

By: Moody

H.B. No. 309

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

(1) touches the anus, breast, or any part of the genitals of another person;

(2) touches another person with the anus, breast, or any part of the genitals of any person;

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

(4) causes another person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of any person.

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

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

SECTION 2. The heading to Chapter 7A, Code of Criminal

1 Procedure, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (a) At a defendant's appearance before a magistrate after
26 arrest for an offense involving family violence or an offense under
27 Section 20A.02, 20A.03, 22.011, 22.012, 22.021, or 42.072, Penal

1 Code, the magistrate may issue an order for emergency protection on
2 the magistrate's own motion or on the request of:

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

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

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

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

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

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

5 SECTION 9. Article 56.021(d), Code of Criminal Procedure,
6 is amended to read as follows:

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

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

18 (2) the right to be informed:

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

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

24 (C) that, on request of the victim or of the
25 victim's parent or guardian, as applicable, and subject to the
26 Texas Disciplinary Rules of Professional Conduct, the attorney
27 representing the state may file the application for a protective

1 order;

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

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

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

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

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

24 (2) collect information concerning the number and
25 nature of offenses reported or known to have been committed in the
26 state and the legal steps taken in connection with the offenses, and
27 other information useful in the study of crime and the

1 administration of justice, including information that enables the
2 bureau to create a statistical breakdown of:

3 (A) offenses in which family violence was
4 involved;

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

7 (C) offenses under Sections 20A.02, 43.02(a),
8 43.02(b), 43.03, and 43.05, Penal Code;

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

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

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

20 (6) collect information concerning the number and
21 nature of protective orders and magistrate's orders of emergency
22 protection and all other pertinent information about all persons
23 subject to active orders, including pertinent information about
24 persons subject to conditions of bond imposed for the protection of
25 the victim in any family violence, sexual assault or abuse,
26 indecent assault, stalking, or trafficking case. Information in the
27 law enforcement information system relating to an active order

1 shall include:

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

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

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

10 (D) the residence address and place of employment
11 or business of the person protected by the order, unless that
12 information is excluded from the order under Article 17.292(e),
13 Code of Criminal Procedure;

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

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

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

25 (H) any minimum distance the person subject to
26 the order is required to maintain from the protected places or
27 persons; and

1 (I) the date the order expires;

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

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

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

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

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

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

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

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

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

25 (4) active protective orders and reporting procedures
26 that ensure that information relating to the issuance and dismissal
27 of an active protective order is reported to the local law

1 enforcement agency at the time of the order's issuance or dismissal
2 and entered by the local law enforcement agency in the state's law
3 enforcement information system;

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

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

9 (7) active conditions of bond imposed on a defendant
10 for the protection of a victim in any family violence, sexual
11 assault or abuse, indecent assault, stalking, or trafficking case,
12 and reporting procedures that ensure that information relating to
13 the issuance, modification, or removal of the conditions of bond is
14 reported, at the time of the issuance, modification, or removal,
15 to:

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

18 (B) the local law enforcement agency for entry by
19 the local law enforcement agency in the state's law enforcement
20 information system.

21 SECTION 11. (a) This section takes effect only if the
22 comptroller determines that Sections 14 and 69, H.B. 7, Acts of the
23 85th Legislature, Regular Session, 2017, took effect as provided by
24 H.B. 7.

25 (b) The heading to Section [25.07](#), Penal Code, is amended to
26 read as follows:

27 Sec. 25.07. VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS

1 OF BOND IN A FAMILY VIOLENCE, CHILD ABUSE OR NEGLECT, SEXUAL ASSAULT
2 OR ABUSE, INDECENT ASSAULT, STALKING, OR TRAFFICKING CASE.

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

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

16 (1) commits family violence or an act in furtherance
17 of an offense under Section 20A.02, 22.011, 22.012, 22.021, or
18 42.072;

19 (2) communicates:

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

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

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

1 an order described by this subsection and the order prohibits any
2 communication with a protected individual or a member of the family
3 or household;

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

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

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

12 (4) possesses a firearm;

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

17 (6) removes, attempts to remove, or otherwise tampers
18 with the normal functioning of a global positioning monitoring
19 system.

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

22 Sec. 25.072. REPEATED VIOLATION OF CERTAIN COURT ORDERS OR
23 CONDITIONS OF BOND IN FAMILY VIOLENCE, CHILD ABUSE OR NEGLECT,
24 SEXUAL ASSAULT OR ABUSE, INDECENT ASSAULT, STALKING, OR TRAFFICKING
25 CASE.

26 (e) Sections 25.07 and 25.072, Penal Code, as amended by
27 this section, apply only to an offense committed on or after the

1 effective date of this Act. An offense committed before the
2 effective date of this Act is governed by the law in effect when the
3 offense was committed, and the former law is continued in effect for
4 that purpose. For purposes of this subsection, an offense was
5 committed before the effective date of this Act if any element of
6 the offense occurred before that date.

7 SECTION 12. (a) This section takes effect only if the
8 comptroller determines that Sections 14 and 69, H.B. 7, Acts of the
9 85th Legislature, Regular Session, 2017, did not take effect as
10 provided by H.B. 7.

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

13 Sec. 25.07. VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS
14 OF BOND IN A FAMILY VIOLENCE, [~~CHILD ABUSE OR NEGLECT,~~] SEXUAL
15 ASSAULT OR ABUSE, INDECENT ASSAULT, STALKING, OR TRAFFICKING CASE.

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

18 (a) A person commits an offense if, in violation of a
19 condition of bond set in a family violence, sexual assault or abuse,
20 indecent assault, stalking, or trafficking case and related to the
21 safety of a victim or the safety of the community, an order issued
22 under Chapter 7A, Code of Criminal Procedure, an order issued under
23 Article 17.292, Code of Criminal Procedure, an order issued under
24 Section 6.504, Family Code, Chapter 83, Family Code, if the
25 temporary ex parte order has been served on the person, or Chapter
26 85, Family Code, or an order issued by another jurisdiction as
27 provided by Chapter 88, Family Code, the person knowingly or

1 intentionally:

2 (1) commits family violence or an act in furtherance
3 of an offense under Section 20A.02, 22.011, 22.012, 22.021, or
4 42.072;

5 (2) communicates:

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

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

11 (C) in any manner with the protected individual
12 or a member of the family or household except through the person's
13 attorney or a person appointed by the court, if the violation is of
14 an order described by this subsection and the order prohibits any
15 communication with a protected individual or a member of the family
16 or household;

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

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

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

25 (4) possesses a firearm;

26 (5) harms, threatens, or interferes with the care,
27 custody, or control of a pet, companion animal, or assistance

1 animal that is possessed by a person protected by the order or
2 condition of bond; or

3 (6) removes, attempts to remove, or otherwise tampers
4 with the normal functioning of a global positioning monitoring
5 system.

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

8 Sec. 25.072. REPEATED VIOLATION OF CERTAIN COURT ORDERS OR
9 CONDITIONS OF BOND IN FAMILY VIOLENCE, [~~CHILD ABUSE OR NEGLECT,~~
10 SEXUAL ASSAULT OR ABUSE, INDECENT ASSAULT, STALKING, OR TRAFFICKING
11 CASE.

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

20 SECTION 13. Section 25.07(b), Penal Code, is amended by
21 adding Subdivision (8) to read as follows:

22 (8) "Indecent assault" means any conduct that
23 constitutes an offense under Section 22.012.

24 SECTION 14. Chapter 7A, Code of Criminal Procedure, as
25 amended by this Act, and Article 17.292, Code of Criminal
26 Procedure, as amended by this Act, apply only to a protective order
27 or magistrate's order for emergency protection that is issued on or

1 after the effective date of this Act. An order issued before the
2 effective date of this Act is governed by the law in effect on the
3 date the order is issued, and the former law is continued in effect
4 for that purpose.

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

11 SECTION 16. Not later than the 30th day after the effective
12 date of this section, the comptroller shall make the determination
13 described by Sections 11(a) and 12(a) of this Act.

14 SECTION 17. (a) Except as provided by Subsection (b) of
15 this section, this Act takes effect September 1, 2019.

16 (b) Section 16 of this Act takes effect immediately if this
17 Act receives a vote of two-thirds of all the members elected to each
18 house, as provided by Section 39, Article III, Texas Constitution.
19 If this Act does not receive the vote necessary for immediate
20 effect, Section 16 of this Act takes effect September 1, 2019.