

BILL ANALYSIS

C.S.H.B. 1447
By: Dale
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that a protective order is not currently required to be issued with respect to a person convicted of sexual assault and other related offenses until after the offender has been released from prison. The parties raise concern that issuing such an order after an offender's release from prison is sometimes impossible as law enforcement often has a difficult time locating the offender after release. C.S.H.B. 1447 seeks to provide victims of sexual assault and other related offenses greater peace of mind and to ease a victim's burden of filing an application for a protective order by revising the laws relating to such a protective order.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1447 amends the Code of Criminal Procedure to authorize a person who is a victim of a continuous trafficking of persons offense to file an application for a protective order without regard to the relationship between the applicant and the alleged offender. The bill entitles certain victims of sexual assault or abuse, stalking, or trafficking and the victim's parent or guardian to the following rights:

- to have the attorney representing the state, on request of the victim or the victim's parent or guardian, as applicable, and subject to the Texas Disciplinary Rules of Professional Conduct, file a protective order application on behalf of the victim;
- to be informed that the victim or the victim's parent or guardian, as applicable, may file a protective order application; to be informed of the court in which the application may be filed; to be informed that, on request of the victim or victim's parent or guardian, as applicable, and subject to the Texas Disciplinary Rules of Professional Conduct, the attorney representing the state is required to file the application;
- to be given by the court, if the victim or the victim's parent or guardian, as applicable, is present when the defendant is convicted or placed on deferred adjudication community supervision, the information of the court in which the protective order application may be filed, and if the court has jurisdiction over protective order applications, the right to file an application immediately following the defendant's conviction or placement on deferred adjudication community supervision; and
- to be given by the attorney representing the state the information of the court in which a protective order application may be filed, if the victim or victim's parent or guardian, as applicable, is not present when the defendant is convicted or placed on deferred

adjudication community supervision.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1447 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Chapter 7A, Code of Criminal Procedure, is amended by adding Article 7A.015 to read as follows:

Art. 7A.015. DUTIES OF PROSECUTING ATTORNEY ON DEFENDANT'S CONVICTION OF CERTAIN SEX OFFENSES. If a defendant is convicted of an offense under Section 21.02, 21.11, 22.011, or 22.021, Penal Code, the prosecuting attorney shall promptly file an application for a protective order on behalf of the victim of the offense.

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

SECTION 1. Article 7A.01(a), Code of Criminal Procedure, is amended to read as follows:

(a) The following persons may file an application for a protective order under this chapter without regard to the relationship between the applicant and the alleged offender:

- (1) a person who is the victim of an offense under Section 21.02, 21.11, 22.011, 22.021, or 42.072, Penal Code;
- (2) a person who is the victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code;
- (3) a parent or guardian acting on behalf of a person younger than 17 years of age who is the victim of an offense listed in Subdivision (1);
- (4) a parent or guardian acting on behalf of a person younger than 18 years of age who is the victim of an offense listed in Subdivision (2); or
- (5) a prosecuting attorney acting on behalf of a person described by Subdivision (1) or (2).

No equivalent provision.

SECTION 2. The heading to Article 56.021, Code of Criminal Procedure, is amended to read as follows:

Art. 56.021. RIGHTS OF VICTIM OF SEXUAL ASSAULT OR ABUSE, STALKING, OR TRAFFICKING.

No equivalent provision.

SECTION 3. Article 56.021, Code of Criminal Procedure, is amended by adding Subsection (d) to read as follows:

(d) This subsection applies only to a victim of an offense under Section 20A.02, 20A.03, 21.02, 21.11, 22.011, 22.021, 42.072, or 43.05, Penal Code. In addition to the rights enumerated in Article 56.02 and, if applicable, Subsection (a) of this article, a victim described by this subsection or a parent or guardian of the victim is entitled to the following rights within the criminal justice system:

(1) the right to have the attorney representing the state, on request of the victim or victim's parent or guardian, as applicable, and subject to the Texas Disciplinary Rules of Professional Conduct, file an application for a protective order under Article 7A.01 on behalf of the victim;

(2) the right to be informed:

(A) that the victim or the victim's parent or guardian, as applicable, may file an application for a protective order under Article 7A.01;

(B) of the court in which the application for a protective order may be filed; and

(C) that, on request of the victim or victim's parent or guardian, as applicable, and subject to the Texas Disciplinary Rules of Professional Conduct, the attorney representing the state is required to file the application for a protective order;

(3) if the victim or victim's parent or guardian, as applicable, is present when the defendant is convicted or placed on deferred adjudication community supervision, the right to be given by the court the information described by Subdivision (2) and, if the court has jurisdiction over applications for protective orders that are filed under Article 7A.01, the right to file an application for a protective order immediately following the defendant's conviction or placement on deferred adjudication community supervision; and

(4) if the victim or victim's parent or

guardian, as applicable, is not present when the defendant is convicted or placed on deferred adjudication community supervision, the right to be given by the attorney representing the state the information described by Subdivision (2).

SECTION 2. The change in law made by this Act applies to a judgment of conviction entered on or after the effective date of this Act, regardless of when the offense for which the defendant is convicted occurred.

SECTION 4. The change in law made by this Act applies to a victim of criminally injurious conduct for which a judgment of conviction is entered or a grant of deferred adjudication is made on or after the effective date of this Act, regardless of whether the criminally injurious conduct occurred before, on, or after the effective date of this Act.

SECTION 3. This Act takes effect September 1, 2015.

SECTION 5. Same as introduced version.