

BILL ANALYSIS

Senate Research Center
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H.B. 1721
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, a court is authorized to render a protective order for certain victims of physical family violence and sexual assault. Victims of stalking, who experience similar fear and isolation, are ineligible for this court order.

Additionally, while a child is allowed to testify at a hearing on an application for a protective order for a victim of sexual assault, hearsay evidence is not allowed to be submitted at such a hearing. This means that children, who often observe some of the worst violence, must relive these situations even if they have already reached out to a reliable adult.

H.B. 1721 seeks to provide stalking victims and child victims the same protection as family violence victims by authorizing a victim of stalking to request a court to render a protective order and allowing statements made by children under 14-years-old to be admissible as evidence in proceedings relating to certain protective orders.

H.B. 1721 amends current law relating to protective orders for certain victims of stalking or sexual assault.

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 Chapter 6, Code of Criminal Procedure, by adding Article 6.09, as follows:

Art. 6.09. STALKING PROTECTIVE ORDER. (a) Authorizes a person, at any proceeding related to an offense under Section 42.072 (Stalking), Penal Code, in which the defendant appears before the court, to request the court to render a protective order under Title 4 (Protective Orders and Family Violence), Family Code, for the protection of the person. Provides that the request is made by filing "An Application for a Protective Order" in the same manner as an application for a protective order under Title 4, Family Code.

(b) Requires the court to render a protective order in the manner provided by Title 4, Family Code, if, in lieu of the finding that family violence occurred and is likely to occur in the future as required by Section 85.001 (Required Findings and Orders), Family Code, the court finds that probable cause exists to believe that an offense under Section 42.072, Penal Code, occurred and that the nature of the scheme or course of conduct engaged in by the defendant in the commission of the offense indicates that the defendant is likely to engage in the future in conduct prohibited by Section 42.072(a)(1) (providing that a person commits an offense if the person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct, including following the other person, that the actor knows or reasonably believes the other person will regard as threatening bodily injury or death for the

other person or a member of the other person's family or household, or that an offense will be committed against the other person's property), (2) (providing that a person commits an offense if the person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct, including following the other person, that causes the other person or a member of the other person's family or household to be placed in fear of bodily injury or death or fear that an offense will be committed against the other person's property), or (3) (providing that a person commits an offense if the person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct, including following the other person, that would cause a reasonable person to fear bodily injury or death for himself or herself, bodily injury or death for a member of the person's family or household, or that an offense will be committed against the person's property), Penal Code.

(c) Provides that the procedure for the enforcement of a protective order under Title 4, Family Code, applies to the fullest extent practicable to the enforcement of a protective order under this article, including provisions relating to findings, contents, duration, warning, delivery, law enforcement duties, and modification.

SECTION 2. Amends Chapter 7A, Code of Criminal Procedure, by adding Article 7A.035, as follows:

Art. 7A.035. HEARSAY STATEMENT OF CHILD VICTIM. Provides that, 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 (Continuous Sexual Abuse of Young Child or Children), 21.11 (Indecency with a Child), 22.011 (Sexual Assault), or 22.021 (Aggravated Sexual Assault), 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 (Hearsay Statement of Child Abuse Victim), Family Code, in a suit affecting the parent-child relationship.

SECTION 3. (a) Provides that Article 6.09, Code of Criminal Procedure, as added by this Act, applies to the commission of an offense under Section 42.072, Penal Code, without regard to whether the offense was committed before, on, or after the effective date of this Act.

(b) Provides that Article 7A.035, Code of Criminal Procedure, as added by this Act, applies only to a hearing on an application for a protective order that is commenced on or after the effective date of this Act. Provides that a hearing on an application for a protective order that is commenced before the effective date of this Act is governed by the law in effect on the date the hearing was commenced, and the former law is continued in effect for that purpose.

SECTION 4. Effective date: September 1, 2011.