

BILL ANALYSIS

Senate Research Center
82R3313 AJZ-D

H.B. 649
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Criminal Justice
5/6/2011
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, for a victim of sexual assault or rape to be eligible for a protective order, a victim must not only show evidence of an original assault, but also, if over the age of 18, that there is the threat of further harm by the alleged offender. Under the 13th Court of Appeals interpretation of the threat requirement, the threat of emotional harm from unwanted contact with a perpetrator is not sufficient to entitle a victim to a protective order. Effectively, the law as interpreted requires the victim to be harmed at least twice before being eligible for a protective order.

The requirement of a threat of further harm thwarts the original purpose of the sexual assault protective order statute by denying relief to some victims who fear continued emotional abuse from their assailant. H.B. 649 allows protective orders for victims of sexual assault without requiring the victim to show a threat of further harm by the assailant.

H.B. 649 amends current law relating to the issuance and duration of certain protective orders for victims of 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 Article 7A.03, Code of Criminal Procedure, as follows:

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 is the victim of a sexual assault. Deletes existing text relating to the applicant being younger than 18 years of age, or regardless of age, being 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 a sexual assault, to issue a protective order that includes a statement of the required findings. Makes a conforming change.

SECTION 2. Amends Article 7A.07, Code of Criminal Procedure, as follows:

Art. 7A.07. DURATION OF PROTECTIVE ORDER. (a) Authorizes a protective order issued under Article 7A.03 to be effective for the duration of the lives of the offender and victim, rather than the lives of the offender and the 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) Redesignates existing Subsection (c) as Subsection (b). Makes no further changes.

(c) Redesignates existing Subsection (d) as Subsection (c). Makes no further changes.

(d) Redesignates existing Subsection (e) as Subsection (d). Makes no further changes.

Deletes existing Subsection (b) authorizing a protective order issued under Article 7A.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.

SECTION 3. (a) Provides that the changes in law made by this Act to Article 7A.03, Code of Criminal Procedure, apply only to an application for a protective order that is filed on or after the effective date of this Act. Provides that an application for a protective order that was filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(b) Provides that the changes in law made by this Act to Article 7A.07, Code of Criminal Procedure, apply only to a protective order that is issued on or after the effective date of this Act. Provides that a protective order that was issued before the effective date of this Act is governed by the law in effect on the date the order was issued, and the former law is continued in effect for that purpose.

SECTION 4. Effective date: September 1, 2011.