

BILL ANALYSIS

Senate Research Center

S.B. 82
By: Nelson
Criminal Justice
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law makes it difficult for prosecutors to prove the occurrence of a stalking offense if a perpetrator engages in different types of stalking behavior or if a perpetrator targets a victim's intimate partner.

Under Section 42.072 (Stalking), Penal Code, an individual commits the offense of stalking by engaging in a "scheme or course of conduct," on more than one occasion, that the actor knows or reasonably believes will cause the victim fear of bodily injury to the victim or to the victim's family or of damage to the victim's property. A first stalking offense is a 3rd degree felony. Any repeat conviction in Texas is a 2nd degree felony. Stalking convictions in other states or under federal law are not addressed in current law. Current law does not guarantee victims the right to offer court testimony about their relationship with the alleged offender.

S.B. 82 seeks to protect victims of stalking by modifying the statutory definition to apply to stalking behaviors. It also acknowledges that stalking is not limited to one type of repeated stalking behavior, and that offenders use a number of tactics to induce fear in their victims. Many stalkers target their victim's intimate partner, and S.B. 82 incorporates this type of behavior in the definition of stalking. S.B. 82 preserves the requirement that a court must determine that an alleged stalking offender intended to cause fear to a victim, regardless of the stalking behavior.

S.B. 82 ensures that stalking victims are permitted to give testimony in court about his or her relationship with an alleged perpetrator. Current law does not guarantee victims the right to offer court testimony about their relationship with the alleged offender. As a result, juries and judges do not always have a clear picture of why a certain course of conduct caused the alleged victim fear. S.B. 82 makes clear that the testimony allowed "shall not be construed to allow character evidence that would otherwise be inadmissible" under the state and federal Rules of Evidence. This testimony is critical in seeking a stalking conviction since stalking behavior can often seem innocuous to a juror unless placed in the context of a victim's history with a stalker.

S.B. 82 amends current law relating to the prosecution of the offense of stalking.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 42.072, Penal Code, as follows:

Sec. 42.072. STALKING. (a) Provides that a person commits an offense if the person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct, rather than conduct including following the other person, that:

(1) the actor knows or reasonably believes the other person will regard as threatening, including bodily injury or death for the other person, bodily injury or

death for a member of the other person's family or household or for an individual with whom the other person has a dating relationship, or that the offense will be committed against the other person's property;

(2) causes the other person, a member of the other person's family or household, or an individual with whom the other person has a dating relationship to be placed in fear of bodily injury or death or fear that an offense will be committed against the other person's property; and

(3) would cause a reasonable person to fear bodily injury or death for himself or herself; bodily injury or death for a member of the person's family or household or for an individual with whom the person has a dating relationship, rather than bodily injury or death for a member of the person's family or household; or that the offense will be committed against the person's property.

(b) Provides that an offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor has previously been convicted of an offense under this section or of an offense under any of the following laws that contains elements that are substantially similar to the elements of an offense under this section:

(1) the laws of another state;

(2) the laws of a federally recognized Indian tribe;

(3) the laws of a territory of the United States; or

(4) federal law.

(c) Authorizes a trier of fact, for purposes of this section, to find that different types of conduct described by Subsection (a), if engaged in on more than one occasion, constitute conduct that is engaged in pursuant to the same scheme or course of conduct.

(d) Redesignates existing Subsection (c) as Subsection (d). Defines "dating relationship" in this section.

SECTION 2. Amends Chapter 13, Code of Criminal Procedure, by adding Article 13.36, as follows:

Art. 13.36. STALKING. Authorizes the offense of stalking to be prosecuted in any county in which an element of the offense occurred.

SECTION 3. Amends Chapter 38, Code of Criminal Procedure, by adding Article 38.46, as follows:

Art. 38.46. EVIDENCE IN PROSECUTIONS FOR STALKING. (a) Authorizes each party in a prosecution for stalking to offer testimony as to all relevant facts and circumstances that would aid the trier of fact in determining whether the actor's conduct would cause a reasonable person to experience a fear described by Sections 42.072(a)(3)(A), (B), or (C), Penal Code, including the facts and circumstances surrounding any existing or previous relationship between the actor and the alleged victim, a member of the alleged victim's family or household, or an individual with whom the alleged victim has a dating relationship.

(b) Provides that this article does not permit the presentation of character evidence that would otherwise be inadmissible under the Texas Rules of Evidence or other applicable law.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2011.