

By: Moody

H.B. No. 309

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the creation of the offense of indecent assault, to  
3 judicial protection for victims of that offense, and to certain  
4 criminal acts committed in relation to that offense.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 22, Penal Code, is amended by adding  
7 Section 22.012 to read as follows:

8 Sec. 22.012. INDECENT ASSAULT. (a) A person commits an  
9 offense if, without the other person's consent and with the intent  
10 to arouse or gratify the sexual desire of any person, the person:

11 (1) touches, including through clothing, the anus,  
12 breast, or any part of the genitals of another person;

13 (2) touches another person, including through  
14 clothing, with the anus, breast, or any part of the genitals of any  
15 person;

16 (3) exposes or attempts to expose another person's  
17 genitals, pubic area, anus, buttocks, or female areola; or

18 (4) causes another person to contact the blood,  
19 seminal fluid, vaginal fluid, saliva, urine, or feces of any  
20 person, including contact occurring through clothing.

21 (b) An offense under this section is a Class A misdemeanor.

22 (c) If conduct that constitutes an offense under this  
23 section also constitutes an offense under another law, the actor  
24 may be prosecuted under this section, the other law, or both.

1 SECTION 2. The heading to Chapter 7A, Code of Criminal  
2 Procedure, is amended to read as follows:

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

5 SECTION 3. Article 7A.01(a), Code of Criminal Procedure, is  
6 amended to read as follows:

7 (a) The following persons may file an application for a  
8 protective order under this chapter without regard to the  
9 relationship between the applicant and the alleged offender:

10 (1) a person who is the victim of an offense under  
11 Section 21.02, 21.11, 22.011, 22.012, 22.021, or 42.072, Penal  
12 Code;

13 (2) a person who is the victim of an offense under  
14 Section 20A.02, 20A.03, or 43.05, Penal Code;

15 (3) a parent or guardian acting on behalf of a person  
16 younger than 17 years of age who is the victim of an offense listed  
17 in Subdivision (1);

18 (4) a parent or guardian acting on behalf of a person  
19 younger than 18 years of age who is the victim of an offense listed  
20 in Subdivision (2); or

21 (5) a prosecuting attorney acting on behalf of a  
22 person described by Subdivision (1), (2), (3), or (4).

23 SECTION 4. Article 7A.02, Code of Criminal Procedure, is  
24 amended to read as follows:

25 Art. 7A.02. TEMPORARY EX PARTE ORDER. If the court finds  
26 from the information contained in an application for a protective  
27 order that there is a clear and present danger of sexual assault or

1 abuse, indecent assault, stalking, trafficking, or other harm to  
2 the applicant, the court, without further notice to the alleged  
3 offender and without a hearing, may enter a temporary ex parte order  
4 for the protection of the applicant or any other member of the  
5 applicant's family or household.

6 SECTION 5. Article 7A.03(a), Code of Criminal Procedure, is  
7 amended to read as follows:

8 (a) At the close of a hearing on an application for a  
9 protective order under this chapter, the court shall find whether  
10 there are reasonable grounds to believe that the applicant is the  
11 victim of sexual assault or abuse, indecent assault, stalking, or  
12 trafficking.

13 SECTION 6. Article 7A.035, Code of Criminal Procedure, is  
14 amended to read as follows:

15 Art. 7A.035. HEARSAY STATEMENT OF CHILD VICTIM. In a  
16 hearing on an application for a protective order under this  
17 chapter, a statement that is made by a child younger than 14 years  
18 of age who is the victim of an offense under Section 21.02, 21.11,  
19 22.011, 22.012, or 22.021, Penal Code, and that describes the  
20 offense committed against the child is admissible as evidence in  
21 the same manner that a child's statement regarding alleged abuse  
22 against the child is admissible under Section 104.006, Family Code,  
23 in a suit affecting the parent-child relationship.

24 SECTION 7. Articles 17.292(a) and (g), Code of Criminal  
25 Procedure, are amended to read as follows:

26 (a) At a defendant's appearance before a magistrate after  
27 arrest for an offense involving family violence or an offense under

1 Section 20A.02, 20A.03, 22.011, 22.012, 22.021, or 42.072, Penal  
2 Code, the magistrate may issue an order for emergency protection on  
3 the magistrate's own motion or on the request of:

- 4 (1) the victim of the offense;
- 5 (2) the guardian of the victim;
- 6 (3) a peace officer; or
- 7 (4) the attorney representing the state.

8 (g) An order for emergency protection issued under this  
9 article must contain the following statements printed in bold-face  
10 type or in capital letters:

11 "A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED  
12 BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY  
13 CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR OR BY BOTH. AN ACT THAT  
14 RESULTS IN [~~FAMILY VIOLENCE OR~~] A SEPARATE [~~STALKING OR~~  
15 ~~TRAFFICKING~~] OFFENSE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR  
16 FELONY OFFENSE, AS APPLICABLE, IN ADDITION TO A VIOLATION OF THIS  
17 ORDER. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS  
18 PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS. THE  
19 POSSESSION OF A FIREARM BY A PERSON, OTHER THAN A PEACE OFFICER, AS  
20 DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT  
21 AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL  
22 SUBDIVISION, WHO IS SUBJECT TO THIS ORDER MAY BE PROSECUTED AS A  
23 SEPARATE OFFENSE PUNISHABLE BY CONFINEMENT OR IMPRISONMENT.

24 "NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS  
25 ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY  
26 PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS  
27 VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT

1 UNLESS A COURT CHANGES THE ORDER."

2 SECTION 8. The heading to Article 56.021, Code of Criminal  
3 Procedure, is amended to read as follows:

4 Art. 56.021. RIGHTS OF VICTIM OF SEXUAL ASSAULT OR ABUSE,  
5 INDECENT ASSAULT, STALKING, OR TRAFFICKING.

6 SECTION 9. Article 56.021(d), Code of Criminal Procedure,  
7 as added by Chapter 1153 (S.B. 630), Acts of the 84th Legislature,  
8 Regular Session, 2015, is amended to read as follows:

9 (d) This subsection applies only to a victim of an offense  
10 under Section 20A.02, 20A.03, 21.02, 21.11, 22.011, 22.012, 22.021,  
11 42.072, or 43.05, Penal Code. In addition to the rights enumerated  
12 in Article 56.02 and, if applicable, Subsection (a) of this  
13 article, a victim described by this subsection or a parent or  
14 guardian of the victim is entitled to the following rights within  
15 the criminal justice system:

16 (1) the right to request that the attorney  
17 representing the state, subject to the Texas Disciplinary Rules of  
18 Professional Conduct, file an application for a protective order  
19 under Article 7A.01 on behalf of the victim;

20 (2) the right to be informed:

21 (A) that the victim or the victim's parent or  
22 guardian, as applicable, may file an application for a protective  
23 order under Article 7A.01;

24 (B) of the court in which the application for a  
25 protective order may be filed; and

26 (C) that, on request of the victim or of the  
27 victim's parent or guardian, as applicable, and subject to the

1 Texas Disciplinary Rules of Professional Conduct, the attorney  
2 representing the state may file the application for a protective  
3 order;

4 (3) if the victim or the victim's parent or guardian,  
5 as applicable, is present when the defendant is convicted or placed  
6 on deferred adjudication community supervision, the right to be  
7 given by the court the information described by Subdivision (2)  
8 and, if the court has jurisdiction over applications for protective  
9 orders that are filed under Article 7A.01, the right to file an  
10 application for a protective order immediately following the  
11 defendant's conviction or placement on deferred adjudication  
12 community supervision; and

13 (4) if the victim or the victim's parent or guardian,  
14 as applicable, is not present when the defendant is convicted or  
15 placed on deferred adjudication community supervision, the right to  
16 be given by the attorney representing the state the information  
17 described by Subdivision (2).

18 SECTION 10. Section 411.042(b), Government Code, as amended  
19 by H.B. 2552 and S.B. 1242, Acts of the 85th Legislature, Regular  
20 Session, 2017, and as effective September 1, 2017, is reenacted and  
21 amended to read as follows:

22 (b) The bureau of identification and records shall:

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

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

7                   (A) offenses in which family violence was  
8 involved;

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

11                   (C) offenses under Sections 20A.02, 43.02(a),  
12 43.02(b), 43.03, and 43.05, Penal Code;

13           (3) make ballistic tests of bullets and firearms and  
14 chemical analyses of bloodstains, cloth, materials, and other  
15 substances for law enforcement officers of the state;

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

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

24           (6) collect information concerning the number and  
25 nature of protective orders and magistrate's orders of emergency  
26 protection and all other pertinent information about all persons  
27 subject to active orders, including pertinent information about

1 persons subject to conditions of bond imposed for the protection of  
2 the victim in any family violence, sexual assault or abuse,  
3 indecent assault, stalking, or trafficking case. Information in  
4 the law enforcement information system relating to an active order  
5 shall include:

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

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

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

14 (D) the residence address and place of employment  
15 or business of the person protected by the order, unless that  
16 information is excluded from the order under Article 17.292(e),  
17 Code of Criminal Procedure;

18 (E) the child-care facility or school where a  
19 child protected by the order normally resides or which the child  
20 normally attends, unless that information is excluded from the  
21 order under Article 17.292(e), Code of Criminal Procedure;

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

25 (G) the conditions of bond imposed on the person  
26 to whom the order is directed, if any, for the protection of a  
27 victim in any family violence, sexual assault or abuse, indecent



1 assault, stalking, or trafficking case;

2 (H) any minimum distance the person subject to  
3 the order is required to maintain from the protected places or  
4 persons; and

5 (I) the date the order expires;

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

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

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

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

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

21 SECTION 11. Section 411.042(g), Government Code, is amended  
22 to read as follows:

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

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

27 (2) the collection, maintenance, and correction of

1 records;

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

4 (4) active protective orders and reporting procedures  
5 that ensure that information relating to the issuance and dismissal  
6 of an active protective order is reported to the local law  
7 enforcement agency at the time of the order's issuance or dismissal  
8 and entered by the local law enforcement agency in the state's law  
9 enforcement information system;

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

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

15 (7) active conditions of bond imposed on a defendant  
16 for the protection of a victim in any family violence, sexual  
17 assault or abuse, indecent assault, stalking, or trafficking case,  
18 and reporting procedures that ensure that information relating to  
19 the issuance, modification, or removal of the conditions of bond is  
20 reported, at the time of the issuance, modification, or removal,  
21 to:

22 (A) the victim or, if the victim is deceased, a  
23 close relative of the victim; and

24 (B) the local law enforcement agency for entry by  
25 the local law enforcement agency in the state's law enforcement  
26 information system.

27 SECTION 12. (a) This section takes effect only if the

1 comptroller determines that Sections 14 and 69, H.B. 7, Acts of the  
2 85th Legislature, Regular Session, 2017, took effect as provided by  
3 H.B. 7.

4 (b) The heading to Section 25.07, Penal Code, as effective  
5 September 1, 2017, is amended to read as follows:

6 Sec. 25.07. VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS  
7 OF BOND IN A FAMILY VIOLENCE, CHILD ABUSE OR NEGLECT, SEXUAL ASSAULT  
8 OR ABUSE, INDECENT ASSAULT, STALKING, OR TRAFFICKING CASE.

9 (c) Section 25.07(a), Penal Code, as effective September 1,  
10 2017, is amended to read as follows:

11 (a) A person commits an offense if, in violation of a  
12 condition of bond set in a family violence, sexual assault or abuse,  
13 indecent assault, stalking, or trafficking case and related to the  
14 safety of a victim or the safety of the community, an order issued  
15 under Chapter 7A, Code of Criminal Procedure, an order issued under  
16 Article 17.292, Code of Criminal Procedure, an order issued under  
17 Section 6.504, Family Code, Chapter 83, Family Code, if the  
18 temporary ex parte order has been served on the person, Chapter 85,  
19 Family Code, or Subchapter F, Chapter 261, Family Code, or an order  
20 issued by another jurisdiction as provided by Chapter 88, Family  
21 Code, the person knowingly or intentionally:

22 (1) commits family violence or an act in furtherance  
23 of an offense under Section 20A.02, 22.011, 22.012, 22.021, or  
24 42.072;

25 (2) communicates:

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

1 manner;

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

4 (C) in any manner with the protected individual  
5 or a member of the family or household except through the person's  
6 attorney or a person appointed by the court, if the violation is of  
7 an order described by this subsection and the order prohibits any  
8 communication with a protected individual or a member of the family  
9 or household;

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

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

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

18 (4) possesses a firearm;

19 (5) harms, threatens, or interferes with the care,  
20 custody, or control of a pet, companion animal, or assistance  
21 animal that is possessed by a person protected by the order or  
22 condition of bond; or

23 (6) removes, attempts to remove, or otherwise tampers  
24 with the normal functioning of a global positioning monitoring  
25 system.

26 (d) The heading to Section [25.072](#), Penal Code, as effective  
27 September 1, 2017, is amended to read as follows:

1           Sec. 25.072. REPEATED VIOLATION OF CERTAIN COURT ORDERS OR  
2 CONDITIONS OF BOND IN FAMILY VIOLENCE, CHILD ABUSE OR NEGLECT,  
3 SEXUAL ASSAULT OR ABUSE, INDECENT ASSAULT, STALKING, OR TRAFFICKING  
4 CASE.

5           (e) Sections 25.07 and 25.072, Penal Code, as amended by  
6 this section, apply only to an offense committed on or after the  
7 effective date of this Act. An offense committed before the  
8 effective date of this Act is governed by the law in effect when the  
9 offense was committed, and the former law is continued in effect for  
10 that purpose. For purposes of this subsection, an offense was  
11 committed before the effective date of this Act if any element of  
12 the offense occurred before that date.

13           SECTION 13. (a) This section takes effect only if the  
14 comptroller determines that Sections 14 and 69, H.B. 7, Acts of the  
15 85th Legislature, Regular Session, 2017, did not take effect as  
16 provided by H.B. 7.

17           (b) The heading to Section 25.07, Penal Code, is amended to  
18 read as follows:

19           Sec. 25.07. VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS  
20 OF BOND IN A FAMILY VIOLENCE, SEXUAL ASSAULT OR ABUSE, INDECENT  
21 ASSAULT, STALKING, OR TRAFFICKING CASE.

22           (c) Section 25.07(a), Penal Code, is amended to read as  
23 follows:

24           (a) A person commits an offense if, in violation of a  
25 condition of bond set in a family violence, sexual assault or abuse,  
26 indecent assault, stalking, or trafficking case and related to the  
27 safety of a victim or the safety of the community, an order issued

1 under Chapter 7A, Code of Criminal Procedure, an order issued under  
2 Article 17.292, Code of Criminal Procedure, an order issued under  
3 Section 6.504, Family Code, Chapter 83, Family Code, if the  
4 temporary ex parte order has been served on the person, or Chapter  
5 85, Family Code, or an order issued by another jurisdiction as  
6 provided by Chapter 88, Family Code, the person knowingly or  
7 intentionally:

8 (1) commits family violence or an act in furtherance  
9 of an offense under Section 20A.02, 22.011, 22.012, 22.021, or  
10 42.072;

11 (2) communicates:

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

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

17 (C) in any manner with the protected individual  
18 or a member of the family or household except through the person's  
19 attorney or a person appointed by the court, if the violation is of  
20 an order described by this subsection and the order prohibits any  
21 communication with a protected individual or a member of the family  
22 or household;

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

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

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

4 (4) possesses a firearm;

5 (5) harms, threatens, or interferes with the care,  
6 custody, or control of a pet, companion animal, or assistance  
7 animal that is possessed by a person protected by the order or  
8 condition of bond; or

9 (6) removes, attempts to remove, or otherwise tampers  
10 with the normal functioning of a global positioning monitoring  
11 system.

12 (d) The heading to Section 25.072, Penal Code, is amended to  
13 read as follows:

14 Sec. 25.072. REPEATED VIOLATION OF CERTAIN COURT ORDERS OR  
15 CONDITIONS OF BOND IN FAMILY VIOLENCE, SEXUAL ASSAULT OR ABUSE,  
16 INDECENT ASSAULT, STALKING, OR TRAFFICKING CASE.

17 (e) Sections 25.07 and 25.072, Penal Code, as amended by  
18 this section, apply only to an offense committed on or after the  
19 effective date of this Act. An offense committed before the  
20 effective date of this Act is governed by the law in effect when the  
21 offense was committed, and the former law is continued in effect for  
22 that purpose. For purposes of this subsection, an offense was  
23 committed before the effective date of this Act if any element of  
24 the offense occurred before that date.

25 SECTION 14. Section 25.07(b), Penal Code, is amended by  
26 adding Subdivision (8) to read as follows:

27 (8) "Indecent assault" means any conduct that

1 constitutes an offense under Section 22.012.

2 SECTION 15. Chapter 7A, Code of Criminal Procedure, as  
3 amended by this Act, and Article 17.292, Code of Criminal  
4 Procedure, as amended by this Act, apply only to a protective order  
5 or magistrate's order for emergency protection that is issued on or  
6 after the effective date of this Act. An order issued before the  
7 effective date of this Act is governed by the law in effect on the  
8 date the order is issued, and the former law is continued in effect  
9 for that purpose.

10 SECTION 16. Article 56.021(d), Code of Criminal Procedure,  
11 as amended by this Act, applies to a victim of criminally injurious  
12 conduct for which a judgment of conviction is entered or a grant of  
13 deferred adjudication is made on or after the effective date of this  
14 Act, regardless of whether the criminally injurious conduct  
15 occurred before, on, or after the effective date of this Act.

16 SECTION 17. Not later than the 30th day after the effective  
17 date of this section, the comptroller shall make the determination  
18 described by Sections 12(a) and 13(a) of this Act.

19 SECTION 18. (a) Except as provided by Subsection (b) of  
20 this section, this Act takes effect January 1, 2018.

21 (b) Section 17 of this Act takes effect immediately if this  
22 Act receives a vote of two-thirds of all the members elected to each  
23 house, as provided by Section 39, Article III, Texas Constitution.  
24 If this Act does not receive the vote necessary for immediate  
25 effect, Section 17 of this Act takes effect on the 91st day after  
26 the last day of the legislative session.