

BILL ANALYSIS

Senate Research Center

S.B. 357
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Criminal Justice
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

By passing H.B. 649, the 82nd Legislature improved the sexual assault protective order statute by eliminating the requirement that a victim prove not only that an assault occurred, but also that a threat of further harm was made by the perpetrator. This change was critical to ensuring protection for sexual assault victims, since the “further harm” requirement, as interpreted by a recent appellate decision, had undermined the original intent of the law and rendered the statute impracticable.

The 82nd Legislature also passed S.B. 250, which created a much-needed stalking protective order. Prior to the bill’s enactment, victims of stalking were unable to obtain protective orders except in certain limited circumstances. Both H.B. 649 and S.B. 250 passed unanimously in committee and in both chambers.

Major legal publications indicate that the changes produced by H.B. 649 and S.B. 250 are in conflict, possibly undermining the intent of those bills. This has led to some uncertainty about the status of the law and an unwillingness among some attorneys to seek protective orders on behalf of victims of stalking and sexual assault. S.B. 357 clarifies the statute and removes any possibility for doubt in a manner that is consistent with the intent of the 82nd Legislature.

S.B. 357 seeks to improve protections available to victims of trafficking. Currently, victims of trafficking may obtain protective orders through another section of the Code of Criminal Procedure—Article 7B—but only if criminal charges have been filed. Often victims are in need of protection before charges are filed or in cases where charges are never filed. By adding trafficking to the grounds for a protective order in this article, trafficking victims may seek protection without having to wait for charges to be filed.

S.B. 357 amends current law relating to the issuance of protective orders for certain sexual, stalking, and trafficking offenses.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

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

CHAPTER 7A. PROTECTIVE ORDER FOR VICTIMS OF SEXUAL ASSAULT OR ABUSE,
STALKING, OR TRAFFICKING

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

(b) Authorizes an application for a protective order under this chapter (Protective Order for Certain Victims of Trafficking or Sexual Assault or Stalking) to be filed in certain courts, including a district court, juvenile court having the jurisdiction of a district court, statutory county court, or constitutional county court in any county in which an element

of the alleged offense occurred or any court with jurisdiction over a protective order under Title 4 (Protective Orders and Family Violence), Family Code, involving the same parties named in the application.

SECTION 3. Reenacts Article 7A.03, Code of Criminal Procedure, as amended by Chapters 135 (S.B. 250) and 238 (H.B. 649), Acts of the 82nd Legislature, Regular Session, 2011, and amends it 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 sexual assault or abuse, stalking, or trafficking. Makes a nonsubstantive change.

(b) Requires the court, if it makes a finding described by Subsection (a), rather than Subsection (a)(1) (establishing that there are reasonable grounds to believe that the applicant is a victim of sexual assault) or (2) (establishing that there are reasonable grounds to believe that the applicant is a victim of stalking), to issue a protective order that includes a statement of the required findings.

SECTION 4. Amends Article 7A.05(a), Code of Criminal Procedure, as follows:

(a) Authorizes the court, in a protective order issued under this chapter, to:

(1) Makes no change to this subdivision; or

(2) prohibit the alleged offender from:

(A) communicating:

(i) Makes no change to this subparagraph; or

(ii) in any manner with the 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; and

(B)-(D) Makes no change to these paragraphs.

SECTION 5. Provides that the change in law made by this Act in amending Chapter 7A, Code of Criminal Procedure, applies only to a protective order issued on or after the effective date of this Act. Provides that a protective order issued before the effective date of this Act is governed by the law in effect on the date the order is issued, and the former law is continued in effect for that purpose.

SECTION 6. Effective date: September 1, 2013.