

BILL ANALYSIS

S.B. 250
By: Zaffirini
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

This bill would extend to persons who are victims of stalking the right to a protective order against their stalker without requiring that the alleged stalker first be arrested for the crime.

Texas law prevents persons who are victims of stalking from qualifying for temporary and regular protective orders unless the stalking falls under the category of family violence. Only in cases where the petitioner is related to the stalker by blood or marriage, or if they have ever lived together, or have a child in common with the stalker can the petitioner qualify for a protective order without proof of an arrest. This provision can be problematic for victims of persons who may be making threats against them but are not related to them.

This legislation will allow all persons who are victims of stalking to access a temporary or regular protective order under the same guidelines provided for stalking victims who have a relation to the alleged stalker. This will allow all victims to circumvent the requirement that the alleged person be arrested first and immediately qualify to apply for such protections.

As proposed, S.B. 250 amends current law relating to protective orders for stalking victims.

RULEMAKING AUTHORITY

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

ANALYSIS

SECTION 1. Amends the heading to Chapter 7A, Code of Criminal Procedure, to read as follows:

CHAPTER 7A. PROTECTIVE ORDER FOR VICTIM OF SEXUAL ASSAULT OR STALKING

SECTION 2. Amends Article 7A.01(a), Code of Criminal Procedure, as follows:

(a) Authorizes a person who is the victim of an offense under Section 21.02 (Continuous Sexual Abuse of Young Child or Children), 21.11 (Indecency with a Child), 22.011 (Sexual Assault), 22.021 (Aggravated Sexual Assault), or 42.072 (Stalking), 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 person to file an application for a protective order under this chapter without regard to the relationship between the applicant and the alleged offender.

SECTION 3. Amends Article 7A.02, Code of Criminal Procedure, as follows:

Art. 7A.02. TEMPORARY EX PARTE ORDER. Authorizes the court, if it finds from the information contained in an application for a protective order that there is a clear and present danger of sexual assault, stalking, or other harm to the applicant, to enter a temporary ex parte order for the protection of the applicant or any other member of the

applicant's family or household without further notice to the alleged offender and without a hearing. Makes a nonsubstantive change.

SECTION 4. Amends Article 7A.03, Code of Criminal Procedure, as follows:

Art. 7A.03. REQUIRED FINDINGS; ISSUANCE OF PROTECTIVE ORDER. (a) Requires the court, at the close of a hearing on an application for a protective order under this chapter, to find whether there are reasonable grounds to believe that the applicant is the victim of:

(1) sexual assault and:

(A) is younger than 18 years of age; or

(B) regardless of age, is the subject of a threat that reasonably places the applicant in fear of further harm from the alleged offender; or

(2) stalking.

(b) Requires the court, if the court makes a finding described by Subsection (a)(1) or (2), rather than if the court finds reasonable grounds to believe that the applicant is the victim of a sexual assault and is younger than 18 years of age, or regardless of age, the subject of a threat that reasonably places the applicant in fear of further harm from the alleged offender, to issue a protective order that includes a statement of the required findings. Makes nonsubstantive changes.

SECTION 5. Makes application of this Act prospective.

EFFECTIVE DATE

September 1, 2011.