

SUBJECT: New offense for repeated violation of family violence protective order

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Gallego, Aliseda, Burkett, Carter, Zedler
0 nays
4 absent — Hartnett, Christian, Y. Davis, Rodriguez

WITNESSES: For — Lawrence Rabb, Cameron County District Attorney's Office; Aaron Setliff, Texas Council on Family Violence (*Registered, but did not testify*: T.J. Patterson, City of Fort Worth)

Against — None

On — David Gonzalez, Texas Criminal Defense Lawyers Association

BACKGROUND: It is an offense under Penal Code, sec. 25.07 to violate emergency protective orders by committing family violence, stalking, or other specified acts. A first offense is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000). Violating the protective order two or more times or by committing assault or stalking is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).

DIGEST: HB 1723 would make violating a protective order by committing burglary when entering the home of a protected individual a third-degree felony.

It also would add Penal Code, sec. 25.072, creating the offense of repeated violation of certain court orders or conditions of bond in a family violence case, which would be a third-degree felony. A person would commit this offense if, within a 12-month-or-less period, the person violated the protective order under sec. 25.07 two or more times. In a jury trial, the jury would not be required to agree unanimously on the specific conduct that constituted the violation of the protective order or the exact date of the conduct. The jury would be required to agree unanimously that the person violated the protective order two or more times in the 12-month-or-less time period.

A defendant could not be convicted of another offense for the same conduct used to convict under this protective order violation offense, unless the other offense:

- was charged in the alternative;
- occurred outside the 12-month-or-less window of the protective order conduct violation period; or
- was considered by the judge or jury to be a lesser included offense of this protective order violation offense.

A defendant could not be charged with more than one count of this protective order violation if all the conduct alleged was alleged to have violated a single court order.

The bill would take effect September 1, 2011, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

HB 1723 would add more teeth to protective orders, which is necessary at a time when domestic violence continues to increase. The law already provides for a third-degree felony offense for repeat violations of family violence protective orders, but this bill would add to the protections. First, under the current offense, violating the protective order by committing burglary when entering the home of a protected individual, would be added as a third-degree felony. Second, the new offense created by HB 1723 for repeated violations of family violence protective orders is needed because it would add protections the current law does not have.

The most important protections added by the new offense would be creating the 12-month period of conduct and allowing a jury to convict even if it did not unanimously agree on the specific conduct constituting repeated violations. This protection would be important in family violence cases, in which the perpetrators of the violence often believe they still have rights to their former partners and try to convince them of that through many forms of conduct, some violent, some not. The conduct needs to be viewed as a whole, and the jury would be able to do that under this new offense for the 12-month period. The jury still would have to unanimously agree that the person violated the protective order two or more times in the 12-month-or-less time period.

The bill is modeled after the continuous family violence offense created last session, and the continuous sexual assault offense created in 2007, both of which have been very successful.

OPPONENTS
SAY:

HB 1723 is unnecessary because it already is a third-degree felony offense to violate a protective order two or more times under Penal Code, sec. 25.07. In addition, judges already can deny bail to keep offenders in jail who repeatedly violate protective orders or conditions of bond in family violence cases, which would be more effective than punishing someone after the fact.

The proposed new protective-order violation offense would eliminate the requirement for unanimity of the jury, which was done for Jessica's law for continuous sexual assault on a child, but is not appropriate when the two parties both are adults, as is the case with protective orders. Difficulty in administering this law could result because family protective order parties often are breaking up and getting back together again, even when the protective order is in effect. This law could be misused by one party to punish another.