

BILL ANALYSIS

Senate Research Center
88R22838 JSC-D

H.B. 2715
By: Hull et al. (Alvarado)
Criminal Justice
5/17/2023
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In instances of domestic violence and stalking, abusers track and monitor the movement of their victims as a coercive control tactic intended to intimidate and harass the victim. Laws related to protective orders, bail requirements for family violence, and temporary restraining orders in a suit for dissolution of marriage should prohibit the tracking or monitoring of an individual without their effective consent to protect victims from further intimidation and harassment.

H.B. 2715 adds prohibitions on tracking protective orders, conditions of bond, and the offense of harassment.

H.B. 2715:

- clarifies that tracking or monitoring someone through a vehicle in their possession, through a tracking application or tracking device, or by physically following the person without effective consent constitutes harassment;
- adds a provision prohibiting tracking or monitoring to be added to the conditions of a protective order, a family violence protective order, an emergency protective order, as a condition of bond for family violence offense, and as a temporary restraining provision in place upon filing a suit for dissolution of marriage; and
- presumes that a person does not consent if they have filed a protective order against the actor, filed for divorce, or dissolved a marriage with the actor.

H.B. 2715 amends current law relating to a prohibition on following an individual and tracking or monitoring the individual's personal property or motor vehicle and to the criminal prosecution of that conduct.

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 Article 7B.005(a), Code of Criminal Procedure, as follows:

(a) Authorizes the court, in a protective order issued under Subchapter A (Protective Order for Victims of Sexual Assault or Abuse, Indecent Assault, Stalking, or Trafficking), to:

(1) makes no changes to this subdivision; or

(2) prohibit the alleged offender from:

(A)-(B) makes no change to these paragraphs;

(C)-(D) makes nonsubstantive changes to these paragraphs; and

(E) tracking or monitoring personal property or a motor vehicle in the possession of the applicant or of a member of the applicant's family or household, without the applicant's effective consent, including by:

(i) using a tracking application on a personal electronic device in the possession of the applicant or the family or household member or using a tracking device; or

(ii) physically following the applicant or the family or household member or causing another to physically follow the applicant or member.

SECTION 2. Amends Article 17.292(c), Code of Criminal Procedure, as follows:

(c) Authorizes the magistrate in the order for emergency protection to prohibit the arrested party from:

(1)-(2) makes no changes to these subdivisions;

(3)-(4) makes nonsubstantive changes to these subdivisions; or

(5) tracking or monitoring personal property or a motor vehicle in the possession of the person protected under the order or of a member of the family or household of the person protected under the order, without the protected person's effective consent, including by:

(A) using a tracking application on a personal electronic device in the possession of the person or the family or household member or using a tracking device; or

(B) physically following the person or the family or household member or causing another to physically follow the person or member.

SECTION 3. Amends Article 17.49(b), Code of Criminal Procedure, as follows:

(b) Authorizes a magistrate to require as a condition of release on bond that a defendant charged with an offense involving family violence:

(1) makes no change to this subdivision;

(2)-(3) makes nonsubstantive changes to these subdivisions; or

(4) refrain from tracking or monitoring personal property or a motor vehicle in the possession of the alleged victim of the offense, without the victim's effective consent, including by:

(A) using a tracking application on a personal electronic device in the possession of the victim or using a tracking device; or

(B) physically following the victim or causing another to physically follow the victim.

SECTION 4. Amends Section 6.501(a), Family Code, as follows:

(a) Authorizes the court, after the filing of a suit for dissolution of a marriage, on the motion of a party or on the court's own motion, to grant a temporary restraining order without notice to the adverse party for the preservation of the property and for the protection of the parties as necessary, including an order prohibiting one or both parties from:

(1)-(24) makes no changes to these subdivisions;

(25)-(26) makes nonsubstantive changes to these subdivisions; or

(27) tracking or monitoring personal property or a motor vehicle in the possession of a party, without that party's effective consent, including by:

(A) using a tracking application on a personal electronic device in the possession of that party or using a tracking device; or

(B) physically following that party or causing another to physically follow that party.

SECTION 5. Amends Section 85.022(b), Family Code, as follows:

(b) Authorizes the court, in a protective order, to prohibit the person found to have committed family violence from:

(1)-(5) makes no changes to these subdivisions;

(6)-(7) makes nonsubstantive changes to these subdivisions; and

(8) tracking or monitoring personal property or a motor vehicle in the possession of a person protected by an order or of a member of the family or household of a person protected by an order, without the person's effective consent, including by:

(A) using a tracking application on a personal electronic device in the possession of the person or the family or household member or using a tracking device; or

(B) physically following the person or the family or household member or causing another to physically follow the person or member.

SECTION 6. Amends Section 25.07(a), Penal Code, as follows:

(a) Provides that a person commits an offense if, in violation of a condition of bond set in a family violence, sexual assault or abuse, indecent assault, stalking, or trafficking case and related to the safety of a victim or the safety of the community, an order issued under certain statute, or an order issued by another jurisdiction as provided by a certain chapter, the person knowingly or intentionally:

(1)-(4) makes no changes to these subdivisions;

(5)-(6) makes nonsubstantive changes to these subdivisions; or

(7) tracks or monitors personal property or a motor vehicle in the possession of a protected individual or of a member of the family or household of a protected individual, without the individual's effective consent, including by:

(A) using a tracking application on a personal electronic device in the possession of the protected individual or the family or household member or using a tracking device; or

(B) physically following the protected individual or family or household member or causing another to physically follow the individual or member.

SECTION 7. Amends Section 42.07, Penal Code, by amending Subsection (a) and adding Subsection (e), as follows:

(a) Provides that a person commits an offense if, with intent to harass, annoy, alarm, abuse, torment, or embarrass another, the person:

(1)-(6) makes no changes to these subdivisions;

(7)-(8) makes nonsubstantive changes to these subdivisions; or

(9) tracks or monitors the personal property or motor vehicle of another person, without the other person's effective consent, including by:

(A) using a tracking application on the person's personal electronic device or using a tracking device; or

(B) physically following the other person or causing any person to physically follow the other person.

(e) Provides that it is presumed that a person did not give effective consent to the actor's conduct, for purposes of Subsection (a)(9), if:

(1) an application for a protective or restraining order against or with respect to the actor has been filed by or on behalf of the person under certain statutes, or an order has been issued against or with respect to the actor under one of those provisions; or

(2) the person is married to the actor and a petition for dissolution of marriage has been filed, or the person was previously married to the actor and the marriage has been dissolved.

SECTION 8. (a) Makes application of Article 7B.005, Code of Criminal Procedure, as amended by this Act, and Sections 6.501 and 85.022, Family Code, as amended by this Act, prospective.

(b) Makes application of Article 17.292, Code of Criminal Procedure, as amended by this Act, prospective.

(c) Makes application of Article 17.49, Code of Criminal Procedure, as amended by this Act, prospective.

(d) Makes application of Sections 25.07 and 42.07, Penal Code, as amended by this Act, prospective.

SECTION 9. Effective date: September 1, 2023.