

BILL ANALYSIS

C.S.S.B. 789
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Children who are sexually assaulted have trouble enough trying to live a normal life without worry of running into the person who sexually assaulted them. Current law requires that the victims of sexual assault prove that a threat of further harm exists to receive a protective order against the person who assaulted them. Allowing minor victims of sexual assault to be granted protective orders without proving an ongoing threat would remove a burden from those children and their families. As proposed, C.S.S.B. 789 authorizes the issuance of a protective order to victims of certain sexual assault offenses who are younger than 18 years of age without proving that a threat of further harm exists. The bill also details who may file the application for protective order and the duration of the protective order.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 789 amends the caption to read that the bill is relating to the issuance of a protective order for a victim of the offense of sexual assault, aggravated sexual assault, or indecency with a child.

Amends Article 7A.01(a), Code of Criminal Procedure, to provide that a person who is the victim of an offense under Section 21.11, 22.011, or 22.021, Penal Code, a parent or guardian acting on behalf of a person younger than 17 years of age who is the victim of such an offense, or a prosecuting attorney acting on behalf of the victim, may file an application for a protective order under Chapter 7A, Code of Criminal Procedure, without regard to the relationship between the victim and the alleged offender.

Amends Article 7A.03, Code of Criminal Procedure, to require the court, at the close of a hearing on an application for a protective order, to find whether there are reasonable grounds to believe that the applicant is the victim of sexual assault and is younger than 18 years of age; or, regardless of age, is the subject of a threat that reasonably places the applicant in fear of further harm from the alleged offender in order to issue a protective order. Makes a conforming change.

Adds Article 7A.07, Code of Criminal Procedure, which provides that a protective order issued under Article 7A.03, Code of Criminal Procedure, is effective for the duration of the lives of the offender and victim, 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. Provides that Section 85.025, Family Code, does not apply to the protective order. Authorizes a victim who is 17 years of age or older or a parent or guardian acting on behalf of a victim who is younger than 17 years of age to file at any time an application with the court to rescind the protective order. Provides that if a person who is the subject of a protective order issued under Article 7A.03, Code of Criminal Procedure, is confined or imprisoned on the date the protective order is due to expire under Article 7A.07(a), Code of Criminal Procedure, 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. Makes application of this Act prospective.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute amends the caption of the original bill.

The substitute adds that Article 7A.01(a), Code of Criminal Procedure, is amended to provide that a person who is the victim of an offense under Section 21.11, 22.011, or 22.021, Penal Code, a parent or guardian acting on behalf of a person younger than 17 years of age who is the victim of such an offense, or a prosecuting attorney acting on behalf of the victim, may file an application for a protective order under Chapter without regard to the relationship between the victim and the alleged offender. The original bill did not contain this change.

The substitute removes the requirement in the original bill that a victim younger than 18 years of age possess a reasonable fear of further harm from the alleged offender in order for the court to issue a protective order.

The substitute adds Article 7A.07, Code of Criminal Procedure, which provides that a protective order issued under Article 7A.03, Code of Criminal Procedure, is effective for the duration of the lives of the offender and victim, 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. Provides that Section 85.025, Family Code, does not apply to the protective order. Authorizes a victim who is 17 years of age or older or a parent or guardian acting on behalf of a victim who is younger than 17 years of age to file at any time an application with the court to rescind the protective order. Provides that if a person who is the subject of a protective order issued under Article 7A.03, Code of Criminal Procedure, is confined or imprisoned on the date the protective order is due to expire under Article 7A.07(a), Code of Criminal Procedure, 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. The original bill did not contain this addition.