

## **BILL ANALYSIS**

C.S.H.B. 1848  
By: Carter  
Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties assert that a gap exists in the protections afforded by the state to victims of sexual abuse. Specifically, current law does not allow courts to prohibit an offender who is the subject of a protective order because of sexual assault abuse from contacting the victim. The parties assert that this gap could be diminished if such victims were offered some of the same protections presently available to victims of family violence.

In addition, there is also concern that current law does not adequately address violations of bond conditions in family violence, sexual assault, and stalking cases. Concerned parties assert that this could result in instances where a victim who is protected by bond conditions may not be able to get immediate help from law enforcement when a violation occurs. C.S.H.B. 1848 seeks to ensure that victims of sexual abuse will be spared the trauma of being contacted by their assailants and to ensure that victims of family violence, sexual assault, and stalking will be able to contact the police for help if a protective order is violated.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Department of Public Safety in SECTION 3 of this bill.

### **ANALYSIS**

C.S.H.B. 1848 amends the Code of Criminal Procedure to authorize a court, in issuing a protective order relating to a victim of sexual assault or abuse, stalking, or trafficking, to prohibit the alleged offender from communicating in any manner with the protective order applicant or any member of the applicant's family or household except through the applicant's attorney or a person appointed by the court, if the court finds good cause for the prohibition. The bill amends the Penal Code to make it a Class A misdemeanor to violate such an order.

C.S.H.B. 1848 amends the Government Code to require the bureau of identification and records to collect pertinent information with regard to active protective orders about persons subject to bond conditions imposed for the protection of the victim in any family violence, sexual assault or abuse, or stalking case and to require the inclusion of the bond conditions in the law enforcement information system. The bill specifies that the authority of the Department of Public Safety (DPS) to adopt reasonable rules relating to active protective orders and certain reporting procedures applies to active protective orders generally, rather than only active protective orders against family violence. The bill authorizes DPS to adopt reasonable rules relating to active conditions of bond imposed on a defendant for the protection of a victim in any family violence, sexual assault or abuse, or stalking case, and reporting procedures that ensure that information relating to the issuance, modification, or removal of the conditions of bond is reported to the local law enforcement agency at the time of the issuance, modification, or removal and entered by the local law enforcement agency in the state's law enforcement information system.

C.S.H.B. 1848 amends the Penal Code to make it a Class A misdemeanor, or a third-degree

felony if it is shown on the trial of the offense that the defendant has previously been convicted two or more times or has violated the order or condition of bond by committing an assault or the offense of stalking, to knowingly or intentionally commit certain acts in violation of a condition of bond set in a sexual assault or abuse or stalking case and related to the safety of a victim or the safety of the community.

**EFFECTIVE DATE**

September 1, 2013.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1848 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

**INTRODUCED**

**HOUSE COMMITTEE SUBSTITUTE**

SECTION 1. The heading to Chapter 7A, Code of Criminal Procedure, is amended.

SECTION 1. Same as introduced version.

SECTION 2. Article 7A.05(a), Code of Criminal Procedure, is amended.

SECTION 2. Same as introduced version.

SECTION 3. Sections 411.042(b) and (g), Government Code, are amended to read as follows:

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(b) The bureau of identification and records shall:

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(1) procure and file for record photographs, pictures, descriptions, fingerprints, measurements, and other pertinent information of all persons arrested for or charged with a criminal offense or convicted of a criminal offense, regardless of whether the conviction is probated;

(1) procure and file for record photographs, pictures, descriptions, fingerprints, measurements, and other pertinent information of all persons arrested for or charged with a criminal offense or convicted of a criminal offense, regardless of whether the conviction is probated;

(2) collect information concerning the number and nature of offenses reported or known to have been committed in the state and the legal steps taken in connection with the offenses, and other information useful in the study of crime and the administration of justice, including information that enables the bureau to create a statistical breakdown of:

(2) collect information concerning the number and nature of offenses reported or known to have been committed in the state and the legal steps taken in connection with the offenses, and other information useful in the study of crime and the administration of justice, including information that enables the bureau to create a statistical breakdown of:

(A) offenses in which family violence was involved;

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(B) offenses under Sections 22.011 and 22.021, Penal Code; and

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(C) offenses under Sections 20A.02 and 43.05, Penal Code;

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(3) make ballistic tests of bullets and

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firearms and chemical analyses of bloodstains, cloth, materials, and other substances for law enforcement officers of the state;

(4) cooperate with identification and crime records bureaus in other states and the United States Department of Justice;

(5) maintain a list of all previous background checks for applicants for any position regulated under Chapter 1702, Occupations Code, who have undergone a criminal history background check under Section 411.119, if the check indicates a Class B misdemeanor or equivalent offense or a greater offense;

(6) collect information concerning the number and nature of protective orders and all other pertinent information about all persons on active protective orders, including pertinent information about persons subject to conditions of bond imposed for the protection of the victim in any family violence, sexual assault, or stalking case. Information in the law enforcement information system relating to an active protective order shall include:

(A) the name, sex, race, date of birth, personal descriptors, address, and county of residence of the person to whom the order is directed;

(B) any known identifying number of the person to whom the order is directed, including the person's social security number or driver's license number;

(C) the name and county of residence of the person protected by the order;

(D) the residence address and place of employment or business of the person protected by the order, unless that information is excluded from the order under Section 85.007, Family Code;

(E) the child-care facility or school where a child protected by the order normally resides or which the child normally attends, unless that information is excluded from the order under Section 85.007, Family Code;

(F) the relationship or former relationship between the person who is protected by the order and the person to whom the order is directed; ~~and~~

(G) the conditions of bond imposed on the person to whom the order is directed for the protection of a victim in any family violence, sexual assault, or stalking case; and

firearms and chemical analyses of bloodstains, cloth, materials, and other substances for law enforcement officers of the state;

(4) cooperate with identification and crime records bureaus in other states and the United States Department of Justice;

(5) maintain a list of all previous background checks for applicants for any position regulated under Chapter 1702, Occupations Code, who have undergone a criminal history background check under Section 411.119, if the check indicates a Class B misdemeanor or equivalent offense or a greater offense;

(6) collect information concerning the number and nature of protective orders and all other pertinent information about all persons on active protective orders, including pertinent information about persons subject to conditions of bond imposed for the protection of the victim in any family violence, sexual assault or abuse, or stalking case. Information in the law enforcement information system relating to an active protective order shall include:

(A) the name, sex, race, date of birth, personal descriptors, address, and county of residence of the person to whom the order is directed;

(B) any known identifying number of the person to whom the order is directed, including the person's social security number or driver's license number;

(C) the name and county of residence of the person protected by the order;

(D) the residence address and place of employment or business of the person protected by the order, unless that information is excluded from the order under Section 85.007, Family Code;

(E) the child-care facility or school where a child protected by the order normally resides or which the child normally attends, unless that information is excluded from the order under Section 85.007, Family Code;

(F) the relationship or former relationship between the person who is protected by the order and the person to whom the order is directed; ~~and~~

(G) the conditions of bond imposed on the person to whom the order is directed, if any, for the protection of a victim in any family violence, sexual assault or abuse, or stalking case; and

(H) the date the order expires;

(7) grant access to criminal history record information in the manner authorized under Subchapter F;

(8) collect and disseminate information regarding offenders with mental impairments in compliance with Chapter 614, Health and Safety Code; and

(9) record data and maintain a state database for a computerized criminal history record system and computerized juvenile justice information system that serves:

(A) as the record creation point for criminal history record information and juvenile justice information maintained by the state; and

(B) as the control terminal for the entry of records, in accordance with federal law and regulations, federal executive orders, and federal policy, into the federal database maintained by the Federal Bureau of Investigation.

(g) The department may adopt reasonable rules under this section relating to:

(1) law enforcement information systems maintained by the department;

(2) the collection, maintenance, and correction of records;

(3) reports of criminal history information submitted to the department;

(4) active protective orders issued under Title 4, Family Code, or Chapter 7A or Article 17.292, Code of Criminal Procedure, and reporting procedures that ensure that information relating to the issuance, modification, or removal of any conditions imposed through [of] an active protective order and to the dismissal of an active protective order is reported to the local law enforcement agency at the time of the order's issuance or dismissal and entered by the local law enforcement agency in the state's law enforcement information system;

(5) the collection of information described by Subsection (h); and

(6) a system for providing criminal history record information through the criminal history clearinghouse under Section 411.0845.

(H) the date the order expires;

(7) grant access to criminal history record information in the manner authorized under Subchapter F;

(8) collect and disseminate information regarding offenders with mental impairments in compliance with Chapter 614, Health and Safety Code; and

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(A) as the record creation point for criminal history record information and juvenile justice information maintained by the state; and

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(g) The department may adopt reasonable rules under this section relating to:

(1) law enforcement information systems maintained by the department;

(2) the collection, maintenance, and correction of records;

(3) reports of criminal history information submitted to the department;

(4) active protective orders ~~issued under Title 4, Family Code,~~ and reporting procedures that ensure that information relating to the issuance and dismissal of an active protective order ~~[and to the dismissal of an active protective order]~~ is reported to the local law enforcement agency at the time of the order's issuance or dismissal and entered by the local law enforcement agency in the state's law enforcement information system;

(5) the collection of information described by Subsection (h); ~~[and]~~

(6) a system for providing criminal history record information through the criminal history clearinghouse under Section 411.0845; and

(7) active conditions of bond imposed on a defendant for the protection of a victim in any family violence, sexual assault or abuse, or stalking case, and reporting procedures that ensure that information relating to the issuance, modification, or removal of the

~~conditions of bond is reported to the local law enforcement agency at the time of the issuance, modification, or removal and entered by the local law enforcement agency in the state's law enforcement information system.~~

SECTION 4. The heading to Section 25.07, Penal Code, is amended to read as follows:  
Sec. 25.07. VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN A FAMILY VIOLENCE, SEXUAL ASSAULT, OR STALKING CASE.

SECTION 5. Section 25.07(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if, in violation of a condition of bond ~~[set in a family violence case]~~ and related to the safety of a ~~[the]~~ victim or the safety of the community, an order issued under Article 17.292, Code of Criminal Procedure, ~~in a family violence, sexual assault, or stalking case,~~ an order issued under Section 6.504, Family Code, Chapter 83, Family Code, if the temporary ex parte order has been served on the person, or Chapter 85, Family Code, ~~in a family violence case,~~ or an order issued by another jurisdiction as provided by Chapter 88, Family Code, ~~in a family violence case,~~ the person knowingly or intentionally:

(1) commits family violence or an act in furtherance of an offense under Section 22.011, 22.021, or 42.072;

(2) communicates:

(A) directly with a protected individual or a member of the family or household in a threatening or harassing manner;

~~(B) in any manner with the protected individual or a member of the family or household except through the protected individual's attorney or a person appointed by the court;~~

~~(C) a threat through any person to a protected individual or a member of the family or household; or~~

~~(D) [(C)] in any manner with the protected individual or a member of the family or household except through the person's attorney or a person appointed by the court, if the violation is of an order described by~~

SECTION 4. The heading to Section 25.07, Penal Code, is amended to read as follows:  
Sec. 25.07. VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN A FAMILY VIOLENCE, SEXUAL ASSAULT OR ABUSE, OR STALKING CASE.

SECTION 5. Section 25.07(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if, in violation of a condition of bond set in a family violence, ~~sexual assault or abuse, or stalking~~ case and related to the safety of a ~~[the]~~ victim or the safety of the community, an order issued under Article 17.292, Code of Criminal Procedure, an order issued under Section 6.504, Family Code, Chapter 83, Family Code, if the temporary ex parte order has been served on the person, or Chapter 85, Family Code, or an order issued by another jurisdiction as provided by Chapter 88, Family Code, the person knowingly or intentionally:

(1) commits family violence or an act in furtherance of an offense under Section 22.011, 22.021, or 42.072;

(2) communicates:

(A) directly with a protected individual or a member of the family or household in a threatening or harassing manner;

(B) a threat through any person to a protected individual or a member of the family or household; or

(C) in any manner with the protected individual or a member of the family or household except through the person's attorney or a person appointed by the court, if the violation is of an order described by

this subsection and the order prohibits any communication with a protected individual or a member of the family or household;

(3) goes to or near any of the following places as specifically described in the order or condition of bond:

(A) the residence or place of employment or business of a protected individual or a member of the family or household; or

(B) any child care facility, residence, or school where a child protected by the order or condition of bond normally resides or attends;

(4) possesses a firearm; or

(5) harms, threatens, or interferes with the care, custody, or control of a pet, companion animal, or assistance animal that is possessed by a person protected by the order.

SECTION 6. Section 25.07(b), Penal Code, is amended by adding Subdivisions (4) and (5) to read as follows:

(4) "Sexual assault" means any act as described by Section 22.011 or 22.021.

(5) "Stalking" means any conduct that constitutes an offense under Section 42.072.

SECTION 7. The heading to Section 38.112, Penal Code, is amended.

SECTION 8. Section 38.112(a), Penal Code, is amended.

SECTION 9. The changes in law made by this Act in amending Sections 25.07 and 38.112, Penal Code, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

this subsection and the order prohibits any communication with a protected individual or a member of the family or household;

(3) goes to or near any of the following places as specifically described in the order or condition of bond:

(A) the residence or place of employment or business of a protected individual or a member of the family or household; or

(B) any child care facility, residence, or school where a child protected by the order or condition of bond normally resides or attends;

(4) possesses a firearm; or

(5) harms, threatens, or interferes with the care, custody, or control of a pet, companion animal, or assistance animal that is possessed by a person protected by the order.

SECTION 6. Section 25.07(b), Penal Code, is amended by adding Subdivisions (4), (5), and (6) to read as follows:

(4) "Sexual abuse" means any act as described by Section 21.02 or 21.11.

(5) "Sexual assault" means any act as described by Section 22.011 or 22.021.

(6) "Stalking" means any conduct that constitutes an offense under Section 42.072.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.

SECTION 10. This Act takes effect  
September 1, 2013.

SECTION 10. Same as introduced version.