

House Bill 2329
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

Art. 7B.01. APPLICATION FOR PROTECTIVE ORDER.

(a) A person who is the victim of an offense under Section 20A.02, Penal Code, 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 may file an application for a protective order under this chapter without regard to the relationship between the applicant and the alleged offender.

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

- (1) the county in which the applicant resides; or
- (2) the county in which the alleged offender resides.

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

Art. 7B.03. REQUIRED FINDINGS; ISSUANCE OF

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

Art. 7B.01. APPLICATION FOR PROTECTIVE ORDER.

(a) A person who is the victim of an offense under Section 20A.02, Penal Code, 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 may file an application for a protective order under this chapter without regard to the relationship between the applicant and the **offender or** alleged offender.

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

- (1) the county in which the applicant resides; or
- (2) the county in which the **offender or** alleged offender resides.

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

Art. 7B.03. REQUIRED FINDINGS; ISSUANCE OF

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PROTECTIVE ORDER. (a) At the close of a hearing on an application for a protective order under this chapter, the court shall find whether there are reasonable grounds to believe that the applicant is the victim of an offense under Section 20A.02, Penal Code, and:

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

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TEMPORARY PRETRIAL PROTECTIVE ORDER. (a) At the close of a hearing on an application for a protective order under this chapter, the court shall find whether there are reasonable grounds to believe that the applicant is the victim of an offense for which the subject of the protective order has been charged under Section 20A.02, Penal Code, and:

- (1) is younger than 18 years of age; or
- (2) regardless of age, is the subject of a threat that reasonably places the applicant in fear of further harm from the alleged offender.
- (b) If the court finds reasonable grounds to believe that the applicant is the victim of an offense for which the subject of the protective order has been charged under Section 20A.02, Penal Code, 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, the court shall issue a temporary protective order that includes a statement of the required findings, to be effective until the date the alleged offender is convicted or acquitted, or until the date on which the case involving the offense under Section 20A.02, Penal Code, is finally disposed.

Art. 7B.04. REQUIRED FINDINGS; ISSUANCE OF POST-TRIAL PROTECTIVE ORDER. (a) At the close of a hearing on an application for a protective order under this chapter, the court shall find whether there are reasonable grounds to believe that the applicant is the victim of an offense for which the subject of the protective order has been convicted under Section 20A.02, Penal Code, and:

- (1) is younger than 18 years of age; or
- (2) regardless of age, is the subject of a threat that reasonably places the applicant in fear of further harm from the alleged

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offender.

(b) If the court finds reasonable grounds to believe that the applicant is the victim of an offense for which the subject of the protective order has been convicted under Section 20A.02, Penal Code, 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 offender, the court shall issue a protective order that includes a statement of the required findings.

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

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

(1) 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

(2) prohibit the alleged offender from:

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

(B) 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;

(C) 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

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

(1) order the **offender or** 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

(2) prohibit the **offender or** alleged offender from:

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

(B) 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;

(C) 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

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likely to harass, annoy, alarm, abuse, torment, or embarrass the person; and

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

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

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

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

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

"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION

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likely to harass, annoy, alarm, abuse, torment, or embarrass the person; and

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

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

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

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"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION

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OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER."

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

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

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

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

(b) A protective order issued under Article 7B.03 may be effective for the duration of the lives of the offender and victim only if the court finds reasonable cause to believe that

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OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER."

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

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

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

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

(b) A protective order issued under Article 7B.03 may be effective for the duration of the lives of the offender and victim only if the court finds reasonable cause to believe that

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the victim is the subject of a threat that reasonably places the victim in fear of further harm from the alleged offender.

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

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

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

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

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

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

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

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

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

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

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

(B) an offense that is part of the same criminal episode, as

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the victim is the subject of a threat that reasonably places the victim in fear of further harm from the alleged offender.

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

(e) To the extent of any conflict with Section 85.025, Family Code, this article prevails. [FA2(1)-(16)]

SECTION 2. Same as House version.

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defined by Section 3.01, Penal Code, as an offense under Section 20A.02, Penal Code.

Art. 57D.02. CONFIDENTIALITY OF FILES AND RECORDS. (a) The office of the attorney general shall 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.

(b) A victim may 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. A victim who elects to use a pseudonym as provided by this article must complete a pseudonym form developed under this article and return the form to the law enforcement agency investigating the offense.

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

(d) A completed and returned pseudonym form is confidential and may not be disclosed 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 court finding required by Subsection (g) is not required to disclose the confidential pseudonym form to the defendant in the case or to the defendant's attorney.

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

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

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possession;

(2) notify the attorney for the state of the pseudonym and that the victim has elected to be designated by the pseudonym; and
(3) maintain the form in a manner that protects the confidentiality of the information contained on the form.

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

(g) A court of competent jurisdiction may order the disclosure 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) Except as required or permitted by other law or by court order, 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 may not release or disclose the identifying information to any person who is not assisting in the investigation, prosecution, or defense of the case. This subsection does not apply to the release or disclosure of a victim's identifying information by:

(1) the victim; or

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

Art. 57D.03. OFFENSE. (a) A public servant with access to the name, address, or telephone number of a victim 18 years of age or older who has chosen a pseudonym under this chapter commits an offense if the public servant knowingly discloses the name, address, or telephone number of the

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victim 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 the person specified in the order of a court of competent jurisdiction.

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

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

(2) knowingly discloses the name, address, or telephone number of the victim 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.

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

(1) the victim; or

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

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

No equivalent provision.

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SECTION __. Section 25.026, Tax Code, is amended to read as follows:

Sec. 25.026. CONFIDENTIALITY OF CERTAIN ~~[VIOLENCE]~~ SHELTER CENTER AND SEXUAL ASSAULT PROGRAM ADDRESS INFORMATION. (a) In this section:

(1) "Family violence shelter center" has the meaning assigned by Section 51.002, Human Resources Code.

(2) "Sexual assault program" has the meaning assigned by

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Section 420.003, Government Code.

(3) "Victims of trafficking shelter center" means a program that:

(A) is operated by a public or private nonprofit organization; and

(B) provides comprehensive residential and nonresidential services to victims of trafficking of persons under Section 20A.02, Penal Code.

(b) Information in appraisal records under Section 25.02 is confidential and is available only for the official use of the appraisal district, this state, the comptroller, and taxing units and political subdivisions of this state if the information identifies the address of a family violence shelter center, ~~or~~ a sexual assault program, or a victims of trafficking shelter center. [FA1]

SECTION 3. Not later than October 1, 2011, the office of the attorney general shall 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 as required by Article 57D.02, Code of Criminal Procedure, as added by this Act.

SECTION 3. Same as House version.

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

SECTION 4. Same as House version.