

CHAPTER 595

H.B. No. 1378

An Act relating to the imposition of certain conditions of bail, probation, mandatory supervision, and parole for defendants charged with or convicted of certain offenses with children as victims.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Chapter 17, Code of Criminal Procedure, 1965, is amended by adding Article 17.41 to read as follows:

Art. 17.41. CONDITION WHERE CHILD ALLEGED VICTIM. (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 12 years of age or younger:

- (1) Chapter 21 (Sexual Offenses) or 22 (Assaultive Offenses);*
- (2) Section 25.02 (Incest);*
- (3) Section 25.06 (Solicitation of a Child, as added by Chapter 413, Acts of the 65th Legislature, Regular Session, 1977); or*
- (4) Section 43.25 (Sexual Performance by a Child).*

(b) A magistrate 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 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.

(c) A magistrate who imposes a condition of bond under this article may grant the defendant supervised access to the alleged victim.

(d) To the extent that a condition imposed under this article conflicts with an existing court order granting possession of or access to a child, the condition imposed under this article prevails for a period specified by the magistrate, not to exceed 90 days.

SECTION 2. Section 6, Article 42.12, Code of Criminal Procedure, 1965, as amended by Section 1, Chapter 237, Acts of the 68th Legislature, Regular Session, 1983, and by Section 10, Chapter 303, Acts of the 68th Legislature, Regular Session, 1983, is amended to read as follows:

Sec. 6. (a) The court having jurisdiction of the case shall determine the terms and conditions of probation and may, at any time, during the period of probation alter or modify the conditions; provided, however, that the clerk of the court shall furnish a copy of such terms and conditions to the probationer, and shall note the date of delivery of such copy on the docket. Terms and conditions of probation may include, but shall not be limited to, the conditions that the probationer shall:

- a. Commit no offense against the laws of this State or of any other State or of the United States;
- b. Avoid injurious or vicious habits;

- c. Avoid persons or places of disreputable or harmful character;
- d. Report to the probation officer as directed by the judge or probation officer and obey all rules and regulations of the probation department;
- e. Permit the probation officer to visit him at his home or elsewhere;
- f. Work faithfully at suitable employment as far as possible;
- g. Remain within a specified place;
- h. Pay his fine, if one be assessed, and all court costs whether a fine be assessed or not, in one or several sums, and make restitution or reparation in any sum that the court shall determine;
- i. Support his dependents;
- j. Participate, for a time specified by the court and subject to the same conditions imposed on community-service probationers by Sections 10A(c), (d), (g), and (h) of this article, in any community-based program, including a community-service work program designated by the court;
- k. Reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending him in the case, if counsel was appointed, or if he was represented by a county-paid public defender, in an amount that would have been paid to an appointed attorney had the county not had a public defender;
- l. Remain under custodial supervision in a community-based facility, obey all rules and regulations of such facility, and pay a percentage of his income to the facility for room and board;
 - m. Pay a percentage of his income to his dependents for their support while under custodial suspension in a community-based facility; and
 - n. Pay a percentage of his income to the victim of the offense, if any, to compensate the victim for any property damage or medical expenses sustained by the victim as a direct result of the commission of the offense.

(b) If the court grants probation to a defendant and requires the defendant to serve a probationary term in a restitution center, the court shall require as a condition of probation that the defendant secure employment and obey all rules and regulations of the center.

(c) ~~(b)~~ If the court grants probation to a person convicted of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 67011-1, Revised Statutes, the court may require as a condition of probation that the person participate, for a time specified by the court and subject to the same conditions imposed on community-service probationers by Subsections (c), (d), (g), and (h), Section 10A of this article, in a community-service work program designated by the court.

(d) If the court grants probation to a person convicted of an offense described by Article 17.41(a) of this code, the court may require as a condition of probation that the defendant not directly communicate with the victim of the offense or go near a residence, school, or other location, as specifically described in the copy of terms and conditions, frequented by the victim. In imposing the condition, the court may grant the defendant supervised access to the victim. To the extent that a condition imposed under this subsection conflicts with an existing court order granting possession of or access to a child, the condition imposed under this subsection prevails for a period specified by the court granting probation, not to exceed 90 days.

SECTION 3. Section 15(g), Article 42.12, Code of Criminal Procedure, 1965, is amended to read as follows:

(g)(1) The Board may adopt such other reasonable rules not inconsistent with law as it may deem proper or necessary with respect to the eligibility of prisoners for parole and mandatory supervision, the conduct of parole and mandatory supervision hearings, or conditions to be imposed upon parolees and persons released to mandatory supervision. Each person to be released on parole shall be furnished a written statement and contract setting forth in clear and intelligible language the conditions and rules of parole. The conditions shall include the making of restitution or reparation to the victim of the prisoner's crime, in an amount not greater than such restitution or reparation as established by the court and entered in the sentence of the court which sentenced the prisoner to his term of imprisonment. Acceptance, signing, and execution of the contract by the inmate to be paroled shall be a precondition to release on parole. Persons released on mandatory supervision shall be furnished a written statement setting forth in clear and intelligible language the conditions and rules of mandatory supervision.

(2) In addition to the conditions imposed by the Board under Subdivision (1) of this subsection, the Board may require as a condition of parole or release to mandatory supervision that a defendant convicted of an offense described by Article 17.41(a) of this code not directly communicate with the victim of the offense or go near a residence, school, or other location, as specifically described in the contract or statement, frequented by the victim. In imposing the condition, the Board may grant the defendant supervised access to the victim. To the extent that a

condition imposed under this subdivision conflicts with an existing court order granting possession of or access to a child, the condition imposed under this subdivision prevails for a period specified by the Board, not to exceed 90 days.

SECTION 4. Section 6, Article 42.13, Code of Criminal Procedure, 1965, is amended to read as follows:

Sec. 6. (a) The court having jurisdiction of the case shall determine the terms and conditions of probation and may at any time during the period of probation alter or modify the conditions; provided, however, that the clerk of the court shall furnish a copy of such terms and conditions to the probationer and shall note the date of delivery of such delivery on the docket. Terms and conditions of probation may include but shall not be limited to the conditions that the probationer shall:

- (1) commit no offense against the laws of this state or of any other state or of the United States;
- (2) avoid injurious or vicious habits;
- (3) avoid persons or places of disreputable or harmful character;
- (4) report to the probation officer as directed by the court or probation officer and obey all rules and regulations of the probation department;
- (5) permit the probation officer to visit him at his home or elsewhere;
- (6) work faithfully at suitable employment as far as possible;
- (7) remain within a specified place;
- (8) pay his fine, if one be assessed, and all court costs, whether a fine be assessed or not, in one or several sums and make restitution or reparation in any sum that the court shall determine;
- (9) support his dependents;
- (10) participate, for a time specified by the court and subject to the same conditions imposed on community-service probationers by Sections 3B(c), (d), (g), and (h) of this article, in any community-based program, including a community-service work program designated by the court, or participate in an alcohol or drug abuse treatment or education program and abstain from the use of alcoholic beverages or specified drugs at all times or under certain circumstances;
- (11) reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending him in the case, if counsel was appointed or if he was represented by a county-paid public defender, in an amount that would have been paid to an appointed attorney had the county not had a public defender;
- (12) remain under custodial supervision in a community-based facility, obey all rules and regulations of such facility, and pay a percentage of his income to the facility for room and board;
- (13) pay a percentage of his income to his dependents for their support while under custodial supervision in the community-based facility; and
- (14) pay a percentage of his income to the victim of the offense, if any, to compensate the victim for any property damage or medical expenses sustained by the victim as a direct result of the commission of the offense.

(b) If the court grants probation to a person convicted of an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 67011-1, Revised Statutes, the court may require as a condition of probation that the person participate, for a time specified by the court and subject to the same conditions imposed on community-service probationers by Subsections (c), (d), (g), and (h), Section 3B of this article, in a community-service work program designated by the court.

(c) If the court grants probation to a person convicted of an offense described by Article 17.41(a) of this code, the court may require as a condition of probation that the defendant not directly communicate with the victim of the offense or go near a residence, school, or other location, as specifically described in the copy of terms and conditions, frequented by the victim. In imposing the condition, the court may grant the defendant supervised access to the victim. To the extent that a condition imposed under this subsection conflicts with an existing court order granting possession of or access to a child, the condition imposed under this subsection prevails for a period specified by the court granting probation, not to exceed 90 days.

SECTION 5. (a) The change in law made by this Act applies only to a person charged with or convicted of an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) 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 this purpose.

SECTION 6. This Act takes effect September 1, 1985.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 17, 1985, by a non-record vote; House concurred in Senate amendments to H.B. No. 1378 on May 25, 1985, by a non-record vote; passed by the Senate, with amendments, on May 23, 1985, by a viva-voce vote.

Approved: June 13, 1985

Effective: September 1, 1985