

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 30, 2009
Date

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 3951 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Shapiro
Shapiro - chair

Averitt
Averitt

H. H. Hays
Hays

John E. Wiley
Wiley

Patrick
Patrick On the part of the Senate

Gallego
Gallego - chair

R. J. Mikes
Mikes

Allen Fletcher
Fletcher

Christy
Christy On the part of the House

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 3751

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the conditions of bond for a defendant charged with
3 committing certain offenses against a child and to the denial of
4 bail pending trial with respect to certain defendants who violate
5 those conditions.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Articles 17.41(a) and (b), Code of Criminal
8 Procedure, are amended to read as follows:

9 (a) This article applies to a defendant charged with an
10 offense under any of the following provisions of the Penal Code, if
11 committed against a child younger than 14 [~~12~~] years of age [~~or~~
12 ~~younger~~]:

13 (1) Chapter 21 (Sexual Offenses) or 22 (Assaultive
14 Offenses);

15 (2) Section 25.02 (Prohibited Sexual Conduct); or

16 (3) Section 43.25 (Sexual Performance by a Child).

17 (b) Subject to Subsections (c) and (d), a [A] magistrate
18 shall [~~may~~] require as a condition of bond for a defendant charged
19 with an offense described by Subsection (a) [~~of this article~~] that
20 the defendant not:

21 (1) directly communicate with the alleged victim of
22 the offense; or

23 (2) go near a residence, school, or other location, as
24 specifically described in the bond, frequented by the alleged

1 victim.

2 SECTION 2. Chapter 17, Code of Criminal Procedure, is
3 amended by adding Article 17.153 to read as follows:

4 Art. 17.153. DENIAL OF BAIL FOR VIOLATION OF CONDITION OF
5 BOND WHERE CHILD ALLEGED VICTIM. (a) This article applies to a
6 defendant charged with a felony offense under any of the following
7 provisions of the Penal Code, if committed against a child younger
8 than 14 years of age:

9 (1) Chapter 21 (Sexual Offenses);

10 (2) Section 25.02 (Prohibited Sexual Conduct); or

11 (3) Section 43.25 (Sexual Performance by a Child).

12 (b) A defendant described by Subsection (a) who violates a
13 condition of bond set under Article 17.41 and whose bail in the case
14 is revoked for the violation may be taken into custody and denied
15 release on bail pending trial if, following a hearing, a judge or
16 magistrate determines by a preponderance of the evidence that the
17 defendant violated a condition of bond related to the safety of the
18 victim of the offense or the safety of the community. If the
19 magistrate finds that the violation occurred, the magistrate may
20 revoke the defendant's bond and order that the defendant be
21 immediately returned to custody. Once the defendant is placed in
22 custody, the revocation of the defendant's bond discharges the
23 sureties on the bond, if any, from any future liability on the bond.
24 A discharge under this subsection from any future liability on the
25 bond does not discharge any surety from liability for previous
26 forfeitures on the bond.

27 SECTION 3. The change in law made by this Act applies only

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1 to an offense committed on or after the effective date of this Act.
2 An offense committed before the effective date of this Act is
3 covered by the law in effect when the offense was committed, and the
4 former law is continued in effect for that purpose. For purposes of
5 this section, an offense was committed before the effective date of
6 this Act if any element of the offense occurred before that date.

7 SECTION 4. This Act takes effect September 1, 2009.

House Bill 3751
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Articles 17.41(a) and (b), Code of Criminal Procedure, are amended to read as follows:

(a) This article applies to a defendant charged with an offense under any of the following provisions of the Penal Code, if committed against a child younger than 14 ~~[12]~~ years of age ~~[or younger]~~:

- (1) Chapter 21 (Sexual Offenses) or 22 (Assaultive Offenses);
- (2) Section 25.02 (Prohibited Sexual Conduct); or
- (3) Section 43.25 (Sexual Performance by a Child).

(b) Subject to Subsections (c) and (d), a [A] magistrate shall ~~[may]~~ require as a condition of bond for a defendant charged with an offense described by Subsection (a) ~~[of this article]~~ that the defendant not:

- ~~(1) directly communicate with the alleged victim of the offense; or~~
- ~~(2) go near a residence, school, or other location, as specifically described in the bond, frequented by the alleged victim.~~

SECTION 2. Chapter 17, Code of Criminal Procedure, is amended by adding Article 17.153 to read as follows:

SENATE VERSION

SECTION 1. Articles 17.41(a) and (b), Code of Criminal Procedure, are amended to read as follows:

(a) This article applies to a defendant charged with an offense under any of the following provisions of the Penal Code, if committed against a child younger than 14 ~~[12]~~ years of age ~~[or younger]~~:

- (1) Chapter 21 (Sexual Offenses) or 22 (Assaultive Offenses);
- (2) Section 25.02 (Prohibited Sexual Conduct); or
- (3) Section 43.25 (Sexual Performance by a Child).

(b) Subject to Subsections (c) and (d), with respect to a defendant who is charged with an offense described by Subsection (a), a [A] magistrate may 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 shall 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, [for a defendant charged with an offense described by Subsection (a) of this article]~~ that the defendant not:

- ~~(1) directly communicate with the alleged victim of the offense; or~~
- ~~(2) go near a residence, school, or other location, as specifically described in the bond, frequented by the alleged victim.~~

SECTION 2. Chapter 17, Code of Criminal Procedure, is amended by adding Article 17.153 to read as follows:

CONFERENCE

SECTION 1. Same as House version.

SECTION 2. Same as House version.

House Bill 3751
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

Art. 17.153. DENIAL OF BAIL FOR VIOLATION OF CONDITION OF BOND WHERE CHILD ALLEGED VICTIM. (a) 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:

- (1) Chapter 21 (Sexual Offenses);
- (2) Section 25.02 (Prohibited Sexual Conduct); or
- (3) Section 43.25 (Sexual Performance by a Child).

(b) 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 may be taken into custody and denied release on bail pending trial if, following a hearing, a judge or magistrate determines by a preponderance of the 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. If the magistrate finds that the violation occurred, the magistrate may revoke the defendant's bond and order that the defendant be immediately returned to custody. 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. 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.

SENATE VERSION

Art. 17.153. DENIAL OF BAIL FOR VIOLATION OF CONDITION OF BOND WHERE CHILD ALLEGED VICTIM. (a) 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:

- (1) Chapter 21 (Sexual Offenses) ~~or 22 (Assaultive Offenses);~~
- (2) Section 25.02 (Prohibited Sexual Conduct); or
- (3) Section 43.25 (Sexual Performance by a Child).

(b) 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 may be taken into custody and denied release on bail pending trial if, following a hearing, a judge or magistrate determines by a preponderance of the 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. If the magistrate finds that the violation occurred, the magistrate may revoke the defendant's bond and order that the defendant be immediately returned to custody. 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. 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.

CONFERENCE

House Bill 3751
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SECTION 3. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 4. This Act takes effect September 1, 2009.

SENATE VERSION

SECTION 3. Same as House version.

SECTION 4. Same as House version.

CONFERENCE

SECTION 3. Same as House version.

SECTION 4. Same as House version.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 30, 2009

TO: Honorable David Dewhurst , Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3751 by Gallego (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.), **Conference Committee Report**

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, ESi, DB

Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on HR B. 3751 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.


(name)

5/30/09
(date)