

BILL ANALYSIS

H.B. 2329
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

A recent report to the legislature recommended certain statutory changes to provide a mechanism for protective orders to prevent interaction and contact between a victim of a trafficking of persons offense and the offenders, as well as restrictions on offenders and warnings for violations. Interested parties note that legislation is required to provide for the availability of certain protective orders for a victim of trafficking, to specify certain confidentiality requirements related to identifying information regarding victims of trafficking, and to allow such victims to receive a pseudonym. H.B. 2329 seeks to address these matters.

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

H.B. 2329 amends the Code of Criminal Procedure to authorize a person who is the victim of a trafficking of persons offense, a parent or guardian acting on behalf of a person younger than 18 years of age who is the victim of such an offense, or a prosecuting attorney acting on behalf of the person to file an application for a protective order without regard to the relationship between the applicant and the alleged offender in a district court, juvenile court having the jurisdiction of a district court, statutory county court, or constitutional county court in the county in which the applicant resides or the county in which the alleged offender resides.

H.B. 2329 authorizes a court, without further notice to an alleged offender and without a hearing, to enter a temporary ex parte order for the protection of a protective order applicant or any other member of the applicant's family or household if the court finds from the information contained in the application that there is a clear and present danger that the alleged offender will traffic the applicant in a manner that constitutes a trafficking of persons offense or that the victim will otherwise suffer harm under that offense.

H.B. 2329 requires a court, at the close of a hearing on an application for a protective order for a victim of a trafficking of persons offense, to find whether there are reasonable grounds to believe that the applicant is the victim of such an offense 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. The bill requires the court on making those required findings to issue a protective order that includes a statement of the findings. The bill establishes that, to the extent applicable, statutory provisions governing protective orders and family violence apply to a protective order issued for a victim of a trafficking of persons offense, except as otherwise provided by the bill.

H.B. 2329 authorizes a court that issues a protective order for a victim of a trafficking of persons offense to order the alleged offender to take action as specified by the court that the court determines is necessary or appropriate to prevent or reduce the likelihood of future harm to the

applicant or a member of the applicant's family or household or to prohibit the alleged offender from the following: communicating directly or indirectly with the applicant or any member of the applicant's family or household in a threatening or harassing manner; going to or near the residence, place of employment or business, or child-care facility or school of the applicant or any member of the applicant's family or household; engaging in conduct directed specifically toward the applicant or any member of the applicant's family or household, including following the person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the person; and possessing a firearm, unless the alleged offender is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision. The bill requires the court, in an order prohibiting the alleged offender from going to or near certain locations, to specifically describe each prohibited location and the minimum distance from the location, if any, that the alleged offender must maintain and makes that requirement inapplicable to an order with respect to which the court has received a request to maintain confidentiality of information revealing the locations. The bill authorizes the court, in a protective order, to suspend a license to carry a concealed handgun that is held by the alleged offender.

H.B. 2329 requires each protective order issued for a victim of a trafficking of persons offense, including a temporary ex parte order, to contain certain prominently displayed statements in a specified format and provides the required language for the statements and requires an order that is not a temporary ex parte order to contain a certain prominently displayed statement in a specified format and provides the required language for the statement.

H.B. 2329 sets out provisions for determining the effective duration of a protective order issued for a victim of a trafficking of persons offense and establishes that the bill's provisions prevail to the extent of any conflict with Family Code provisions governing the duration of a protective order.

H.B. 2329 requires the office of the attorney general, not later than October 1, 2011, to develop and distribute to all law enforcement agencies of the state a pseudonym form to record the name, address, telephone number, and pseudonym of a victim of a trafficking of persons offense or of an offense that is part of the same criminal episode as such an offense. The bill authorizes a victim to choose a pseudonym to be used instead of the victim's name to designate the victim in all public files and records concerning the offense, including police summary reports, press releases, and records of judicial proceedings. The bill requires a victim who elects to use a pseudonym to complete a pseudonym form developed by the attorney general and return the form to the law enforcement agency investigating the offense. The bill prohibits a victim who completes and returns a pseudonym form to the law enforcement agency investigating the offense from being required to disclose the victim's name, address, and telephone number in connection with the investigation or prosecution of the offense. The bill makes a completed and returned pseudonym form confidential and prohibits disclosure to any person other than a defendant in the case or the defendant's attorney, except on an order of a court of competent jurisdiction. The bill establishes that a finding by the court that the victim's identifying information is essential in the trial of a defendant is not required to disclose the confidential pseudonym form to the defendant in the case or to the defendant's attorney.

H.B. 2329 requires a law enforcement agency that receives a completed pseudonym form to remove the victim's name and substitute the pseudonym for the name on all reports, files, and records in the agency's possession; notify the attorney for the state of the pseudonym and that the victim has elected to be designated by the pseudonym; and maintain the form in a manner that protects the confidentiality of the information contained on the form. The bill requires an attorney for the state who receives notice that a victim has elected to be designated by a pseudonym to ensure that the victim is designated by the pseudonym in all legal proceedings concerning the offense. The bill authorizes disclosure by a court of competent jurisdiction of a victim's name, address, and telephone number only if the court finds that the information is essential in the trial of the defendant for the offense or the identity of the victim is in issue.

H.B. 2329 prohibits a public servant or other person who has access to or obtains the name, address, telephone number, or other identifying information of a victim younger than 18 years of age from releasing or disclosing the identifying information to any person who is not assisting in the investigation, prosecution, or defense of the case, except as required or permitted by other law or by court order. The bill makes that prohibition inapplicable to the release or disclosure of a victim's identifying information by the victim or the victim's parent, conservator, or guardian, unless the victim's parent, conservator, or guardian allegedly committed the trafficking of persons related offense.

H.B. 2329 makes it a Class C misdemeanor for a public servant or other person who has access to the name, address, or telephone number of a victim 18 years of age or older who has chosen a pseudonym to knowingly disclose that information to any person who is not assisting in the investigation or prosecution of the offense or to any person other than the defendant, the defendant's attorney, or a person specified in an order of a court of competent jurisdiction. The bill makes it a Class C misdemeanor for a public servant or other person who has access to or obtains the name, address, or telephone number of a victim younger than 18 years of age to knowingly disclose that information to any person who is not assisting in the investigation or prosecution of the offense or to any person other than the defendant, the defendant's attorney, or a person specified in an order of a court of competent jurisdiction, unless the disclosure is required or permitted by other law. The bill establishes an affirmative defense to prosecution for the offense relating to disclosure of the information of a victim younger than 18 years of age if the actor is the victim or the victim's parent, conservator, or guardian, unless the victim's parent, conservator, or guardian allegedly committed the trafficking of persons related offense.

H.B. 2329 defines, for purposes of its provisions relating to the confidentiality of identifying information of victims of trafficking of persons, "name," pseudonym," and "victim" and provides for the meaning of "public servant" by reference to the Penal Code.

EFFECTIVE DATE

September 1, 2011.