would apply only to an offense committed on or after this date.

**SUPPORTERS  
SAY:**

Requiring a judge or magistrate to issue no-contact orders for defendants charged with certain crimes against children under 14 years old, as CSHB 3751 would do, would protect the safety of victims awaiting trial. Continued contact gives offenders the opportunity to further victimize children. Where no contact orders already are required, incidents of re-victimization have diminished considerably.

The bill would protect the integrity of criminal cases. An offender who continues to contact a victim has time to intimidate or harass the victim into recanting an outcry. By causing a victim to change the victim's story or refuse to testify, an offender can render these heinous crimes difficult to prosecute.

**OPPONENTS  
SAY:**

A judge or magistrate should have the option not to issue a no-contact order as a condition of bond. In a case where the offense is a lower-level assault, it might not be necessary to require a no-contact order.

**OTHER  
OPPONENTS  
SAY:**

While CSHB 3751 would be a valuable tool to ensure the safety of victims and the integrity of cases, it should prohibit indirect contact with the victim in addition to direct contact. When an offender is a parent or guardian of the victim, that person often sends letters or messages to the child through the other parent, which can be as intimidating or harmful as direct contact.

**NOTES:**

The companion bill, SB 1381 by Shapiro, has been referred to the Senate Criminal Justice Committee.