

By: Perry

S.B. No. 339

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) removes or attempts to remove any clothing
17 covering another person's genitals, pubic area, anus, buttocks, or
18 female areola; or

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

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

23 (c) If conduct that constitutes an offense under this
24 section also constitutes an offense under another law, the actor

1 may be prosecuted under this section, the other law, or both.

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

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

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

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

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

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

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

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

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

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

26 Art. 7A.02. TEMPORARY EX PARTE ORDER. If the court finds
27 from the information contained in an application for a protective

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

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

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

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

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

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

27 (a) At a defendant's appearance before a magistrate after

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

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

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

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

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

1 VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT
2 UNLESS A COURT CHANGES THE ORDER."

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

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

7 SECTION 9. (a) Article 56.021(d), Code of Criminal
8 Procedure, as added by Chapter 1032 (H.B. 1447), Acts of the 84th
9 Legislature, Regular Session, 2015, is amended to read as follows:

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

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

21 (2) the right to be informed:

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

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

27 (C) that, on request of the victim or the

1 victim's parent or guardian, as applicable, and subject to the
2 Texas Disciplinary Rules of Professional Conduct, the attorney
3 representing the state may file the application for a protective
4 order;

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

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

19 (b) Article 56.021(d), Code of Criminal Procedure, as added
20 by Chapter 1153 (S.B. 630), Acts of the 84th Legislature, Regular
21 Session, 2015, is repealed as duplicative of Article 56.021(d),
22 Code of Criminal Procedure, as added by Chapter 1032 (H.B. 1447),
23 Acts of the 84th Legislature, Regular Session, 2015.

24 SECTION 10. Sections 411.042(b) and (g), Government Code,
25 are amended to read as follows:

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

27 (1) procure and file for record photographs, pictures,

1 descriptions, fingerprints, measurements, and other pertinent
2 information of all persons arrested for or charged with a criminal
3 offense or convicted of a criminal offense, regardless of whether
4 the conviction is probated;

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

11 (A) offenses in which family violence was
12 involved;

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

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

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

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

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

1 (6) collect information concerning the number and
2 nature of protective orders and magistrate's orders of emergency
3 protection and all other pertinent information about all persons
4 subject to active orders, including pertinent information about
5 persons subject to conditions of bond imposed for the protection of
6 the victim in any family violence, sexual assault or abuse,
7 indecent assault, stalking, or trafficking case. Information in
8 the law enforcement information system relating to an active order
9 shall include:

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

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

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

18 (D) the residence address and place of employment
19 or business of the person protected by the order, unless that
20 information is excluded from the order under Section 85.007, Family
21 Code, or Article 17.292(e), Code of Criminal Procedure;

22 (E) the child-care facility or school where a
23 child protected by the order normally resides or which the child
24 normally attends, unless that information is excluded from the
25 order under Section 85.007, Family Code, or Article 17.292(e), Code
26 of Criminal Procedure;

27 (F) the relationship or former relationship

1 between the person who is protected by the order and the person to
2 whom the order is directed;

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

7 (H) any minimum distance the person subject to
8 the order is required to maintain from the protected places or
9 persons; and

10 (I) the date the order expires;

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

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

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

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

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

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

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

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

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

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

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

15 (6) a system for providing criminal history record
16 information through the criminal history clearinghouse under
17 Section [411.0845](#); and

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

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

27 (B) the local law enforcement agency for entry by

1 the local law enforcement agency in the state's law enforcement
2 information system.

3 SECTION 11. The heading to Section 25.07, Penal Code, is
4 amended to read as follows:

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

8 SECTION 12. Section 25.07(a), Penal Code, is amended to
9 read as follows:

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

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

24 (2) communicates:

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

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

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

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

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

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

17 (4) possesses a firearm;

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

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

25 SECTION 13. 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 14. The heading to Section 25.072, Penal Code, is
3 amended to read as follows:

4 Sec. 25.072. REPEATED VIOLATION OF CERTAIN COURT ORDERS OR
5 CONDITIONS OF BOND IN FAMILY VIOLENCE, SEXUAL ASSAULT OR ABUSE,
6 INDECENT ASSAULT, STALKING, OR TRAFFICKING CASE.

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

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

21 SECTION 17. Sections 25.07 and 25.072, Penal Code, as
22 amended by this Act, apply only to an offense committed on or after
23 the effective date of this Act. An offense committed before the
24 effective date of this Act is governed by the law in effect on the
25 date the offense was committed, and the former law is continued in
26 effect for that purpose. For purposes of this section, an offense
27 was committed before the effective date of this Act if any element

1 of the offense occurred before that date.

2 SECTION 18. To the extent of any conflict, this Act prevails
3 over another Act of the 85th Legislature, Regular Session, 2017,
4 relating to nonsubstantive additions to and corrections in enacted
5 codes.

6 SECTION 19. This Act takes effect September 1, 2017.