

CHAPTER 10

S.B. No. 25

AN ACT

relating to the offense of harassment and including within that offense conduct that constitutes stalking; providing limitations on release on bond, furlough, probation, and parole; and providing notification.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 42.07, Penal Code, is amended to read as follows:

Sec. 42.07. HARASSMENT. (a) A person commits an offense if, with intent to harass, annoy, alarm, abuse, torment, or embarrass another, he:

(1) initiates communication by telephone or in writing and in the course of the communication makes a comment, request, suggestion, or proposal that is obscene;

(2) threatens, by telephone or in writing, in a manner reasonably likely to alarm the person receiving the threat, to inflict [~~serious~~] bodily injury on the person or to commit a felony against the person, a member of his family, or his property;

(3) conveys, in a manner reasonably likely to alarm the person receiving the report, a false report, which is known by the conveyer to be false, that another person has suffered death or serious bodily injury;

(4) causes the telephone of another to ring repeatedly or makes repeated telephone communications anonymously or in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another;

(5) makes a telephone call and intentionally fails to hang up or disengage the connection; [~~or~~]

(6) knowingly permits a telephone under his control to be used by a person to commit an offense under this section; or

(7)(A) *on more than one occasion engages in conduct directed specifically toward the other person, including following that person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass that person;*

(B) *on at least one of those occasions by acts or words threatens to inflict bodily injury on that person or to commit an offense against that person, a member of that person's family, or that person's property; and*

(C) *on at least one of those occasions engages in the conduct after the person toward whom the conduct is specifically directed has reported to a law enforcement agency the conduct described by this subdivision.*

(b) For purposes of Subsection (a)(1) of this section, "obscene" means containing a patently offensive description of or a solicitation to commit an ultimate sex act, including sexual intercourse, masturbation, cunnilingus, fellatio, or anilingus, or a description of an excretory function. *In this section, "family" has the meaning assigned by Section 71.01, Family Code.*

(c) An offense under Subsections (a)(1)–(a)(6) of this section is a Class B misdemeanor.

(d) *An offense under Subsection (a)(7) of this section is a Class A misdemeanor, except that the offense is a felony of the third degree if the actor has previously been convicted under Subsection (a)(7) of this section.*

(e) *It is an affirmative defense to prosecution under Subsection (a)(7) of this section that the actor was engaged in conduct that consisted of activity in support of constitutionally or statutorily protected rights.*

SECTION 2. Chapter 17, Code of Criminal Procedure, is amended by adding Article 17.46 to read as follows:

Art. 17.46. CONDITIONS FOR A DEFENDANT CHARGED WITH STALKING. (a) *A magistrate may require as a condition of release on bond that a defendant charged with an offense under Section 42.07(a)(7), Penal Code, may not:*

(1) *communicate directly or indirectly with the victim; or*

(2) *go to or near the residence, place of employment, or business of the victim or to or near a school, day-care facility, or similar facility where a dependent child of the victim is in attendance.*

(b) *If the magistrate requires the prohibition contained in Subsection (a)(2) of this article as a condition of release on bond, the magistrate shall specifically describe the prohibited locations and the minimum distances, if any, that the defendant must maintain from the locations.*

SECTION 3. Section 11, Article 42.12, Code of Criminal Procedure, is amended by adding Subsection (l) to read as follows:

(l)(1) *If the court grants probation to a person convicted of an offense under Section 42.07(a)(7), Penal Code, the court may require as a condition of probation that the probationer may not:*

(A) *communicate directly or indirectly with the victim; or*

(B) *go to or near the residence, place of employment, or business of the victim or to or near a school, day-care facility, or similar facility where a dependent child of the victim is in attendance.*

(2) *If the court requires the prohibition contained in Subdivision (1)(B) of this subsection as a condition of probation, the court shall specifically describe the prohibited locations and the minimum distances, if any, that the probationer must maintain from the locations.*

SECTION 4. Subdivision (1), Subsection (f), Section 8, Article 42.18, Code of Criminal Procedure, is amended to read as follows:

(1) In this subsection: (A) "close relative of a deceased victim" means a person who was the spouse of a deceased victim at the time of the victim's death, a parent of the deceased victim, or an adult brother, sister, or child of the deceased victim; (B) "guardian of a

victim” means a person who is the legal guardian of a victim, whether or not the legal relationship between the guardian and victim exists because of the age of the victim or the physical or mental incompetency of the victim; and (C) “victim” means a person who is a victim of sexual assault, kidnapping, [or] aggravated robbery, or *felony harassment* or who has suffered bodily injury or death as the result of the criminal conduct of another.

SECTION 5. Section 8, Article 42.18, Code of Criminal Procedure, is amended by adding Subsection (o) to read as follows:

(o)(1) In addition to other conditions imposed by a parole panel under this article, the parole panel may require as a condition of parole or release to mandatory supervision that an inmate serving a sentence for an offense under Section 42.07(a)(7), Penal Code, may not:

(A) communicate directly or indirectly with the victim; or

(B) go to or near the residence, place of employment, or business of the victim or to or near a school, day-care facility, or similar facility where a dependent child of the victim is in attendance.

(2) If a parole panel requires the prohibition contained in Subdivision (1)(B) of this subsection as a condition of parole or release to mandatory supervision, the parole panel shall specifically describe the prohibited locations and the minimum distances, if any, that the inmate must maintain from the locations.

SECTION 6. Chapter 56, Code of Criminal Procedure, is amended by adding Article 56.11 to read as follows:

Art. 56.11. NOTIFICATION TO STALKING VICTIM. *(a) The institutional division of the Texas Department of Criminal Justice shall notify the victim of the offense and local law enforcement officials in the county where the victim resides whenever a person convicted of a felony offense under Subsection (a)(7) as enhanced by Subsection (d) of Section 42.07, Penal Code:*

(1) completes the person's sentence and is released; or

(2) escapes from a facility operated by the institutional division.

(b) It is the responsibility of the victim desiring notification of the offender's release to notify the institutional division of the Texas Department of Criminal Justice of any change of address of the victim.

(c) The institutional division of the Texas Department of Criminal Justice shall give the notice required by Subsection (a) of this article:

(1) not later than the 30th day before the person completes the sentence and is released; or

(2) immediately if the person escapes from the facility operated by the institutional division.

SECTION 7. Section 501.006, Government Code, is amended by adding Subsection (i) to read as follows:

(i) The institutional division may not grant a furlough to an inmate convicted of an offense under Section 42.07(a)(7), Penal Code.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on February 17, 1993, by a viva-voce vote; the Senate concurred in House amendments on March 10, 1993: Yeas 31, Nays 0; passed the House, with amendments, on March 9, 1993: Yeas 148, Nays 0, one present not voting.

Approved March 19, 1993.

Effective March 19, 1993.