

BILL ANALYSIS

S.B. 357
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

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 also improves 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.

ANALYSIS

SECTION 1. 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 previously issued under

Title 4 (Protective Orders and Family Violence), Family Code, with respect to the same parties named in the application.

SECTION 2. 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 3. Makes application of Section 7A.03, Code of Criminal Procedure, as amended by this Act, prospective.

EFFECTIVE DATE

Effective date: September 1, 2013.