

By: Zedler

H.B. No. 2329

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the confidentiality of certain information regarding
3 victims of trafficking of persons and to the issuance and
4 enforcement of protective orders to protect victims of trafficking
5 of persons; providing penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Title 1, Code of Criminal Procedure, is amended
8 by adding Chapter 7B to read as follows:

9 CHAPTER 7B. PROTECTIVE ORDER FOR VICTIM OF TRAFFICKING OF PERSONS

10 Art. 7B.01. APPLICATION FOR PROTECTIVE ORDER. (a) A person
11 who is the victim of an offense under Section 20A.02, Penal Code, a
12 parent or guardian acting on behalf of a person younger than 18
13 years of age who is the victim of such an offense, or a prosecuting
14 attorney acting on behalf of the person may file an application for
15 a protective order under this chapter without regard to the
16 relationship between the applicant and the alleged offender.

17 (b) An application for a protective order under this chapter
18 may be filed in a district court, juvenile court having the
19 jurisdiction of a district court, statutory county court, or
20 constitutional county court in:

21 (1) the county in which the applicant resides; or

22 (2) the county in which the alleged offender resides.

23 Art. 7B.02. TEMPORARY EX PARTE ORDER. If the court finds
24 from the information contained in an application for a protective

1 order that there is a clear and present danger that the alleged
2 offender will traffic the applicant in a manner that constitutes an
3 offense under Section 20A.02, Penal Code, or that the victim will
4 otherwise suffer harm described by that section, the court, without
5 further notice to the alleged offender and without a hearing, may
6 enter a temporary ex parte order for the protection of the applicant
7 or any other member of the applicant's family or household.

8 Art. 7B.03. REQUIRED FINDINGS; ISSUANCE OF PROTECTIVE
9 ORDER. (a) At the close of a hearing on an application for a
10 protective order under this chapter, the court shall find whether
11 there are reasonable grounds to believe that the applicant is the
12 victim of an offense under Section 20A.02, Penal Code, and:

13 (1) is younger than 18 years of age; or

14 (2) regardless of age, is the subject of a threat that
15 reasonably places the applicant in fear of further harm from the
16 alleged offender.

17 (b) If the court finds reasonable grounds to believe that
18 the applicant is the victim of an offense under Section 20A.02,
19 Penal Code, and is younger than 18 years of age, or regardless of
20 age, the subject of a threat that reasonably places the applicant in
21 fear of further harm from the alleged offender, the court shall
22 issue a protective order that includes a statement of the required
23 findings.

24 Art. 7B.04. APPLICATION OF OTHER LAW. To the extent
25 applicable, except as otherwise provided by this chapter, Title 4,
26 Family Code, applies to a protective order issued under this
27 chapter.

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

3 (1) order the alleged offender to take action as
4 specified by the court that the court determines is necessary or
5 appropriate to prevent or reduce the likelihood of future harm to
6 the applicant or a member of the applicant's family or household;
7 or

8 (2) prohibit the alleged offender from:

9 (A) communicating directly or indirectly with
10 the applicant or any member of the applicant's family or household
11 in a threatening or harassing manner;

12 (B) going to or near the residence, place of
13 employment or business, or child-care facility or school of the
14 applicant or any member of the applicant's family or household;

15 (C) engaging in conduct directed specifically
16 toward the applicant or any member of the applicant's family or
17 household, including following the person, that is reasonably
18 likely to harass, annoy, alarm, abuse, torment, or embarrass the
19 person; and

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

24 (b) In an order under Subsection (a)(2)(B), the court shall
25 specifically describe each prohibited location and the minimum
26 distance from the location, if any, that the alleged offender must
27 maintain. This subsection does not apply to an order with respect

1 to which the court has received a request to maintain
2 confidentiality of information revealing the locations.

3 (c) In a protective order, the court may suspend a license
4 to carry a concealed handgun issued under Section 411.177,
5 Government Code, that is held by the alleged offender.

6 Art. 7B.06. WARNING ON PROTECTIVE ORDER. (a) Each
7 protective order issued under this chapter, including a temporary
8 ex parte order, must contain the following prominently displayed
9 statements in boldfaced type, capital letters, or underlined:

10 "A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR
11 CONTEMPT OF COURT BY A FINE OF AS MUCH AS \$500 OR BY CONFINEMENT IN
12 JAIL FOR AS LONG AS SIX MONTHS, OR BOTH."

13 "NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS
14 ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY
15 PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS
16 VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT
17 UNLESS A COURT CHANGES THE ORDER."

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

23 (b) Each protective order issued under this chapter, except
24 for a temporary ex parte order, must contain the following
25 prominently displayed statement in boldfaced type, capital
26 letters, or underlined:

27 "A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED

1 BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY
2 CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT
3 RESULTS IN A SEPARATE OFFENSE MAY BE PROSECUTED AS A SEPARATE
4 OFFENSE IN ADDITION TO A VIOLATION OF THIS ORDER."

5 Art. 7B.07. DURATION OF PROTECTIVE ORDER. (a) A protective
6 order issued under Article 7B.03 may be effective for the duration
7 of the lives of the offender and victim as provided by Subsection
8 (b), or for any shorter period stated in the order. If a period is
9 not stated in the order, the order is effective until the second
10 anniversary of the date the order was issued.

11 (b) A protective order issued under Article 7B.03 may be
12 effective for the duration of the lives of the offender and victim
13 only if the court finds reasonable cause to believe that the victim
14 is the subject of a threat that reasonably places the victim in fear
15 of further harm from the alleged offender.

16 (c) A victim who is 18 years of age or older or a parent or
17 guardian acting on behalf of a victim who is younger than 18 years
18 of age may file at any time an application with the court to rescind
19 the protective order.

20 (d) If a person who is the subject of a protective order
21 issued under Article 7B.03 is confined or imprisoned on the date the
22 protective order is due to expire under Subsection (a), the period
23 for which the order is effective is extended, and the order expires
24 on the first anniversary of the date the person is released from
25 confinement or imprisonment.

26 (e) To the extent of any conflict with Section 85.025,
27 Family Code, this article prevails.

1 SECTION 2. Title 1, Code of Criminal Procedure, is amended
2 by adding Chapter 57D to read as follows:

3 CHAPTER 57D. CONFIDENTIALITY OF IDENTIFYING INFORMATION OF VICTIMS
4 OF TRAFFICKING OF PERSONS

5 Art. 57D.01. DEFINITIONS. In this chapter:

6 (1) "Name" means the legal name of a person.

7 (2) "Pseudonym" means a set of initials or a
8 fictitious name chosen by a victim to designate the victim in all
9 public files and records concerning the offense, including police
10 summary reports, press releases, and records of judicial
11 proceedings.

12 (3) "Public servant" has the meaning assigned by
13 Section 1.07(a), Penal Code.

14 (4) "Victim" means a person who is the subject of:

15 (A) an offense under Section 20A.02, Penal Code;

16 or

17 (B) an offense that is part of the same criminal
18 episode, as defined by Section 3.01, Penal Code, as an offense under
19 Section 20A.02, Penal Code.

20 Art. 57D.02. CONFIDENTIALITY OF FILES AND RECORDS. (a) The
21 office of the attorney general shall develop and distribute to all
22 law enforcement agencies of the state a pseudonym form to record the
23 name, address, telephone number, and pseudonym of a victim.

24 (b) A victim may choose a pseudonym to be used instead of the
25 victim's name to designate the victim in all public files and
26 records concerning the offense, including police summary reports,
27 press releases, and records of judicial proceedings. A victim who

1 elects to use a pseudonym as provided by this article must complete
2 a pseudonym form developed under this article and return the form to
3 the law enforcement agency investigating the offense.

4 (c) A victim who completes and returns a pseudonym form to
5 the law enforcement agency investigating the offense may not be
6 required to disclose the victim's name, address, and telephone
7 number in connection with the investigation or prosecution of the
8 offense.

9 (d) A completed and returned pseudonym form is confidential
10 and may not be disclosed to any person other than a defendant in the
11 case or the defendant's attorney, except on an order of a court of
12 competent jurisdiction. The court finding required by Subsection
13 (g) is not required to disclose the confidential pseudonym form to
14 the defendant in the case or to the defendant's attorney.

15 (e) If a victim completes and returns a pseudonym form to a
16 law enforcement agency under this article, the law enforcement
17 agency receiving the form shall:

18 (1) remove the victim's name and substitute the
19 pseudonym for the name on all reports, files, and records in the
20 agency's possession;

21 (2) notify the attorney for the state of the pseudonym
22 and that the victim has elected to be designated by the pseudonym;
23 and

24 (3) maintain the form in a manner that protects the
25 confidentiality of the information contained on the form.

26 (f) An attorney for the state who receives notice that a
27 victim has elected to be designated by a pseudonym shall ensure that

1 the victim is designated by the pseudonym in all legal proceedings
2 concerning the offense.

3 (g) A court of competent jurisdiction may order the
4 disclosure of a victim's name, address, and telephone number only
5 if the court finds that the information is essential in the trial of
6 the defendant for the offense or the identity of the victim is in
7 issue.

8 (h) Except as required or permitted by other law or by court
9 order, a public servant or other person who has access to or obtains
10 the name, address, telephone number, or other identifying
11 information of a victim younger than 18 years of age may not release
12 or disclose the identifying information to any person who is not
13 assisting in the investigation, prosecution, or defense of the
14 case. This subsection does not apply to the release or disclosure
15 of a victim's identifying information by:

16 (1) the victim; or

17 (2) the victim's parent, conservator, or guardian,
18 unless the victim's parent, conservator, or guardian allegedly
19 committed the offense described by Article 57D.01(4).

20 Art. 57D.03. OFFENSE. (a) A public servant with access to
21 the name, address, or telephone number of a victim 18 years of age
22 or older who has chosen a pseudonym under this chapter commits an
23 offense if the public servant knowingly discloses the name,
24 address, or telephone number of the victim to any person who is not
25 assisting in the investigation or prosecution of the offense or to
26 any person other than the defendant, the defendant's attorney, or
27 the person specified in the order of a court of competent

1 jurisdiction.

2 (b) Unless the disclosure is required or permitted by other
3 law, a public servant or other person commits an offense if the
4 person:

5 (1) has access to or obtains the name, address, or
6 telephone number of a victim younger than 18 years of age; and

7 (2) knowingly discloses the name, address, or
8 telephone number of the victim to any person who is not assisting in
9 the investigation or prosecution of the offense or to any person
10 other than the defendant, the defendant's attorney, or a person
11 specified in an order of a court of competent jurisdiction.

12 (c) It is an affirmative defense to prosecution under
13 Subsection (b) that the actor is:

14 (1) the victim; or

15 (2) the victim's parent, conservator, or guardian,
16 unless the victim's parent, conservator, or guardian allegedly
17 committed the offense described by Article 57D.01(4).

18 (d) An offense under this article is a Class C misdemeanor.

19 SECTION 3. Not later than October 1, 2011, the office of the
20 attorney general shall develop and distribute to all law
21 enforcement agencies of the state a pseudonym form to record the
22 name, address, telephone number, and pseudonym of a victim as
23 required by Article 57D.02, Code of Criminal Procedure, as added by
24 this Act.

25 SECTION 4. This Act takes effect September 1, 2011.