

BILL ANALYSIS

C.S.S.B. 2238
By: Garcia
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties explain that there is a need for stronger protections against certain crimes involving conduct of a sexual nature, such as sexual coercion and sexual assault. C.S.S.B. 2238 seeks to provide for these protections by creating the offenses of sexual coercion, indecent assault, and possession or promotion of lewd visual material depicting a child and by revising provisions governing certain criminal acts committed in relation to those offenses.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes 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.S.B. 2238 amends the Penal Code to create the state jail felony offense of sexual coercion for a person who, with the intent to coerce another person either to engage in sexual conduct or to produce, provide, or distribute intimate visual material, communicates a threat against the other person's person, property, or reputation or communicates a threat to distribute or cause distribution of intimate visual material of the other person, or who knowingly causes another person to engage in sexual conduct or to produce, provide, or distribute intimate visual material, by means of such a threat. The bill applies to a threat regardless of how that threat is communicated and enhances the penalty to a third degree felony for a subsequent conviction of sexual coercion. The bill authorizes an actor whose conduct constitutes a sexual coercion offense under the bill's provisions and also constitutes an offense under any other law to be prosecuted under the bill's provisions, the other law, or both.

C.S.S.B. 2238 expands the conditions under which sexual assault is considered to be without the consent of the other person to include: the actor compelling the other person to submit or participate by the use of coercion; the actor compelling the other person to submit or participate by threatening to cause harm to the other person when the other person believes that the actor has the present ability to execute the threat; and the actor knowing that the other person has withdrawn consent to the act and the actor persisting in the act after consent is withdrawn. The bill changes one of such conditions from the actor having intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge to the other person having not consented and the actor knowing the other person is incapable of appraising the nature of the act. The bill removes as one of such conditions the actor being a public servant who coerces the other person to submit or

participate. The bill establishes that it is not a defense to prosecution for sexual assault that the actor mistakenly believed that the other person consented to the conduct if a reasonable person should have known or understood that the other person did not consent to the conduct.

C.S.S.B. 2238 expands the type of substances the administration or provision of which to the victim of a sexual assault offense with the intent of facilitating the commission of the offense constitutes aggravated sexual assault from flunitrazepam, gamma hydroxybutyrate, or ketamine to any substance capable of impairing the victim's ability to appraise the nature of the act or to resist the act. The bill establishes that it is not a defense to prosecution for aggravated sexual assault that the actor mistakenly believed that the other person consented to the conduct if a reasonable person should have known or understood that the other person did not consent to the conduct.

C.S.S.B. 2238 creates the state jail felony offense of possession or promotion of lewd visual material depicting a child for a person who knowingly possesses, accesses with intent to view, or promotes visual material that depicts the lewd exhibition of the genitals or pubic area of an unclothed, partially clothed, or clothed child who is younger than 18 years of age at the time the visual material was created, that appeals to the prurient interest in sex, and that has no serious literary, artistic, political, or scientific value. The bill enhances the penalty to a third degree felony if it is shown on the trial of the offense that the person has been previously convicted one time of the offense or of an offense of possession or promotion of child pornography. The bill enhances the penalty to a second degree felony if it is shown on the trial of the offense that the person has been previously convicted two or more times of either such offense. The bill establishes that it is not a defense to prosecution for possession or promotion of lewd visual material depicting a child that the depicted child consented to the creation of the visual material.

C.S.S.B. 2238 creates the Class A misdemeanor offense of indecent assault for a person who without consent and with the intent to arouse or gratify the sexual desire of any person touches, including through clothing, the anus, breast, or any part of the genitals of another person; touches another person, including through clothing, with the anus, breast, or any part of the genitals of any person; exposes or attempts to expose another person's genitals, pubic area, anus, buttocks, or female areola; or causes another person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of any person, including contact occurring through clothing. The bill authorizes an actor whose conduct constitutes the offense of indecent assault and also an offense under another law to be prosecuted under the bill's provisions, the other law, or both. The bill includes indecent assault cases in the scope of the offense for a violation of certain court orders or bond conditions in certain cases and expands the conduct constituting that offense to include the knowing or intentional commission of an act in furtherance of an offense of indecent assault in violation of a court order or bond condition.

C.S.S.B. 2238 amends the Code of Criminal Procedure to authorize a victim of an indecent assault offense to file an application for a protective order without regard to the relationship between the applicant and the alleged offender. The bill includes a court finding from information contained in such an application that there is a clear and present danger of indecent assault to the applicant among the conditions under which the court may enter a temporary ex parte order for the protection of the applicant or any other member of the applicant's family or household without further notice to the alleged offender and without a hearing. The bill includes indecent assault among the offenses of which a court, at the close of a hearing on such an application, is required to find whether there are reasonable grounds to believe the applicant is a victim. The bill makes a statement that is made by a child younger than 14 years of age who is the victim of an indecent assault offense and that describes the offense committed against the child admissible as evidence in a hearing on such an application in the same manner that a hearsay statement of a child abuse victim 12 years of age or younger is admissible under the Family Code in a suit affecting the parent-child relationship. The bill authorizes a magistrate to issue an order for emergency protection at a defendant's appearance before the magistrate after arrest for an indecent assault offense on the magistrate's own motion or on the request of the

victim of the offense, the guardian of the victim, a peace officer, or the attorney representing the state. The bill includes victims of indecent assault in the scope of statutory provisions enumerating certain rights of victims of sexual assault or abuse, stalking, or trafficking and makes those provisions applicable 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 bill's effective date, regardless of whether the criminally injurious conduct occurred before, on, or after that date.

C.S.S.B. 2238 amends the Government Code to include certain information concerning persons subject to bond conditions in an indecent assault case among the information required to be collected by the bureau of identification and records within the administrative division of the Department of Public Safety (DPS) and requires the law enforcement information system relating to an active protective order to include any conditions of bond imposed on the person to whom the order is directed for the protection of a victim in an indecent assault case. The bill includes reasonable rules relating to active conditions of bond imposed on a defendant for the protection of a victim in any indecent assault case among the rules DPS may adopt for purposes of the bureau of identification and records.

C.S.S.B. 2238 repeals Article 56.021(d), Code of Criminal Procedure, as added by Chapter 1153 (S.B. 630), Acts of the 84th Legislature, Regular Session, 2015.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 2238 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Chapter 21, Penal Code, is amended by adding Section 21.18 to read as follows:

Sec. 21.18. SEXUAL COERCION. (a) In this section:

(1) "Intimate visual material" means the visual material described by Section 21.16(b)(1) or (c), as added by Chapter 852 (S.B. 1135), Acts of the 84th Legislature, Regular Session, 2015.

(2) "Sexual conduct" has the meaning assigned by Section 43.25.

(b) A person commits an offense if:

(1) with the intent to coerce another person either to engage in sexual conduct or to produce, provide, or distribute intimate visual material, the actor communicates a threat:

(A) against the other person's person, property, or reputation; or

(B) to distribute or cause distribution of intimate visual material of the other person;

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 21, Penal Code, is amended by adding Section 21.18 to read as follows:

Sec. 21.18. SEXUAL COERCION. (a) In this section:

(1) "Intimate visual material" means the visual material described by Section 21.16(b)(1) or (c), as added by Chapter 852 (S.B. 1135), Acts of the 84th Legislature, Regular Session, 2015.

(2) "Sexual conduct" has the meaning assigned by Section 43.25.

(b) A person commits an offense if:

(1) with the intent to coerce another person either to engage in sexual conduct or to produce, provide, or distribute intimate visual material, the actor communicates a threat:

(A) against the other person's person, property, or reputation; or

(B) to distribute or cause distribution of intimate visual material of the other person;

or

(2) the actor knowingly causes another person to engage in sexual conduct or to produce, provide, or distribute intimate visual material, by means of a threat:

(A) against the other person's person, property, or reputation; or

(B) to distribute or cause distribution of intimate visual material of the other person.

(c) This section applies to a threat regardless of how that threat is communicated, including a threat transmitted through e-mail or an Internet website, social media account, or chat room and a threat made by other electronic or technological means.

(d) An offense under this section is a state jail felony, except that the offense is a felony of the third degree if:

(1) it is shown on the trial of the offense that the defendant has previously been convicted of an offense under this section;

or

(2) the victim was younger than 18 years of age at the time of the offense.

(e) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

No equivalent provision.

or

(2) the actor knowingly causes another person to engage in sexual conduct or to produce, provide, or distribute intimate visual material, by means of a threat:

(A) against the other person's person, property, or reputation; or

(B) to distribute or cause distribution of intimate visual material of the other person.

(c) This section applies to a threat regardless of how that threat is communicated, including a threat transmitted through e-mail or an Internet website, social media account, or chat room and a threat made by other electronic or technological means.

(d) An offense under this section is a state jail felony, except that the offense is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted of an offense under this section.

(e) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

SECTION 2. Section 22.011, Penal Code, is amended by amending Subsection (b) and adding Subsection (e-1) to read as follows:

(b) A sexual assault under Subsection (a)(1) is without the consent of the other person if:

(1) the actor compels the other person to submit or participate by the use of physical force, ~~[or]~~ violence, or coercion;

(2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person or to cause harm to the other person, and the other person believes that the actor has the present ability to execute the threat;

(3) the other person has not consented and the actor knows the other person is:

(A) unconscious;

(B) ~~[or]~~ physically unable to resist;

(C) incapable of appraising the nature of the act; or

(D) unaware that the sexual assault is occurring;

(4) the actor knows that as a result of mental disease or defect the other person is

at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;

~~(5) [the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;~~

~~[(6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge;~~

~~[(7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;~~

~~(6) [(8) the actor is a public servant who coerces the other person to submit or participate;~~

~~[(9) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;~~

~~(7) [(10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser; or]~~

~~(8) [(11) the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other under Chapter 2, Family Code; or~~

~~(9) the actor knows that the other person has withdrawn consent to the act and the actor persists in the act after consent is withdrawn.~~

~~(e-1) It is not a defense to prosecution under this section that the actor mistakenly believed that the other person consented to the conduct if a reasonable person should have known or understood that the other person did not consent to the conduct.~~

No equivalent provision.

SECTION 3. Chapter 22, Penal Code, is amended by adding Section 22.012 to read as follows:

Sec. 22.012. INDECENT ASSAULT. (a) A person commits an offense if, without the other person's consent and with the intent to arouse or gratify the sexual desire of any person, the person:

(1) touches, including through clothing, the anus, breast, or any part of the genitals of another person;

(2) touches another person, including through clothing, with the anus, breast, or any part of the genitals of any person;

(3) exposes or attempts to expose another person's genitals, pubic area, anus, buttocks, or female areola; or

(4) causes another person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of any person, including contact occurring through clothing.

(b) An offense under this section is a Class A misdemeanor.

(c) If conduct that constitutes an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

No equivalent provision.

SECTION 4. Section 22.021, Penal Code, is amended by amending Subsection (a) and adding Subsection (d-1) to read as follows:

(a) A person commits an offense:

(1) if the person:

(A) intentionally or knowingly:

(i) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;

(ii) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

(iii) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(B) intentionally or knowingly:

(i) causes the penetration of the anus or sexual organ of a child by any means;

(ii) causes the penetration of the mouth of a child by the sexual organ of the actor;

(iii) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;

(iv) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or

(v) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor; and

(2) if:

(A) the person:

- (i) causes serious bodily injury or attempts to cause the death of the victim or another person in the course of the same criminal episode;
- (ii) by acts or words places the victim in fear that any person will become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or that death, serious bodily injury, or kidnapping will be imminently inflicted on any person;
- (iii) by acts or words occurring in the presence of the victim threatens to cause any person to become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or to cause the death, serious bodily injury, or kidnapping of any person;
- (iv) uses or exhibits a deadly weapon in the course of the same criminal episode;
- (v) acts in concert with another who engages in conduct described by Subdivision (1) directed toward the same victim and occurring during the course of the same criminal episode; or
- (vi) with the intent of facilitating the commission of the offense, administers or provides [flunitrazepam, otherwise known as rohypnol, gamma hydroxybutyrate, or ketamine] to the victim of the offense any substance capable of impairing the victim's ability to appraise the nature of the act or to resist the act [with the intent of facilitating the commission of the offense];
- (B) the victim is younger than 14 years of age; or
- (C) the victim is an elderly individual or a disabled individual.
- (d-1) It is not a defense to prosecution under this section that the actor mistakenly believed that the other person consented to the conduct if a reasonable person should have known or understood that the other person did not consent to the conduct.

No equivalent provision.

SECTION 5. Subchapter B, Chapter 43, Penal Code, is amended by adding Section 43.262 to read as follows:

Sec. 43.262. POSSESSION OR PROMOTION OF LEWD VISUAL MATERIAL DEPICTING CHILD. (a) In this section:

- (1) "Promote" and "sexual conduct" have the meanings assigned by Section 43.25.
- (2) "Visual material" has the meaning assigned by Section 43.26.
- (b) A person commits an offense if the

person knowingly possesses, accesses with intent to view, or promotes visual material that:

(1) depicts the lewd exhibition of the genitals or pubic area of an unclothed, partially clothed, or clothed child who is younger than 18 years of age at the time the visual material was created;

(2) appeals to the prurient interest in sex; and

(3) has no serious literary, artistic, political, or scientific value.

(c) An offense under this section is a state jail felony, except that the offense is:

(1) a felony of the third degree if it is shown on the trial of the offense that the person has been previously convicted one time of an offense under this section or Section 43.26; and

(2) a felony of the second degree if it is shown on the trial of the offense that the person has been previously convicted two or more times of an offense under this section or Section 43.26.

(d) It is not a defense to prosecution under this section that the depicted child consented to the creation of the visual material.

No equivalent provision.

SECTION 6. The heading to Chapter 7A, Code of Criminal Procedure, is amended to read as follows:

CHAPTER 7A. PROTECTIVE ORDER FOR VICTIMS OF SEXUAL ASSAULT OR ABUSE, INDECENT ASSAULT, STALKING, OR TRAFFICKING

No equivalent provision.

SECTION 7. 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, 22.012, 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), (2), (3), or (4).

No equivalent provision.

SECTION 8. Article 7A.02, Code of Criminal Procedure, is amended to read as follows:

Art. 7A.02. TEMPORARY EX PARTE ORDER. If the court finds from the information contained in an application for a protective order that there is a clear and present danger of sexual assault or abuse, indecent assault, stalking, trafficking, or other harm to the applicant, the court, without further notice to the alleged offender and without a hearing, may enter a temporary ex parte order for the protection of the applicant or any other member of the applicant's family or household.

No equivalent provision.

SECTION 9. Article 7A.03(a), Code of Criminal Procedure, is amended to read as follows:

(a) At the close of a hearing on an application for a protective order under this chapter, the court shall find whether there are reasonable grounds to believe that the applicant is the victim of sexual assault or abuse, indecent assault, stalking, or trafficking.

No equivalent provision.

SECTION 10. Article 7A.035, Code of Criminal Procedure, is amended to read as follows:

Art. 7A.035. HEARSAY STATEMENT OF CHILD VICTIM. In a hearing on an application for a protective order under this chapter, a statement that is made by a child younger than 14 years of age who is the victim of an offense under Section 21.02, 21.11, 22.011, 22.012, or 22.021, Penal Code, and that describes the offense committed against the child is admissible as evidence in the same manner that a child's statement regarding alleged abuse against the child is admissible under Section 104.006, Family Code, in a suit affecting the parent-child relationship.

No equivalent provision.

SECTION 11. Articles 17.292(a) and (g), Code of Criminal Procedure, are amended to read as follows:

(a) At a defendant's appearance before a magistrate after arrest for an offense involving family violence or an offense under Section 20A.02, 20A.03, 22.011, 22.012, 22.021, or 42.072, Penal Code, the magistrate may issue an order for emergency protection on the magistrate's own motion or on the request of:

- (1) the victim of the offense;
- (2) the guardian of the victim;
- (3) a peace officer; or
- (4) the attorney representing the state.

(g) An order for emergency protection issued under this article must contain the following statements printed in bold-face type or in capital letters:

"A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR OR BY BOTH. AN ACT THAT RESULTS IN ~~[FAMILY VIOLENCE OR]~~ A SEPARATE ~~[STALKING OR TRAFFICKING]~~ OFFENSE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE, AS APPLICABLE, IN ADDITION TO A VIOLATION OF THIS ORDER. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS. THE POSSESSION OF A FIREARM BY A PERSON, OTHER THAN A PEACE OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO THIS ORDER MAY BE PROSECUTED AS A SEPARATE OFFENSE PUNISHABLE BY CONFINEMENT OR IMPRISONMENT.

"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES

THE ORDER."

No equivalent provision.

SECTION 12. 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, INDECENT ASSAULT, STALKING, OR TRAFFICKING.

No equivalent provision.

SECTION 13. (a) Article 56.021(d), Code of Criminal Procedure, as added by Chapter 1032 (H.B. 1447), Acts of the 84th Legislature, Regular Session, 2015, is amended 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, 22.012, 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 request that the attorney representing the state, 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 the victim's parent or guardian, as applicable, and subject to the Texas Disciplinary Rules of Professional Conduct, the attorney representing the state may file the application for a protective order;

(3) 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 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 the 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).

(b) Article 56.021(d), Code of Criminal Procedure, as added by Chapter 1153 (S.B. 630), Acts of the 84th Legislature, Regular Session, 2015, is repealed as duplicative of Article 56.021(d), Code of Criminal Procedure, as added by Chapter 1032 (H.B. 1447), Acts of the 84th Legislature, Regular Session, 2015.

No equivalent provision.

SECTION 14. Sections 411.042(b) and (g), Government Code, are amended to read as follows:

(b) The bureau of identification and records shall:

(1) procure and file for record photographs, pictures, descriptions, fingerprints, measurements, and other pertinent information of all persons arrested for or charged with a criminal offense or convicted of a criminal offense, regardless of whether the conviction is probated;

(2) collect information concerning the number and nature of offenses reported or known to have been committed in the state and the legal steps taken in connection with the offenses, and other information useful in the study of crime and the administration of justice, including information that enables the bureau to create a statistical breakdown of:

(A) offenses in which family violence was involved;

(B) offenses under Sections 22.011 and 22.021, Penal Code; and

(C) offenses under Sections 20A.02 and 43.05, Penal Code;

(3) make ballistic tests of bullets and firearms and chemical analyses of bloodstains, cloth, materials, and other substances for law enforcement officers of the state;

(4) cooperate with identification and crime records bureaus in other states and the United States Department of Justice;

(5) maintain a list of all previous background checks for applicants for any position regulated under Chapter 1702,

Occupations Code, who have undergone a criminal history background check under Section 411.119, if the check indicates a Class B misdemeanor or equivalent offense or a greater offense;

(6) collect information concerning the number and nature of protective orders and magistrate's orders of emergency protection and all other pertinent information about all persons subject to active orders, including pertinent information about persons subject to conditions of bond imposed for the protection of the victim in any family violence, sexual assault or abuse, indecent assault, stalking, or trafficking case. Information in the law enforcement information system relating to an active order shall include:

(A) the name, sex, race, date of birth, personal descriptors, address, and county of residence of the person to whom the order is directed;

(B) any known identifying number of the person to whom the order is directed, including the person's social security number or driver's license number;

(C) the name and county of residence of the person protected by the order;

(D) the residence address and place of employment or business of the person protected by the order, unless that information is excluded from the order under Section 85.007, Family Code, or Article 17.292(e), Code of Criminal Procedure;

(E) the child-care facility or school where a child protected by the order normally resides or which the child normally attends, unless that information is excluded from the order under Section 85.007, Family Code, or Article 17.292(e), Code of Criminal Procedure;

(F) the relationship or former relationship between the person who is protected by the order and the person to whom the order is directed;

(G) the conditions of bond imposed on the person to whom the order is directed, if any, for the protection of a victim in any family violence, sexual assault or abuse, indecent assault, stalking, or trafficking case;

(H) any minimum distance the person subject to the order is required to maintain from the protected places or persons; and

(I) the date the order expires;

- (7) grant access to criminal history record information in the manner authorized under Subchapter F;
- (8) collect and disseminate information regarding offenders with mental impairments in compliance with Chapter 614, Health and Safety Code; and
- (9) record data and maintain a state database for a computerized criminal history record system and computerized juvenile justice information system that serves:
 - (A) as the record creation point for criminal history record information and juvenile justice information maintained by the state; and
 - (B) as the control terminal for the entry of records, in accordance with federal law and regulations, federal executive orders, and federal policy, into the federal database maintained by the Federal Bureau of Investigation.
- (g) The department may adopt reasonable rules under this section relating to:
 - (1) law enforcement information systems maintained by the department;
 - (2) the collection, maintenance, and correction of records;
 - (3) reports of criminal history information submitted to the department;
 - (4) active protective orders and reporting procedures that ensure that information relating to the issuance and dismissal of an active protective order is reported to the local law enforcement agency at the time of the order's issuance or dismissal and entered by the local law enforcement agency in the state's law enforcement information system;
 - (5) the collection of information described by Subsection (h);
 - (6) a system for providing criminal history record information through the criminal history clearinghouse under Section 411.0845; and
 - (7) active conditions of bond imposed on a defendant for the protection of a victim in any family violence, sexual assault or abuse, indecent assault, stalking, or trafficking case, and reporting procedures that ensure that information relating to the issuance, modification, or removal of the conditions of bond is reported, at the time of the issuance, modification, or removal, to:
 - (A) the victim or, if the victim is deceased, a close relative of the victim; and
 - (B) the local law enforcement agency for

entry by the local law enforcement agency in the state's law enforcement information system.

No equivalent provision.

SECTION 15. The heading to Section 25.07, Penal Code, is amended to read as follows:

Sec. 25.07. VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN A FAMILY VIOLENCE, SEXUAL ASSAULT OR ABUSE, INDECENT ASSAULT, STALKING, OR TRAFFICKING CASE.

No equivalent provision.

SECTION 16. Section 25.07(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if, in violation of a condition of bond set in a family violence, sexual assault or abuse, indecent assault, stalking, or trafficking case and related to the safety of a victim or the safety of the community, an order issued under Chapter 7A, Code of Criminal Procedure, an order issued under Article 17.292, Code of Criminal Procedure, an order issued under Section 6.504, Family Code, Chapter 83, Family Code, if the temporary ex parte order has been served on the person, or Chapter 85, Family Code, or an order issued by another jurisdiction as provided by Chapter 88, Family Code, the person knowingly or intentionally:

(1) commits family violence or an act in furtherance of an offense under Section 20A.02, 22.011, 22.012, 22.021, or 42.072;

(2) communicates:

(A) directly with a protected individual or a member of the family or household in a threatening or harassing manner;

(B) a threat through any person to a protected individual or a member of the family or household; or

(C) in any manner with the protected individual or a member of the family or household except through the person's attorney or a person appointed by the court, if the violation is of an order described by this subsection and the order prohibits any communication with a protected individual or a member of the family or household;

(3) goes to or near any of the following places as specifically described in the order or condition of bond:

(A) the residence or place of employment or business of a protected individual or a

member of the family or household; or
(B) any child care facility, residence, or school where a child protected by the order or condition of bond normally resides or attends;
(4) possesses a firearm;
(5) harms, threatens, or interferes with the care, custody, or control of a pet, companion animal, or assistance animal that is possessed by a person protected by the order or condition of bond; or
(6) removes, attempts to remove, or otherwise tampers with the normal functioning of a global positioning monitoring system.

No equivalent provision.

SECTION 17. Section 25.07(b), Penal Code, is amended by adding Subdivision (8) to read as follows:

(8) "Indecent assault" means any conduct that constitutes an offense under Section 22.012.

No equivalent provision.

SECTION 18. The heading to Section 25.072, Penal Code, is amended to read as follows:

Sec. 25.072. REPEATED VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN FAMILY VIOLENCE, SEXUAL ASSAULT OR ABUSE, INDECENT ASSAULT, STALKING, OR TRAFFICKING CASE.

No equivalent provision.

SECTION 19. Chapter 7A, Code of Criminal Procedure, as amended by this Act, and Article 17.292, Code of Criminal Procedure, as amended by this Act, apply only to a protective order or magistrate's order for emergency protection that is issued on or after the effective date of this Act. An order issued before the effective date of this Act is governed by the law in effect on the date the order is issued, and the former law is continued in effect for that purpose.

No equivalent provision.

SECTION 20. Article 56.021(d), Code of Criminal Procedure, as amended 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.

No equivalent provision.

SECTION 21. Sections 22.011, 22.021, 25.07, and 25.072, Penal Code, as amended by this Act, apply 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 governed by the law in effect on the date 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.

No equivalent provision.

SECTION 22. To the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 2. This Act takes effect September 1, 2017.

SECTION 23. Same as engrossed version.