

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 subtitle,  
14 except 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. Chapter 38, Penal Code, is amended by adding  
23 Section 38.112 to read as follows:

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

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

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

7           (3) possesses a firearm.

8           (b) If conduct constituting an offense under this section  
9 also constitutes an offense under another section of this code, the  
10 actor may be prosecuted under either section or under both  
11 sections.

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

13           SECTION 3. Section 46.04(c), Penal Code, is amended to read  
14 as follows:

15           (c) A person, other than a peace officer, as defined by  
16 Section 1.07, actively engaged in employment as a sworn, full-time  
17 paid employee of a state agency or political subdivision, who is  
18 subject to an order issued under Section 6.504 or Chapter 85, Family  
19 Code, under Article 17.292 or Chapter 7A, Code of Criminal  
20 Procedure, or by another jurisdiction as provided by Chapter 88,  
21 Family Code, commits an offense if the person possesses a firearm  
22 after receiving notice of the order and before expiration of the  
23 order.

24           SECTION 4. This Act takes effect September 1, 2003.