

1-1 By: Nelson S.B. No. 433  
1-2 (In the Senate - Filed February 11, 2003; February 17, 2003,  
1-3 read first time and referred to Committee on Criminal Justice;  
1-4 March 24, 2003, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 6, Nays 0; March 24, 2003,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 433 By: Hinojosa

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the issuance and enforcement of protective orders to  
1-11 protect victims of sexual assault; providing criminal penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Title 1, Code of Criminal Procedure, is amended  
1-14 by adding Chapter 7A to read as follows:

1-15 CHAPTER 7A. PROTECTIVE ORDER FOR VICTIM OF SEXUAL ASSAULT

1-16 Art. 7A.01. APPLICATION FOR PROTECTIVE ORDER. (a) A  
1-17 person who is the victim of an offense under Section 22.011 or  
1-18 22.021, Penal Code, or a prosecuting attorney acting on behalf of  
1-19 the person, may file an application for a protective order under  
1-20 this chapter without regard to the relationship between the  
1-21 applicant and the alleged offender.

1-22 (b) An application for a protective order under this chapter  
1-23 may be filed in a district court, juvenile court having the  
1-24 jurisdiction of a district court, statutory county court, or  
1-25 constitutional county court in:

1-26 (1) the county in which the applicant resides; or

1-27 (2) the county in which the alleged offender resides.

1-28 Art. 7A.02. TEMPORARY EX PARTE ORDER. If the court finds  
1-29 from the information contained in an application for a protective  
1-30 order that there is a clear and present danger of a sexual assault  
1-31 or other harm to the applicant, the court, without further notice to  
1-32 the alleged offender and without a hearing, may enter a temporary ex  
1-33 parte order for the protection of the applicant or any other member  
1-34 of the applicant's family or household.

1-35 Art. 7A.03. REQUIRED FINDINGS; ISSUANCE OF PROTECTIVE  
1-36 ORDER. (a) At the close of a hearing on an application for a  
1-37 protective order under this chapter, the court shall find whether  
1-38 there are reasonable grounds to believe that the applicant is:

1-39 (1) the victim of a sexual assault; and

1-40 (2) the subject of a threat that reasonably places the  
1-41 applicant in fear of further harm from the alleged offender.

1-42 (b) If the court finds reasonable grounds to believe that  
1-43 the applicant is the victim of a sexual assault and is the subject  
1-44 of a threat that reasonably places the applicant in fear of further  
1-45 harm from the alleged offender, the court shall issue a protective  
1-46 order that includes a statement of the required findings.

1-47 Art. 7A.04. APPLICATION OF OTHER LAW. To the extent  
1-48 applicable, except as otherwise provided by this chapter, Title 4,  
1-49 Family Code, applies to a protective order issued under this  
1-50 chapter.

1-51 Art. 7A.05. CONDITIONS SPECIFIED BY ORDER. (a) In a  
1-52 protective order issued under this chapter, the court may:

1-53 (1) order the alleged offender to take action as  
1-54 specified by the court that the court determines is necessary or  
1-55 appropriate to prevent or reduce the likelihood of future harm to  
1-56 the applicant or a member of the applicant's family or household; or

1-57 (2) prohibit the alleged offender from:

1-58 (A) communicating directly or indirectly with  
1-59 the applicant or any member of the applicant's family or household  
1-60 in a threatening or harassing manner;

1-61 (B) going to or near the residence, place of  
1-62 employment or business, or child-care facility or school of the  
1-63 applicant or any member of the applicant's family or household;

2-1 (C) engaging in conduct directed specifically  
2-2 toward the applicant or any member of the applicant's family or  
2-3 household, including following the person, that is reasonably  
2-4 likely to harass, annoy, alarm, abuse, torment, or embarrass the  
2-5 person; and

2-6 (D) possessing a firearm, unless the alleged  
2-7 offender is a peace officer, as defined by Section 1.07, Penal Code,  
2-8 actively engaged in employment as a sworn, full-time paid employee  
2-9 of a state agency or political subdivision.

2-10 (b) In an order under Subsection (a)(2)(B), the court shall  
2-11 specifically describe each prohibited location and the minimum  
2-12 distance from the location, if any, that the alleged offender must  
2-13 maintain. This subsection does not apply to an order with respect  
2-14 to which the court has received a request to maintain  
2-15 confidentiality of information revealing the locations.

2-16 (c) In a protective order, the court may suspend a license  
2-17 to carry a concealed handgun issued under Section 411.177,  
2-18 Government Code, that is held by the alleged offender.

2-19 Art. 7A.06. WARNING ON PROTECTIVE ORDER. (a) Each  
2-20 protective order issued under this chapter, including a temporary  
2-21 ex parte order, must contain the following prominently displayed  
2-22 statements in boldfaced type, capital letters, or underlined:

2-23 "A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR  
2-24 CONTEMPT OF COURT BY A FINE OF AS MUCH AS \$500 OR BY CONFINEMENT IN  
2-25 JAIL FOR AS LONG AS SIX MONTHS, OR BOTH."

2-26 "NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS  
2-27 ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY  
2-28 PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS  
2-29 VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT  
2-30 UNLESS A COURT CHANGES THE ORDER."

2-31 "IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS  
2-32 DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT  
2-33 AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL  
2-34 SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A  
2-35 FIREARM OR AMMUNITION."

2-36 (b) Each protective order issued under this chapter, except  
2-37 for a temporary ex parte order, must contain the following  
2-38 prominently displayed statement in boldfaced type, capital  
2-39 letters, or underlined:

2-40 "A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED  
2-41 BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY  
2-42 CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT  
2-43 RESULTS IN A SEPARATE OFFENSE MAY BE PROSECUTED AS A SEPARATE  
2-44 OFFENSE IN ADDITION TO A VIOLATION OF THIS ORDER."

2-45 SECTION 2. Subsections (a), (b), and (c), Article 14.03,  
2-46 Code of Criminal Procedure, are amended to read as follows:

2-47 (a) Any peace officer may arrest, without warrant:

2-48 (1) persons found in suspicious places and under  
2-49 circumstances which reasonably show that such persons have been  
2-50 guilty of some felony, violation of Title 9, Chapter 42, Penal Code,  
2-51 breach of the peace, or offense under Section 49.02, Penal Code, or  
2-52 threaten, or are about to commit some offense against the laws;

2-53 (2) persons who the peace officer has probable cause  
2-54 to believe have committed an assault resulting in bodily injury to  
2-55 another person and the peace officer has probable cause to believe  
2-56 that there is danger of further bodily injury to that person;

2-57 (3) persons who the peace officer has probable cause  
2-58 to believe have committed an an [the] offense defined by Section  
2-59 25.07, Penal Code (violation of Protective Order), or by Section  
2-60 38.112, Penal Code (violation of Protective Order issued on basis  
2-61 of sexual assault), if the offense is not committed in the presence  
2-62 of the peace officer; or

2-63 (4) persons who the peace officer has probable cause  
2-64 to believe have committed an assault resulting in bodily injury to a  
2-65 member of the person's family or household.

2-66 (b) A peace officer shall arrest, without a warrant, a  
2-67 person the peace officer has probable cause to believe has  
2-68 committed an offense under Section 25.07, Penal Code (violation of  
2-69 Protective Order), or Section 38.112, Penal Code (violation of

3-1 Protective Order issued on basis of sexual assault), if the offense  
3-2 is committed in the presence of the peace officer.

3-3 (c) If reasonably necessary to verify an allegation of a  
3-4 violation of a protective order or of the commission of an assault  
3-5 against a member of the family or household, a peace officer shall  
3-6 remain at the scene of the investigation to verify the allegation  
3-7 and to prevent the further commission of the violation or of family  
3-8 violence.

3-9 SECTION 3. Chapter 38, Penal Code, is amended by adding  
3-10 Section 38.112 to read as follows:

3-11 Sec. 38.112. VIOLATION OF PROTECTIVE ORDER ISSUED ON BASIS  
3-12 OF SEXUAL ASSAULT. (a) A person commits an offense if, in  
3-13 violation of an order issued under Chapter 7A, Code of Criminal  
3-14 Procedure, the person knowingly:

3-15 (1) communicates directly or indirectly with the  
3-16 applicant or any member of the applicant's family or household in a  
3-17 threatening or harassing manner;

3-18 (2) goes to or near the residence, place of employment  
3-19 or business, or child-care facility or school of the applicant or  
3-20 any member of the applicant's family or household; or

3-21 (3) possesses a firearm.

3-22 (b) If conduct constituting an offense under this section  
3-23 also constitutes an offense under another section of this code, the  
3-24 actor may be prosecuted under either section or under both  
3-25 sections.

3-26 (c) An offense under this section is a Class A misdemeanor.

3-27 SECTION 4. Subsection (c), Section 46.04, Penal Code, is  
3-28 amended to read as follows:

3-29 (c) A person, other than a peace officer, as defined by  
3-30 Section 1.07, actively engaged in employment as a sworn, full-time  
3-31 paid employee of a state agency or political subdivision, who is  
3-32 subject to an order issued under Section 6.504 or Chapter 85, Family  
3-33 Code, under Article 17.292 or Chapter 7A, Code of Criminal  
3-34 Procedure, or by another jurisdiction as provided by Chapter 88,  
3-35 Family Code, commits an offense if the person possesses a firearm  
3-36 after receiving notice of the order and before expiration of the  
3-37 order.

3-38 SECTION 5. This Act takes effect September 1, 2003.

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