

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 3751
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Criminal Justice
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This bill recognizes that children are a very unique class of victims due to their age and developmental level and strives to address one of the many barriers children face when they are involved in the very complicated and adult criminal justice system. Due to a variety of reasons, child sexual and physical abuse cases can often take a substantial period of time to get to trial. During this delay, the alleged perpetrator can often be out in the community on bond. Contact by the alleged perpetrator during this time can create another source of victimization for the child and can also affect the child's willingness and ability to testify in court as a witness.

This bill seeks to provide a legal means through which the "status quo" between all parties can be maintained after an allegation of abuse has been charged and the alleged perpetrator has been released into the community on bond. In order to accomplish this, it is important to protect both the victim and the defendant by ensuring that additional complicating factors brought on by the contact between the child and the alleged perpetrator do not arise while the allegation is being investigated and prosecuted. Often children are abused by people they know and trust. Unsupervised contact with such people may influence both the child's testimony and the child's willingness to participate in this difficult process. This bill also seeks to give judges a variety of means to address defendants who violate a no-contact order, which is a condition of bond. The purpose of this bill is to ensure the safety of child victims of sexual and physical assault during the time between investigation and prosecution.

C.S.H.B. 3751 amends current law relating to the conditions of bond for a defendant charged with committing certain offenses against a child and to the denial of bail pending trial with respect to certain defendants who violate those conditions.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Articles 17.41(a) and (b), Code of Criminal Procedure, as follows:

- (a) Provides that this article applies to a defendant charged with an offense under certain provisions of the Penal Code, if committed against a child younger than 14, rather than 12, years of age or younger.
- (b) Authorizes a magistrate, subject to Subsections (c) (relating to authorizing the magistrate to grant the defendant supervised access to the victim) and (d) (relating to a condition imposed by this article prevailing over an existing court order), with respect to a defendant who is charged with an offense described by Subsection (a), to require as a condition of bond, if an attorney representing the state is present at the time the magistrate sets the conditions of the defendant's bond, and to require as a condition of bond, if an attorney representing the state is not present at the time the magistrate sets the conditions of the defendant's bond, that the defendant not directly communicate with the alleged victim of the offense or go near a residence, school, or other location, as specifically described in the bond, frequented by the alleged victim. Deletes existing text authorizing a magistrate to require as a condition of bond for a defendant charged with an offense described by Subsection (a) of this article that the defendant not directly

communicate with the alleged victim of the offense or go near a residence, school, or other location, as specifically described in the bond, frequented by the alleged victim. Makes nonsubstantive changes.

SECTION 2. Amends Chapter 17, Code of Criminal Procedure, by adding Article 17.153, as follows:

Art. 17.153. DENIAL OF BAIL FOR VIOLATION OF CONDITION OF BOND WHERE CHILD ALLEGED VICTIM. (a) Provides that this article applies to a defendant charged with a felony offense under any of the following provisions of the Penal Code, if committed against a child younger than 14 years of age: Chapter 21 (Sexual Offenses) or 22 (Assaultive Offenses), Section 25.02 (Prohibited Sexual Conduct), or Section 43.25 (Sexual Performance by a Child).

(b) Authorizes a defendant described by Subsection (a) who violates a condition of bond set under Article 17.41 and whose bail in the case is revoked for the violation to be taken into custody and denied release on bail pending trial if, following a hearing, a judge or magistrate determines by a preponderance of evidence that the defendant violated a condition of bond related to the safety of the victim of the offense or the safety of the community. Authorizes the magistrate to revoke the defendant's bond and order the defendant be immediately returned to custody if the magistrate finds that the violation occurred. Provides that once the defendant is placed in custody, the revocation of the defendant's bond discharges the sureties on the bond, if any, from any future liability on the bond. Provides that a discharge under this subsection from any future liability on the bond does not discharge any surety from liability for previous forfeitures on the bond.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2009.