

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1726
By: West
Jurisprudence
4-15-97
Committee Report (Substituted)

DIGEST

Currently, federal law requires all states to enact, at the earliest opportunity, a state full faith and credit provision for the enforcement of foreign protective orders. The Violence Against Women Act specifies that in order to qualify to receive federal funding, states must provide for the enforcement of a protective order which has been issued by another state, a military court, a tribal court, or a territorial court; and must provide for registration of such a protective order on the existing state-wide computer registry. This bill would enact provisions to comply with the Violence Against Women Act.

PURPOSE

As proposed, C.S.S.B. 1726 sets forth provisions complying with federal law, the Violence Against Women Act. This bill defines "protective order from another jurisdiction," establishes procedures for each law enforcement agency to provide access to information regarding foreign protective orders; and provides for the full faith and credit of foreign protective orders by the courts of Texas.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 71, Family Code, by adding Section 71.008, as follows:

Sec. 71.008. PROTECTIVE ORDER FROM ANOTHER JURISDICTION. Defines "protective order from another jurisdiction" as a protective order rendered by a military court or a court of another state, tribe, or territory related to protecting an individual from domestic or family violence and that meets certain requirements.

SECTION 2. Amends Chapter 86, Family Code, by adding Section 86.005, as follows:

Sec. 86.005. PROTECTIVE ORDER FROM ANOTHER JURISDICTION. Requires each law enforcement agency, to ensure that law enforcement officers responding to calls are aware of the existence and terms of a protective order from another jurisdiction, to establish procedures in the agency to provide adequate information or access to information for law enforcement officers of the name of each person protected by an order rendered in another jurisdiction and of each person against whom the protective order is directed. Requires the officer, under certain conditions, to rely on a copy of a protective order from another jurisdiction that has been provided to the officer by any source; and the statement by a person protected by the order that the order remains in effect. Provides that a law enforcement officer acting in good faith is not subject to civil or criminal liability for any action arising in connection with the enforcement of a protective order issued in another jurisdiction that a court later determines was not entitled to full faith and credit under Chapter 88.

SECTION 3. Amends Title 4B, Family Code, by adding Chapter 88, as follows:

CHAPTER 88. PROTECTIVE ORDER FROM ANOTHER JURISDICTION

Sec. 88.001. FULL FAITH AND CREDIT OF PROTECTIVE ORDER FROM ANOTHER JURISDICTION. Requires a protective order from another jurisdiction to be accorded full faith and credit by the courts of this state and enforced as if the order was rendered by a court in this state. Provides that a protective order from another jurisdiction rendered against both the applicant and respondent is not enforceable against the applicant in this state unless certain conditions exist.

Sec. 88.002. PRESUMPTION OF VALIDITY. Provides that a protective order from another jurisdiction is presumed to be valid if the order appears authentic on the order's face.

Sec. 88.003. AFFIRMATIVE DEFENSE. Provides that it is an affirmative defense in any action seeking enforcement of a protective order rendered in another jurisdiction that the respondent was not given reasonable notice and an opportunity to be heard consistent with due process either before the date the order was rendered; or in the case of an ex parte order, within the time required by the jurisdiction rendering the order after the date the order was rendered, but no later than a reasonable time.

Sec. 88.004. ENFORCEMENT OF AN ORDER. Authorizes a protective order from another jurisdiction to be enforced even if the order is not entered into the state law enforcement information system maintained by the Department of Public Safety.

SECTION 4. Amends Sections 25.07(a) and (g), Penal Code, to provide that a person commits an offense if, in violation of an order issued under Section 3.581 or Chapter 85, Family Code, under Article 17.292, Code of Criminal Procedure, or by another jurisdiction as provided by Chapter 88, Family Code, the person knowingly or intentionally, among other actions, communicates directly with a protected individual or a member of the family or household in a threatening or harassing manner. Deletes text referring to Sections 71.11 and 71.12, Family Code. Provides that an offense under this section is Class A misdemeanor unless it is shown on the trial of the offense that the defendant has previously been convicted under this section two or more times or has violated the protective order by committing an assault or the offense of stalking, in which event the offense is a third degree felony, rather than a state jail felony. Makes conforming changes.

SECTION 5. Amends Article 5.04(a), Code of Criminal Procedure, to provide that the primary duties of a peace officer who investigates a family violence allegation or who responds to a disturbance call that may involve family violence are to protect any potential victim of family violence, enforce the law of this state, enforce a protective order from another jurisdiction as provided by Chapter 88, Family Code, and make lawful arrests of violators.

SECTION 6. Effective date: September 1, 1997.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

Revises relating clause.

SECTION 1.

Amends Chapter 71, Family Code, to add Section 71.008, relating to protective orders from another jurisdiction.

SECTION 2.

Amends Chapter 86, Family Code, to add Section 86.005, relating to protective orders from another jurisdiction. Omits proposed addition of Section 25.071 to Chapter 25, Penal Code, relating to the full faith and credit of valid foreign protective orders.

SECTION 3.

Amends Title 4B, Family Code, by adding Chapter 88, relating to protective orders from another jurisdiction. Omits proposed changes to Section 71.18, Family Code, relating to an order issued by a military court, court of another state, tribe or territory as provided in Section 25.071, Penal Code.

SECTION 4.

Amends Section 25.07, Penal Code, to revise changes to Subsections (a) and (g). Previously set forth in SECTION 1.

SECTION 5.

Amends Article 5.04, Code of Criminal Procedure, to revise changes to Subsection (a). Previously set forth in SECTION 4.

SECTION 6.

Sets forth the effective date, previously set forth in SECTION 5.

SECTION 7.

Adds session law making application of this Act prospective.

SECTION 8.

Sets forth the emergency clause, previously set forth in SECTION 6.