

By: Nelson

S.B. No. 433

A BILL TO BE ENTITLED

AN ACT

relating to the issuance and enforcement of protective orders to protect victims of sexual assault; providing criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 1, Code of Criminal Procedure, is amended by adding Chapter 7A to read as follows:

CHAPTER 7A. PROTECTIVE ORDER FOR VICTIM OF SEXUAL ASSAULT

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

(b) An application for a protective order under this chapter may 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. 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 a sexual assault or other harm to the applicant, the court, without further notice to the alleged offender and without a hearing, may enter a temporary ex

1 parte order for the protection of the applicant or any other member
2 of the applicant's family or household.

3 Art. 7A.03. REQUIRED FINDINGS; ISSUANCE OF PROTECTIVE
4 ORDER. (a) At the close of a hearing on an application for a
5 protective order under this chapter, the court shall find whether
6 there are reasonable grounds to believe that the applicant is:

- 7 (1) the victim of a sexual assault; and
8 (2) the subject of a threat that reasonably places the
9 applicant in fear of further harm from the alleged offender.

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

15 Art. 7A.04. APPLICATION OF OTHER LAW. To the extent
16 applicable, except as otherwise provided by this chapter, Title 4,
17 Family Code, applies to a protective order issued under this
18 chapter.

19 Art. 7A.05. CONDITIONS SPECIFIED BY ORDER. (a) In a
20 protective order issued under this chapter, the court may:

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

- 25 (2) prohibit the alleged offender from:
26 (A) communicating directly or indirectly with
27 the applicant or any member of the applicant's family or household

1 in a threatening or harassing manner;

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

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

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

14 (b) In an order under Subsection (a)(2)(B), the court shall
15 specifically describe each prohibited location and the minimum
16 distance from the location, if any, that the alleged offender must
17 maintain. This subsection does not apply to an order with respect
18 to which the court has received a request to maintain
19 confidentiality of information revealing the locations.

20 (c) In a protective order, the court may suspend a license
21 to carry a concealed handgun issued under Section 411.177,
22 Government Code, that is held by the alleged offender.

23 Art. 7A.06. WARNING ON PROTECTIVE ORDER. (a) Each
24 protective order issued under this chapter, including a temporary
25 ex parte order, must contain the following prominently displayed
26 statements in boldfaced type, capital letters, or underlined:

27 "A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR

1 CONTEMPT OF COURT BY A FINE OF AS MUCH AS \$500 OR BY CONFINEMENT IN
2 JAIL FOR AS LONG AS SIX MONTHS, OR BOTH."

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

8 "IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS
9 DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT
10 AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL
11 SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A
12 FIREARM OR AMMUNITION."

13 (b) Each protective order issued under this chapter, except
14 for a temporary ex parte order, must contain the following
15 prominently displayed statement in boldfaced type, capital
16 letters, or underlined:

17 "A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED
18 BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY
19 CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT
20 RESULTS IN A SEPARATE OFFENSE MAY BE PROSECUTED AS A SEPARATE
21 OFFENSE IN ADDITION TO A VIOLATION OF THIS ORDER."

22 SECTION 2. Subsections (a), (b), and (c), Article 14.03,
23 Code of Criminal Procedure, are amended to read as follows:

24 (a) Any peace officer may arrest, without warrant:

25 (1) persons found in suspicious places and under
26 circumstances which reasonably show that such persons have been
27 guilty of some felony, violation of Title 9, Chapter 42, Penal Code,

1 breach of the peace, or offense under Section 49.02, Penal Code, or
2 threaten, or are about to commit some offense against the laws;

3 (2) persons who the peace officer has probable cause
4 to believe have committed an assault resulting in bodily injury to
5 another person and the peace officer has probable cause to believe
6 that there is danger of further bodily injury to that person;

7 (3) persons who the peace officer has probable cause
8 to believe have committed an [~~the~~] offense defined by Section
9 25.07, Penal Code (violation of Protective Order), or by Section
10 38.112, Penal Code (violation of Protective Order issued on basis
11 of sexual assault), if the offense is not committed in the presence
12 of the peace officer; or

13 (4) persons who the peace officer has probable cause
14 to believe have committed an assault resulting in bodily injury to a
15 member of the person's family or household.

16 (b) A peace officer shall arrest, without a warrant, a
17 person the peace officer has probable cause to believe has
18 committed an offense under Section 25.07, Penal Code (violation of
19 Protective Order), or Section 38.112, Penal Code (violation of
20 Protective Order issued on basis of sexual assault), if the offense
21 is committed in the presence of the peace officer.

22 (c) If reasonably necessary to verify an allegation of a
23 violation of a protective order or of the commission of an assault
24 against a member of the family or household, a peace officer shall
25 remain at the scene of the investigation to verify the allegation
26 and to prevent the further commission of the violation or of family
27 violence.

1 SECTION 3. Chapter 38, Penal Code, is amended by adding
2 Section 38.112 to read as follows:

3 Sec. 38.112. VIOLATION OF PROTECTIVE ORDER ISSUED ON BASIS
4 OF SEXUAL ASSAULT. (a) A person commits an offense if, in
5 violation of an order issued under Chapter 7A, Code of Criminal
6 Procedure, the person knowingly:

7 (1) communicates directly or indirectly with the
8 applicant or any member of the applicant's family or household in a
9 threatening or harassing manner;

10 (2) goes to or near the residence, place of employment
11 or business, or child-care facility or school of the applicant or
12 any member of the applicant's family or household; or

13 (3) possesses a firearm.

14 (b) If conduct constituting an offense under this section
15 also constitutes an offense under another section of this code, the
16 actor may be prosecuted under either section or under both
17 sections.

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

19 SECTION 4. Subsection (c), Section 46.04, Penal Code, is
20 amended to read as follows:

21 (c) A person, other than a peace officer, as defined by
22 Section 1.07, actively engaged in employment as a sworn, full-time
23 paid employee of a state agency or political subdivision, who is
24 subject to an order issued under Section 6.504 or Chapter 85, Family
25 Code, under Article 17.292 or Chapter 7A, Code of Criminal
26 Procedure, or by another jurisdiction as provided by Chapter 88,
27 Family Code, commits an offense if the person possesses a firearm

1 after receiving notice of the order and before expiration of the
2 order.

3 SECTION 5. This Act takes effect September 1, 2003.