

1-1 By: Zedler (Senate Sponsor - Van de Putte) H.B. No. 2329
1-2 (In the Senate - Received from the House May 9, 2011;
1-3 May 10, 2011, read first time and referred to Committee on Criminal
1-4 Justice; May 21, 2011, reported favorably by the following vote:
1-5 Yeas 6, Nays 0; May 21, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the confidentiality of certain information regarding
1-9 victims of trafficking of persons and to the issuance and
1-10 enforcement of protective orders to protect victims of trafficking
1-11 of persons; providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Title 1, Code of Criminal Procedure, is amended
1-14 by adding Chapter 7B to read as follows:

1-15 CHAPTER 7B. PROTECTIVE ORDER FOR VICTIM OF TRAFFICKING OF PERSONS

1-16 Art. 7B.01. APPLICATION FOR PROTECTIVE ORDER. (a) A
1-17 person who is the victim of an offense under Section 20A.02, Penal
1-18 Code, a parent or guardian acting on behalf of a person younger than
1-19 18 years of age who is the victim of such an offense, or a
1-20 prosecuting attorney acting on behalf of the person may file an
1-21 application for a protective order under this chapter without
1-22 regard to the relationship between the applicant and the alleged
1-23 offender.

1-24 (b) An application for a protective order under this chapter
1-25 may be filed in a district court, juvenile court having the
1-26 jurisdiction of a district court, statutory county court, or
1-27 constitutional county court in:

1-28 (1) the county in which the applicant resides; or

1-29 (2) the county in which the alleged offender resides.

1-30 Art. 7B.02. TEMPORARY EX PARTE ORDER. If the court finds
1-31 from the information contained in an application for a protective
1-32 order that there is a clear and present danger that the alleged
1-33 offender will traffic the applicant in a manner that constitutes an
1-34 offense under Section 20A.02, Penal Code, or that the victim will
1-35 otherwise suffer harm described by that section, the court, without
1-36 further notice to the alleged offender and without a hearing, may
1-37 enter a temporary ex parte order for the protection of the applicant
1-38 or any other member of the applicant's family or household.

1-39 Art. 7B.03. REQUIRED FINDINGS; ISSUANCE OF PROTECTIVE
1-40 ORDER. (a) At the close of a hearing on an application for a
1-41 protective order under this chapter, the court shall find whether
1-42 there are reasonable grounds to believe that the applicant is the
1-43 victim of an offense under Section 20A.02, Penal Code, and:

1-44 (1) is younger than 18 years of age; or

1-45 (2) regardless of age, is the subject of a threat that
1-46 reasonably places the applicant in fear of further harm from the
1-47 alleged offender.

1-48 (b) If the court finds reasonable grounds to believe that
1-49 the applicant is the victim of an offense under Section 20A.02,
1-50 Penal Code, and is younger than 18 years of age, or regardless of
1-51 age, the subject of a threat that reasonably places the applicant in
1-52 fear of further harm from the alleged offender, the court shall
1-53 issue a protective order that includes a statement of the required
1-54 findings.

1-55 Art. 7B.04. APPLICATION OF OTHER LAW. To the extent
1-56 applicable, except as otherwise provided by this chapter, Title 4,
1-57 Family Code, applies to a protective order issued under this
1-58 chapter.

1-59 Art. 7B.05. CONDITIONS SPECIFIED BY ORDER. (a) In a
1-60 protective order issued under this chapter, the court may:

1-61 (1) order the alleged offender to take action as
1-62 specified by the court that the court determines is necessary or
1-63 appropriate to prevent or reduce the likelihood of future harm to
1-64 the applicant or a member of the applicant's family or household;

2-1 or

2-2 (2) prohibit the alleged offender from:

2-3 (A) communicating directly or indirectly with
2-4 the applicant or any member of the applicant's family or household
2-5 in a threatening or harassing manner;

2-6 (B) going to or near the residence, place of
2-7 employment or business, or child-care facility or school of the
2-8 applicant or any member of the applicant's family or household;

2-9 (C) engaging in conduct directed specifically
2-10 toward the applicant or any member of the applicant's family or
2-11 household, including following the person, that is reasonably
2-12 likely to harass, annoy, alarm, abuse, torment, or embarrass the
2-13 person; and

2-14 (D) possessing a firearm, unless the alleged
2-15 offender is a peace officer, as defined by Section 1.07, Penal Code,
2-16 actively engaged in employment as a sworn, full-time paid employee
2-17 of a state agency or political subdivision.

2-18 (b) In an order under Subsection (a)(2)(B), the court shall
2-19 specifically describe each prohibited location and the minimum
2-20 distance from the location, if any, that the alleged offender must
2-21 maintain. This subsection does not apply to an order with respect
2-22 to which the court has received a request to maintain
2-23 confidentiality of information revealing the locations.

2-24 (c) In a protective order, the court may suspend a license
2-25 to carry a concealed handgun issued under Section 411.177,
2-26 Government Code, that is held by the alleged offender.

2-27 Art. 7B.06. WARNING ON PROTECTIVE ORDER. (a) Each
2-28 protective order issued under this chapter, including a temporary
2-29 ex parte order, must contain the following prominently displayed
2-30 statements in boldfaced type, capital letters, or underlined:

2-31 "A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR
2-32 CONTEMPT OF COURT BY A FINE OF AS MUCH AS \$500 OR BY CONFINEMENT IN
2-33 JAIL FOR AS LONG AS SIX MONTHS, OR BOTH."

2-34 "NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS
2-35 ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY
2-36 PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS
2-37 VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT
2-38 UNLESS A COURT CHANGES THE ORDER."

2-39 "IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS
2-40 DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT
2-41 AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL
2-42 SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A
2-43 FIREARM OR AMMUNITION."

2-44 (b) Each protective order issued under this chapter, except
2-45 for a temporary ex parte order, must contain the following
2-46 prominently displayed statement in boldfaced type, capital
2-47 letters, or underlined:

2-48 "A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED
2-49 BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY
2-50 CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT
2-51 RESULTS IN A SEPARATE OFFENSE MAY BE PROSECUTED AS A SEPARATE
2-52 OFFENSE IN ADDITION TO A VIOLATION OF THIS ORDER."

2-53 Art. 7B.07. DURATION OF PROTECTIVE ORDER. (a) A
2-54 protective order issued under Article 7B.03 may be effective for
2-55 the duration of the lives of the offender and victim as provided by
2-56 Subsection (b), or for any shorter period stated in the order. If a
2-57 period is not stated in the order, the order is effective until the
2-58 second anniversary of the date the order was issued.

2-59 (b) A protective order issued under Article 7B.03 may be
2-60 effective for the duration of the lives of the offender and victim
2-61 only if the court finds reasonable cause to believe that the victim
2-62 is the subject of a threat that reasonably places the victim in fear
2-63 of further harm from the alleged offender.

2-64 (c) A victim who is 18 years of age or older or a parent or
2-65 guardian acting on behalf of a victim who is younger than 18 years
2-66 of age may file at any time an application with the court to rescind
2-67 the protective order.

2-68 (d) If a person who is the subject of a protective order
2-69 issued under Article 7B.03 is confined or imprisoned on the date the

3-1 protective order is due to expire under Subsection (a), the period
3-2 for which the order is effective is extended, and the order expires
3-3 on the first anniversary of the date the person is released from
3-4 confinement or imprisonment.

3-5 (e) To the extent of any conflict with Section 85.025,
3-6 Family Code, this article prevails.

3-7 SECTION 2. Title 1, Code of Criminal Procedure, is amended
3-8 by adding Chapter 57D to read as follows:

3-9 CHAPTER 57D. CONFIDENTIALITY OF IDENTIFYING INFORMATION OF VICTIMS
3-10 OF TRAFFICKING OF PERSONS

3-11 Art. 57D.01. DEFINITIONS. In this chapter:

3-12 (1) "Name" means the legal name of a person.

3-13 (2) "Pseudonym" means a set of initials or a
3-14 fictitious name chosen by a victim to designate the victim in all
3-15 public files and records concerning the offense, including police
3-16 summary reports, press releases, and records of judicial
3-17 proceedings.

3-18 (3) "Public servant" has the meaning assigned by
3-19 Section 1.07(a), Penal Code.

3-20 (4) "Victim" means a person who is the subject of:

3-21 (A) an offense under Section 20A.02, Penal Code;
3-22 or

3-23 (B) an offense that is part of the same criminal
3-24 episode, as defined by Section 3.01, Penal Code, as an offense under
3-25 Section 20A.02, Penal Code.

3-26 Art. 57D.02. CONFIDENTIALITY OF FILES AND RECORDS.

3-27 (a) The office of the attorney general shall develop and
3-28 distribute to all law enforcement agencies of the state a pseudonym
3-29 form to record the name, address, telephone number, and pseudonym
3-30 of a victim.

3-31 (b) A victim may choose a pseudonym to be used instead of the
3-32 victim's name to designate the victim in all public files and
3-33 records concerning the offense, including police summary reports,
3-34 press releases, and records of judicial proceedings. A victim who
3-35 elects to use a pseudonym as provided by this article must complete
3-36 a pseudonym form developed under this article and return the form to
3-37 the law enforcement agency investigating the offense.

3-38 (c) A victim who completes and returns a pseudonym form to
3-39 the law enforcement agency investigating the offense may not be
3-40 required to disclose the victim's name, address, and telephone
3-41 number in connection with the investigation or prosecution of the
3-42 offense.

3-43 (d) A completed and returned pseudonym form is confidential
3-44 and may not be disclosed to any person other than a defendant in the
3-45 case or the defendant's attorney, except on an order of a court of
3-46 competent jurisdiction. The court finding required by Subsection
3-47 (g) is not required to disclose the confidential pseudonym form to
3-48 the defendant in the case or to the defendant's attorney.

3-49 (e) If a victim completes and returns a pseudonym form to a
3-50 law enforcement agency under this article, the law enforcement
3-51 agency receiving the form shall:

3-52 (1) remove the victim's name and substitute the
3-53 pseudonym for the name on all reports, files, and records in the
3-54 agency's possession;

3-55 (2) notify the attorney for the state of the pseudonym
3-56 and that the victim has elected to be designated by the pseudonym;
3-57 and

3-58 (3) maintain the form in a manner that protects the
3-59 confidentiality of the information contained on the form.

3-60 (f) An attorney for the state who receives notice that a
3-61 victim has elected to be designated by a pseudonym shall ensure that
3-62 the victim is designated by the pseudonym in all legal proceedings
3-63 concerning the offense.

3-64 (g) A court of competent jurisdiction may order the
3-65 disclosure of a victim's name, address, and telephone number only
3-66 if the court finds that the information is essential in the trial of
3-67 the defendant for the offense or the identity of the victim is in
3-68 issue.

3-69 (h) Except as required or permitted by other law or by court

4-1 order, a public servant or other person who has access to or obtains
4-2 the name, address, telephone number, or other identifying
4-3 information of a victim younger than 18 years of age may not release
4-4 or disclose the identifying information to any person who is not
4-5 assisting in the investigation, prosecution, or defense of the
4-6 case. This subsection does not apply to the release or disclosure
4-7 of a victim's identifying information by:

- 4-8 (1) the victim; or
- 4-9 (2) the victim's parent, conservator, or guardian,
4-10 unless the victim's parent, conservator, or guardian allegedly
4-11 committed the offense described by Article 57D.01(4).

4-12 Art. 57D.03. OFFENSE. (a) A public servant with access to
4-13 the name, address, or telephone number of a victim 18 years of age
4-14 or older who has chosen a pseudonym under this chapter commits an
4-15 offense if the public servant knowingly discloses the name,
4-16 address, or telephone number of the victim to any person who is not
4-17 assisting in the investigation or prosecution of the offense or to
4-18 any person other than the defendant, the defendant's attorney, or
4-19 the person specified in the order of a court of competent
4-20 jurisdiction.

4-21 (b) Unless the disclosure is required or permitted by other
4-22 law, a public servant or other person commits an offense if the
4-23 person:

- 4-24 (1) has access to or obtains the name, address, or
4-25 telephone number of a victim younger than 18 years of age; and
- 4-26 (2) knowingly discloses the name, address, or
4-27 telephone number of the victim to any person who is not assisting in
4-28 the investigation or prosecution of the offense or to any person
4-29 other than the defendant, the defendant's attorney, or a person
4-30 specified in an order of a court of competent jurisdiction.

4-31 (c) It is an affirmative defense to prosecution under
4-32 Subsection (b) that the actor is:

- 4-33 (1) the victim; or
- 4-34 (2) the victim's parent, conservator, or guardian,
4-35 unless the victim's parent, conservator, or guardian allegedly
4-36 committed the offense described by Article 57D.01(4).

4-37 (d) An offense under this article is a Class C misdemeanor.

4-38 SECTION 3. Not later than October 1, 2011, the office of the
4-39 attorney general shall develop and distribute to all law
4-40 enforcement agencies of the state a pseudonym form to record the
4-41 name, address, telephone number, and pseudonym of a victim as
4-42 required by Article 57D.02, Code of Criminal Procedure, as added by
4-43 this Act.

4-44 SECTION 4. This Act takes effect September 1, 2011.

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