

BILL ANALYSIS

Senate Research Center

C.S.S.B. 433
By: Nelson
Criminal Justice
3/20/2003
Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, Texas law provides that a person who is battered, sexually assaulted, or harassed by a family member, household member, or by someone the person is dating may seek protection under the Texas Family Code. This remedy is not available to a person who is battered, sexually assaulted, or harassed by a stranger or a friend/acquaintance in a non-dating relationship. C.S.S.B. 433 creates a Sexual Assault Order of Protection that would be available to individuals alleging sexual assault and would be available to a victim who has no prior relationship with the perpetrator.

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 Title 1, Code of Criminal Procedure, by adding Chapter 7A, as follows:

CHAPTER 7A. PROTECTIVE ORDER FOR VICTIM OF SEXUAL ASSAULT

Art. 7A.01. APPLICATION FOR PROTECTIVE ORDER. (a) Authorizes a person who is the victim of an offense under Section 22.011 (Sexual Assault) or 22.021 (Aggravated Sexual Assault), Penal Code, or a prosecuting attorney acting on behalf of the person, to file an application for a protective order under this chapter without regard to the relationship between the applicant and the alleged offender.

(b) Authorizes an application for a protective order under this chapter to be filed in certain courts and in certain counties.

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

Art. 7A.03. REQUIRED FINDINGS; ISSUANCE OF PROTECTIVE ORDER. (a) Requires the court, at the close of a hearing on an application for a protective order under this chapter, to find whether there are reasonable grounds to believe that the applicant meets certain conditions relating to sexual assault.

(b) Requires the court, if the court finds reasonable grounds to believe that the applicant is the victim of a sexual assault and is the subject of a threat that reasonably places the applicant in fear of further harm from the alleged offender, to issue a protective order that includes a statement of the required findings.

Art. 7A.04. APPLICATION OF OTHER LAW. Provides that to the extent applicable, except as otherwise provided by this chapter, Title 4, Family Code (Protective Orders and Family Violence), applies to a protective order issued under this chapter.

Art. 7A.05. CONDITIONS SPECIFIED BY ORDER. (a) Authorizes the court, in a protective order issued under this chapter, to take certain actions relating to the alleged offender.

(b) Requires the court, in an order under Subsection (a)(2)(B), to specifically describe each prohibited location and the minimum distance from the location, if any, that the alleged offender is required to maintain. Provides that this subsection does not apply to an order with respect to which the court has received a request to maintain confidentiality of information revealing the locations.

(c) Authorizes the court, in a protective order, to suspend a license to carry a concealed handgun issued under Section 411.177, Government Code (Issuance or Denial of License), that is held by the alleged offender.

Art. 7A.06. WARNING ON PROTECTIVE ORDER. (a) Requires each protective order issued under this chapter, including a temporary ex parte order, to contain certain statements, relating to a protective order, prominently displayed in boldface type, capital letters, or underlined.

(b) Requires each protective order issued under this subtitle, except for a temporary ex parte order, to contain a certain statement, relating to the violation of the order, prominently displayed in boldface type, capital letters, or underlined.

SECTION 2. Amends Article 14.03, Code of Criminal Procedure, by amending Subsections (a), (b), and (c), as follows:

(a)-(b) Make conforming and nonsubstantive changes.

(c) Requires a peace officer, if reasonably necessary to verify an allegation of a violation of a protective order or of the commission of an assault against a member of the family or household, to remain at the scene of the investigation to verify the allegation and to prevent the further commission the violation or [*sic*] of family violence.

SECTION 3. Amends Chapter 38, Penal Law, by adding Section 38.112, as follows:

Sec. 38.112. VIOLATION OF PROTECTIVE ORDER ISSUED ON BASIS OF SEXUAL ASSAULT. (a) Provides that a person commits an offense if, in violation of an order issued under Chapter 7A, Code of Criminal Procedure, the person knowingly performs certain actions relating to a protective order.

(b) Authorizes the actor, if conduct constituting an offense under this section also constitutes an offense under another section of this code, to be prosecuted under either or under both sections.

(c) Provides that an offense under this section is a Class A misdemeanor.

SECTION 4. Amends Section 46.04(c), Penal Code, to make a conforming change relating to the addition of Chapter 7A, Code of Criminal Procedure.

SECTION 5. Effective date: September 1, 2003.

SUMMARY OF COMMITTEE CHANGES

Differs from original by adding new SECTION 2 and redesignating original SECTION 3 and 4 as SECTION 4 and SECTION 5.