

BILL ANALYSIS

Senate Research Center
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H.B. 2329
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A recent report to the legislature recommended certain statutory changes to provide a mechanism for protective orders to prevent interaction and contact between a victim of a trafficking of persons offense and the offenders, as well as restrictions on offenders and warnings for violations. Interested parties note that legislation is required to provide for the availability of certain protective orders for a victim of trafficking, to specify certain confidentiality requirements related to identifying information regarding victims of trafficking, and to allow such victims to receive a pseudonym. H.B. 2329 seeks to address these matters.

H.B. 2329 amends current law relating to the confidentiality of certain information regarding victims of trafficking of persons and to the issuance and enforcement of protective orders to protect victims of trafficking of persons and provides penalties.

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 7B, as follows:

CHAPTER 7B. PROTECTIVE ORDER FOR VICTIM OF TRAFFICKING OF PERSONS

Art. 7B.01. APPLICATION FOR PROTECTIVE ORDER. (a) Authorizes a person who is the victim of an offense under Section 20A.02 (Trafficking of Persons), Penal Code, a parent or guardian acting on behalf of a person younger than 18 years of age who is the victim of such an offense, 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 a district court, juvenile court having the jurisdiction of a district court, statutory county court, or constitutional county court in:

- (1) the county in which the applicant resides; or
- (2) the county in which the alleged offender resides.

Art. 7B.02. TEMPORARY EX PARTE ORDER. Authorizes the court, if the court finds from the information contained in an application for a protective order that there is a clear and present danger that the alleged offender will traffic the applicant in a manner that constitutes an offense under Section 20A.02, Penal Code, or that the victim will otherwise suffer harm described by that section, without further notice to the alleged offender and without a hearing, to enter a temporary ex parte order for the protection of the applicant or any other member of the applicant's family or household.

Art. 7B.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 is the victim of an offense under Section 20A.02, Penal Code, and:

- (1) is younger than 18 years of age; or
- (2) regardless of age, is the subject of a threat that reasonably places the applicant in fear of further harm from the alleged offender.

(b) Requires the court, if the court finds reasonable grounds to believe that the applicant is the victim of an offense under Section 20A.02, Penal Code, and is younger than 18 years of age, or regardless of age, 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. 7B.04. APPLICATION OF OTHER LAW. Provides that, to the extent applicable, except as otherwise provided by this chapter, Title 4 (Protective Orders and Family Violence), Family Code, applies to a protective order issued under this chapter.

Art. 7B.05. CONDITIONS SPECIFIED BY ORDER. (a) Authorizes the court, in a protective order issued under this chapter, to:

- (1) order the alleged offender to take action as specified by the court that the court determines is necessary or appropriate to prevent or reduce the likelihood of future harm to the applicant or a member of the applicant's family or household; or

- (2) prohibit the alleged offender from:

(A) communicating directly or indirectly with the applicant or any member of the applicant's family or household in a threatening or harassing manner;

(B) going to or near the residence, place of employment or business, or child-care facility or school of the applicant or any member of the applicant's family or household;

(C) engaging in conduct directed specifically toward the applicant or any member of the applicant's family or household, including following the person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the person; and

(D) possessing a firearm, unless the alleged offender is a peace officer, as defined by Section 1.07 (Definitions), Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

(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 must 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 (Issuance or Denial of License), Government Code, that is held by the alleged offender.

Art. 7B.06. WARNING ON PROTECTIVE ORDER. (a) Requires that each protective order issued under this chapter, including a temporary ex parte order, contain certain

prominently displayed statements in boldfaced type, capital letters, or underlined. Sets forth the required language.

(b) Requires that each protective order issued under this chapter, except for a temporary ex parte order, contain a certain prominently displayed statement in boldfaced type, capital letters, or underlined. Sets forth the required language.

Art. 7B.07. DURATION OF PROTECTIVE ORDER. (a) Authorizes a protective order issued under Article 7B.03 to be effective for the duration of the lives of the offender and victim as provided by Subsection (b), or for any shorter period stated in the order. Provides that, if a period is not stated in the order, the order is effective until the second anniversary of the date the order was issued.

(b) Authorizes a protective order issued under Article 7B.03 to be effective for the duration of the lives of the offender and victim only if the court finds reasonable cause to believe that the victim is the subject of a threat that reasonably places the victim in fear of further harm from the alleged offender.

(c) Authorizes a victim who is 18 years of age or older or a parent or guardian acting on behalf of a victim who is younger than 18 years of age to file at any time an application with the court to rescind the protective order.

(d) Provides that, if a person who is the subject of a protective order issued under Article 7B.03 is confined or imprisoned on the date the protective order is due to expire under Subsection (a), the period for which the order is effective is extended, and the order expires on the first anniversary of the date the person is released from confinement or imprisonment.

(e) Provides that, to the extent of any conflict with Section 85.025, Family Code, this article prevails.

SECTION 2. Amends Title 1, Code of Criminal Procedure by adding Chapter 57D, as follows:

CHAPTER 57D. CONFIDENTIALITY OF IDENTIFYING INFORMATION OF VICTIMS OF TRAFFICKING OF PERSONS

Art. 57D.01. DEFINITIONS. Defines, in this chapter, "name," "pseudonym," "public servant," and "victim."

Art. 57D.02. CONFIDENTIALITY OF FILES AND RECORDS. (a) Requires the office of the attorney general (OAG) to develop and distribute to all law enforcement agencies of the state a pseudonym form to record the name, address, telephone number, and pseudonym of a victim.

(b) Authorizes a victim to choose a pseudonym to be used instead of the victim's name to designate the victim in all public files and records concerning the offense, including police summary reports, press releases, and records of judicial proceedings. Requires a victim who elects to use a pseudonym as provided by this article to complete a pseudonym form developed under this article and return the form to the law enforcement agency investigating the offense.

(c) Prohibits a victim who completes and returns a pseudonym form to the law enforcement agency investigating the offense from being required to disclose the victim's name, address, and telephone number in connection with the investigation or prosecution of the offense.

(d) Provides that a completed and returned pseudonym form is confidential and is prohibited from being disclosed to any person other than a defendant in the case or the defendant's attorney, except on an order of a court of competent jurisdiction. Provides that the court finding required by Subsection (g) is not

required to disclose the confidential pseudonym form to the defendant in the case or to the defendant's attorney.

(e) Requires the law enforcement agency receiving the form, if a victim completes and returns a pseudonym form to a law enforcement agency under this article, to:

(1) remove the victim's name and substitute the pseudonym for the name on all reports, files, and records in the agency's possession;

(2) notify the attorney for the state of the pseudonym and that the victim has elected to be designated by the pseudonym; and

(3) maintain the form in a manner that protects the confidentiality of the information contained on the form.

(f) Requires an attorney for the state who receives notice that a victim has elected to be designated by a pseudonym to ensure that the victim is designated by the pseudonym in all legal proceedings concerning the offense.

(g) Authorizes a court of competent jurisdiction to order the disclosure of a victim's name, address, and telephone number only if the court finds that the information is essential in the trial of the defendant for the offense or the identity of the victim is in issue.

(h) Prohibits a public servant or other person who has access to or obtains the name, address, telephone number, or other identifying information of a victim younger than 18 years of age, except as required or permitted by other law or by court order, from releasing or disclosing the identifying information to any person who is not assisting in the investigation, prosecution, or defense of the case. Provides that this subsection does not apply to the release or disclosure of a victim's identifying information by:

(1) the victim; or

(2) the victim's parent, conservator, or guardian, unless the victim's parent, conservator, or guardian allegedly committed the offense described by Article 57D.01(4).

Art. 57D.03. OFFENSE. (a) Provides that a public servant with access to the name, address, or telephone number of a victim 18 years of age or older who has chosen a pseudonym under this chapter commits an offense if the public servant knowingly discloses the name, address, or telephone number of the victim to any person who is not assisting in the investigation or prosecution of the offense or to any person other than the defendant, the defendant's attorney, or the person specified in the order of a court of competent jurisdiction.

(b) Provides that, unless the disclosure is required or permitted by other law, a public servant or other person commits an offense if the person:

(1) has access to or obtains the name, address, or telephone number of a victim younger than 18 years of age; and

(2) knowingly discloses the name, address, or telephone number of the victim to any person who is not assisting in the investigation or prosecution of the offense or to any person other than the defendant, the defendant's attorney, or a person specified in an order of a court of competent jurisdiction.

(c) Provides that it is an affirmative defense to prosecution under Subsection (b) that the actor is:

(1) the victim; or

(2) the victim's parent, conservator, or guardian, unless the victim's parent, conservator, or guardian allegedly committed the offense described by Article 57D.01(4).

(d) Provides that an offense under this article is a Class C misdemeanor.

SECTION 3. Requires OAG, not later than October 1, 2011, to develop and distribute to all law enforcement agencies of the state a pseudonym form to record the name, address, telephone number, and pseudonym of a victim as required by Article 57D.02, Code of Criminal Procedure, as added by this Act.

SECTION 4. Effective date: September 1, 2011.