

SUBJECT: Establishing a registry of protective orders related to family violence

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 9 ayes — Nevárez, Paul, Burns, Calanni, Clardy, Goodwin, Israel, Lang, Tinderholt

0 nays

WITNESSES: For — Jon Nielsen; (*Registered, but did not testify:* Joseph Chacon, Austin Police Department; Christine Wright, City of San Antonio; Jessica Anderson, Houston Police Department; Kent Birdsong, Oldham County Attorney; Monty Wynn, Texas Municipal League; CJ Grisham)

Against — (*Registered, but did not testify:* Reginald Smith, Texas Criminal Justice Coalition; Alexis Tatum, Travis County Commissioners Court)

On — David Slayton, Office of Court Administration; Joel Rogers, Office of the Attorney General-Child Support Division

BACKGROUND: Family Code ch. 82 establishes the process for a person to file an application for a protective order with regard to family violence. Before obtaining an order, notice of the application must be served on the respondent, and the court must set a hearing. Under ch. 85, a court issues a protective order if at a hearing on the application it is determined that family violence has occurred and is likely to occur in the future.

Under ch. 83, if the court finds from the application that there is a clear and present danger of family violence, it may issue a temporary ex parte order without notice to the respondent or a hearing.

Code of Criminal Procedure art. 17.292 allows a magistrate to issue an order for emergency protection at a defendant's appearance after arrest for certain offenses, including family violence. The magistrate may issue the

order on the magistrate's own motion or on the request of the victim or victim's guardian, a peace officer, or a prosecutor.

DIGEST: CSHB 629 would create and establish requirements for a registry of protective orders related to family violence, including public access.

The bill would apply only to:

- an application for an order filed under Family Code ch. 82;
- a protective order issued under Family Code ch. 85;
- a temporary ex parte order issued under Family Code ch. 83; or
- an application for or an issued order for emergency protection under Code of Criminal Procedure art. 17.292, with respect to a person who was arrested for an offense involving family violence.

Protective order registry. CSHB 629 would require the Office of Court Administration (OCA), in consultation with the Department of Public Safety, to establish and maintain a centralized internet-based registry for applications for protective orders filed and protective orders issued in the state that were related to family violence, including a vacated or expired order. OCA would have to establish the registry in a manner that allowed it to easily interface with municipal and county case management systems.

OCA would have to establish the registry by June 1, 2020, unless a delay of up to 90 days was authorized by the Texas Judicial Council.

Entry of information. The clerk of a court generally would have to enter within 24 hours a copy of a protective order application after it was filed or an original or modified order after it was issued or extended.

For an issued, modified, or extended protective order, the clerk would have to enter into the registry:

- a copy of the order and notation regarding any modification or extension of the order;
- the court that issued the order;

- the case number;
- the full name, county of residence, birth year, and race or ethnicity of the person who was the subject of the order;
- the dates the order was issued and served;
- the date the order was vacated, if applicable; and
- the date the order expired or will expire.

The clerk would have to modify the record of an order in the registry if it was vacated or had expired to reflect the order's status.

Restricted access to registry. Under the registry, only an authorized user, the attorney general, a district attorney, a criminal district attorney, a county attorney, a municipal attorney, or a peace officer could access a copy of each application for a protective order filed and a copy of each order issued. OCA would have to ensure that those users were able to search for and receive such information through the registry's website.

An authorized user would include a person to whom OCA had given permission and the means to submit records to or modify or remove records in the registry.

Public access to registry. OCA would have to establish and maintain the protective order registry in a manner that allowed the public to search for and receive public information on each issued protective order for free. The registry would be searchable by the county of issuance and the name and birth year of a person who was the subject of the protective order.

Publicly accessible information on each protective order would consist of only the information a clerk had to enter into the registry for an issued, modified, or extended protective order under the bill. OCA could not allow public access to any information related to a temporary ex parte order under Family Code ch. 83 or an order for emergency protection issued under Code of Criminal Procedure art. 17.292. OCA also would have to ensure that the public could not access the application or any information related to it through the registry's website.

Request for grant or removal of public access. The public would have access to information in the registry only if OCA approved a request from a protected person granting the public access. A person later could request that OCA remove public access to the information, which would be done within three days of receiving such a request.

The Supreme Court of Texas would prescribe the form for requesting a grant or removal of public access and could prescribe procedures for requesting a grant or removal of public access.

Before September 1, 2020, OCA could not allow a member of the public to view publicly accessible information included in the registry.

Training program. The bill would require OCA to establish and supervise a training program for magistrates, court personnel, and peace officers on the use of the protective order registry by June 1, 2020.

Implementation. OCA would be required to implement the bill only if an appropriation was made for that purpose. Otherwise, the office could, but would not be required to, implement the bill using other available funds.

Effective date. The bill would take effect September 1, 2019, and would apply only to an application for a protective order or a protective order issued on or after September 1, 2020.

SUPPORTERS
SAY:

CSHB 629 would make public information about protective orders relating to family violence more accessible to law enforcement agencies, courts, governmental entities, and the public. While much of this information already is public information, there is not currently a process for accessing it. By providing a central location where these individuals and agencies could easily access such information, the bill could help reduce the recurrence of domestic violence and possibly save lives.

The registry created by CSHB 629 would provide law enforcement agencies, courts, and governmental entities a more reliable way of obtaining and confirming information about protective orders relating to

family violence. Currently, a law enforcement agency might be unaware of a protective order if it was issued in another jurisdiction. Courts and governmental agencies also do not readily have a way to obtain complete information about protective orders. Having access to such information across jurisdictional lines could save the lives of officers and other first responders executing their duties.

The bill would empower and protect victims of family violence by allowing them to proactively choose to grant public access to information on protective orders. They would be able to choose to remove that public access at any time. The registry created by the bill also could help people avoid entering into abusive relationships by making some information about the subjects of previous protective orders publicly available and accessible online.

Concerns that the bill would result in unintended consequences for innocent people are unfounded. The bill would ensure that only protective orders that had gone through due process would be accessible on the public portion of the registry. The public could not access any information related to the application for an order or on a temporary order. Further, if an order was later revoked or expired, it would be removed from the registry.

The bill would not overly burden clerks or result in a large cost to either the state or counties. Clerks would have up to 24 hours to enter relevant information into the registry after a protective order was applied for or issued, and the bill would ensure that the registry could interface with existing systems of municipalities and counties. There would be no additional cost from general revenue to implement the bill as the Statewide Electronic Filing Fund, a general revenue dedicated account, appropriately could be used to cover both the start-up costs of the registry and possibly any related operational costs. The House-passed version of the general appropriations act would appropriate to OCA all balances of the fund.

OPPONENTS

CSHB 629 would include information in the proposed public registry that

SAY: had the potential to be significantly abused. Personal information for civil rulings, like protective orders, should not be made public because the burden of proof is lower in these rulings than in a criminal court, which could result in innocent people unintentionally being implicated.

There are always two sides to a story, and once basic factual information about the subject of an order was entered into a public database online, it could affect the person's reputation for life. Making this information public could subject innocent people to retaliation or other unintended consequences. For example, many family law attorneys recommend that their clients get a protective order, even if there has been no indication of family violence. Making information about these orders publicly available could have unintended and outsized effects on the subjects of the orders.

**OTHER
OPPONENTS
SAY:** CSHB 629 could result in a compliance burden on court clerks and significant implementation costs for counties.

NOTES: According to an estimate by the Legislative Budget Board, the bill would have a negative impact of \$350,000 to general revenue related funds through the biennium ending August 31, 2021.