

BILL ANALYSIS

Senate Research Center

S.B. 797
By: Harris
Criminal Justice
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DIGEST

Currently, the Texas Family Code is under criticism based on its overcrowded and disorganized condition. In its final report to the 74th Texas Legislature, the Joint Interim Committee on the Family Code recommended a total reorganization of the code based on its cumbersome structure. In response to the code's condition, several committees were assembled in the fall of 1993 to oversee a recodification effort, including the Family Law Council and the joint committee. The Family Law Council focused on nonsubstantive recodification while the joint committee investigated substantive changes. Ultimately, the joint committee integrated all of the recommendations, incorporating its own improvements to the Family Code as well. S.B. 797 recodifies Title 4, regarding protective orders and family violence, in an effort to create a more organized and coherent code.

PURPOSE

As proposed, S.B. 797 recodifies Family Code statutes relating to protective orders and family violence.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Recodifies the Family Code, by reenacting Title 4, as follows:

TITLE 4. PROTECTIVE ORDERS AND FAMILY VIOLENCE

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 71. DEFINITIONS

- Sec. 71.001. **APPLICABILITY OF DEFINITIONS.** Establishes the applicability of definitions in this chapter.
- Sec. 71.002. **COURT.** Defines "court."
- Sec. 71.003. **FAMILY.** Defines "family."
- Sec. 71.004. **FAMILY VIOLENCE.** Defines "family violence."
- Sec. 71.005. **HOUSEHOLD.** Defines "household."
- Sec. 71.006. **MEMBER OF A HOUSEHOLD.** Defines "member of a household."
- Sec. 71.007. **PROSECUTING ATTORNEY.** Defines "prosecuting attorney."

SUBTITLE B. PROTECTIVE ORDERS

CHAPTER 81. GENERAL PROVISIONS

Sec. 81.001. ENTITLEMENT TO PROTECTIVE ORDER. Requires a court to render a protective order as provided by Section 85.001(b) if the court finds that family violence has occurred and is likely to occur in the future.

Sec. 81.002. NO FEE FOR APPLICANT. Prohibits an applicant for a protective order from being assessed a fee, cost, charge, or expense by a clerk of court or other public official in connection with filing, servicing, or entering a protective order. Prohibits a fee from being charged to dismiss, modify, or withdraw a protective order.

Sec. 81.003. FEES AND COSTS PAID BY RESPONDENT. Sets forth the terms by which the court is required to require that the respondent against whom the order is rendered pay certain fees.

Sec. 81.004. CONTEMPT FOR NONPAYMENT OF FEE. Sets forth the punishment for a respondent who is ordered to pay fees and costs and does not pay before the 60th day after the date the order was rendered.

Sec. 81.005. ATTORNEY'S FEES. Sets forth the terms by which the court is authorized to assess attorney's fees against a party found to have committed family violence.

Sec. 81.006. PAYMENT OF ATTORNEY'S FEES. Sets forth the terms by which the amount of fees collected as compensation for the fees of a private attorney, prosecuting attorney, and attorney employed by the Department of Protective and Regulatory Services are required to be paid or deposited.

Sec. 81.007. PROSECUTING ATTORNEY. Establishes the terms under which the county or criminal district attorney is the prosecuting attorney responsible for filing applications, unless the district attorney assumes the responsibility. Requires the prosecuting attorney to provide notice of that responsibility to all appropriate law enforcement agencies. Sets forth the procedure for filing an application.

Sec. 81.008. RELIEF CUMULATIVE. Provides that, except as provided by this subtitle, the relief and remedies provided by this subtitle are cumulative of other relief and remedies provided by law.

CHAPTER 82. APPLYING FOR PROTECTIVE ORDER

SUBCHAPTER A. APPLICATION FOR PROTECTIVE ORDER

Sec. 82.001. APPLICATION. Provides that a proceeding under this subtitle is begun by filing "An Application for a Protective Order" with the clerk of court.

Sec. 82.002. WHO MAY FILE APPLICATION. Sets forth the terms by which an application for a protective order and for the protection of any person alleged to be a victim of family violence may be filed. Provides that the person alleged to be the victim of family violence in an application filed under Subsection (b) is considered to be the applicant for a protective order.

Sec. 82.003. VENUE. Authorizes an application to be filed in the county in which the applicant or respondent resides.

Sec. 82.004. CONTENTS OF APPLICATION. Sets forth the contents of an application.

Sec. 82.005. APPLICATION FILED DURING SUIT FOR DISSOLUTION OF MARRIAGE. Sets forth the terms by which a person who is a party to a suit for the dissolution of a marriage that is pending in court is required to file an application for a protective order as a motion in that suit. Prohibits an applicant denied such a protective order from applying for a protective order in another court based on identical facts.

Sec. 82.006. APPLICATION FILED AFTER DISSOLUTION OF MARRIAGE. Sets forth the contents of an application for a protective order if an applicant is a former spouse of the individual alleged to have committed family violence.

Sec. 82.007. APPLICATION FILED FOR CHILD SUBJECT TO CONTINUING JURISDICTION. Sets forth the contents of an application requesting a protective order for a child subject to continuing court jurisdiction, or alleging that a child subject to continuing jurisdiction has committed family violence.

Sec. 82.008. APPLICATION FILED AFTER EXPIRATION OF FORMER PROTECTIVE ORDER. Sets forth the contents of an application filed after expiration of the former protective order. Provides that the procedural requirements for an original application for a protective order apply to a protective order requested under this section.

Sec. 82.009. APPLICATION FOR TEMPORARY EX PARTE ORDER. Sets forth the contents of an application requesting the issuance of a temporary ex parte order.

SUBCHAPTER B. PLEADINGS BY RESPONDENT

Sec. 82.021. ANSWER. Authorizes a respondent to an application for a protective order who is served notice of an application to file an answer at any time before the hearing, but does not require a respondent to file an answer.

Sec. 82.022. REQUEST BY RESPONDENT FOR PROTECTIVE ORDER. Requires a respondent to an application, in order to apply for a protective order, to file a separate application.

SUBCHAPTER C. NOTICE OF APPLICATION FOR PROTECTIVE ORDER

Sec. 82.041. CONTENTS OF NOTICE OF APPLICATION. Sets forth the contents of a notice of application for a protective order, and requires the notice to be directed to each person alleged to have committed family violence.

Sec. 82.042. ISSUANCE OF NOTICE OF APPLICATION. Sets forth the terms by which the clerk of the court, on the filing of an application, is required to issue a notice of an application and deliver the notice.

Sec. 82.043. SERVICE OF NOTICE OF APPLICATION. Establishes the conditions by which each respondent is entitled to service of notice of an application for a protective order. Provides that the requirements under this subchapter do not apply if the application is filed as a motion in a suit for dissolution of a marriage.

CHAPTER 83. TEMPORARY EX PARTE ORDERS

Sec. 83.001. REQUIREMENTS FOR TEMPORARY EX PARTE ORDER. Sets forth the terms by which a court is authorized to enter a temporary ex parte order. Authorizes the court, in such an order, to direct a respondent to do or refrain from doing specified acts.

Sec. 83.002. DURATION OF ORDER; EXTENSION. Sets forth the duration of, and extension period for, an order.

Sec. 83.003. BOND NOT REQUIRED. Authorizes the court to dispense with the necessity of a bond for an order.

Sec. 83.004. MOTION TO VACATE. Sets forth the terms by which any member of the family or household affected by an order is authorized to file a motion to vacate the order, and by which the court is required to set a hearing date.

Sec. 83.005. CONFLICTING ORDERS. Sets forth the terms by which an order prevails

over any other court order made under Title 5.

Sec. 83.006. **EXCLUSION OF PARTY FROM RESIDENCE.** Establishes the conditions by which a person is authorized to be excluded from the occupancy of the person's residence by an order. Requires the court to establish certain conditions before rendering an order excluding a person from the person's residence.

Sec. 83.007. **RECESS OF HEARING TO CONTACT RESPONDENT.** Sets forth the terms by which a court is authorized to recess the hearing on an order.

CHAPTER 84. HEARING

Sec. 84.001. **TIME SET FOR HEARING.** Sets forth the terms by which a court is required to set a date and time for a hearing.

Sec. 84.002. **EXTENDED TIME FOR HEARING IN CERTAIN COUNTIES.** Sets forth the conditions by which a court is required to set an extended time for a hearing in certain counties.

Sec. 84.003. **HEARING RESCHEDULED FOR FAILURE OF SERVICE.** Sets forth the conditions by which an applicant is authorized to request the court to reschedule a hearing based on the failure of a respondent to receive service of notice of an application for a protective order.

Sec. 84.004. **HEARING RESCHEDULED FOR INSUFFICIENT NOTICE.** Establishes the conditions by which a court is required to reschedule a hearing if a respondent receives service of notice within 48 hours before the time set for the hearing.

CHAPTER 85. ISSUANCE OF PROTECTIVE ORDER

SUBCHAPTER A. FINDINGS AND ORDERS

Sec. 85.001. **REQUIRED FINDINGS AND ORDERS.** Requires the court, at the close of a hearing, to find whether family violence occurred and is likely to occur in the future. Sets forth the terms by which the court is required and authorized, if the court finds that family violence has occurred or is likely to occur, to render a protective order.

Sec. 85.002. **EXCEPTION FOR VIOLATION OF EXPIRED PROTECTIVE ORDER.** Provides an exception if the court finds that a respondent violated a protective order that expired after the date the violation occurred.

Sec. 85.003. **SEPARATE PROTECTIVE ORDER REQUIRED.** Sets forth the terms by which a court is required to render separate protective orders.

Sec. 85.004. **PROTECTIVE ORDER IN SUIT FOR DISSOLUTION OF MARRIAGE.** Requires a protective order in a suit for dissolution of a marriage to be in a separate document entitled, "PROTECTIVE ORDER."

Sec. 85.005. **AGREED ORDER.** Sets forth the terms by which the parties to a proceeding and a respondent are authorized to agree to the terms of a protective order.

Sec. 85.006. **DEFAULT ORDER.** Authorizes a court to render a protective order on a respondent who does not attend a hearing. Authorizes a protective order to be rendered if the respondent does not attend a rescheduled hearing.

Sec. 85.007. **CONFIDENTIALITY OF CERTAIN INFORMATION.** Sets forth the conditions under which a court is authorized to exclude the addresses and telephone numbers of certain persons or entities from a protective order.

Sec. 85.008. DISMISSAL OF APPLICATION PROHIBITED IF DIVORCE FILED; EXCEPTION. Prohibits a court from dismissing an application on grounds that a divorce suit is filed, and provides an exception.

Sec. 85.009. ORDER VALID UNTIL SUPERSEDED. Establishes the conditions under which a protective order is valid and enforceable until the order is superseded.

SUBCHAPTER B. CONTENTS OF PROTECTIVE ORDER

Sec. 85.021. REQUIREMENTS OF ORDER APPLYING TO ANY PARTY. Sets forth the requirements and prohibitions which a court is authorized to apply to any party in a protective order.

Sec. 85.022. REQUIREMENTS OF ORDER APPLYING TO PERSON WHO COMMITTED FAMILY VIOLENCE. Sets forth the requirements and prohibitions which a court is authorized to apply to a person found to have committed family violence.

Sec. 85.023. EFFECT ON PROPERTY RIGHTS. Provides that a protective order or an agreement approved by the court does not affect the title to real property.

Sec. 85.024. ENFORCEMENT OF COUNSELING REQUIREMENT. Sets forth the terms by which a person who fails to comply with the counseling requirement may be punished for contempt of court. Requires a protective order to advise the person subject to the order of the requirement of this section and the punishment for failure to comply.

Sec. 85.025. DURATION OF PROTECTIVE ORDER. Establishes the effective period and expiration date of a protective order.

Sec. 85.026. WARNING ON PROTECTIVE ORDER. Sets forth the warnings required to be printed on protective orders.

SUBCHAPTER C. DELIVERY OF PROTECTIVE ORDER

Sec. 85.041. DELIVERY TO RESPONDENT. Sets forth the terms by which a protective order or a certified copy of an order rendered under this subtitle is required to be delivered, served, and mailed to the respondent and applicant.

Sec. 85.042. DELIVERY OF ORDER TO OTHER PERSONS. Sets forth the provisions regarding the delivery of a protective order to other persons and entities.

CHAPTER 86. LAW ENFORCEMENT DUTIES RELATING TO PROTECTIVE ORDERS

Sec. 86.001. ADOPTION OF PROCEDURES BY LAW ENFORCEMENT AGENCY. Sets forth the terms by which each law enforcement agency is required to establish procedures to provide adequate information or access to information relating to protective orders. Establishes the means by which an agency is authorized to enter an order in its computer records and is required to remove the order.

Sec. 86.002. DUTY TO PROVIDE INFORMATION TO FIREARMS DEALERS. Establishes the conditions by which a chief law enforcement officer is required to cooperate with licensed firearms dealers through a record check and prohibition of certain transfers.

Sec. 86.003. COURT ORDER FOR LAW ENFORCEMENT ASSISTANCE UNDER TEMPORARY ORDER. Establishes the conditions by which a court granting a temporary order that excludes the respondent from the respondent's residence is required to render a written order to the sheriff or chief of police to provide law enforcement assistance.

Sec. 86.004. COURT ORDER FOR LAW ENFORCEMENT ASSISTANCE UNDER

FINAL ORDER. Establishes the conditions by which a court granting a final protective order that excludes the respondent from the respondent's residence is required to render a written order to the sheriff or chief of police to provide law enforcement assistance.

CHAPTER 87. MODIFICATION OF PROTECTIVE ORDERS

Sec. 87.001. MODIFICATION OF PROTECTIVE ORDER. Authorizes the court, on the motion of any party and after notice and hearing, to modify a protective order to exclude or include any item.

Sec. 87.002. MODIFICATION MAY NOT EXTEND DURATION OF ORDER. Prohibits a protective order from being modified to extend the period of the order's validity beyond the first anniversary of the date the original order was rendered.

Sec. 87.003. NOTIFICATION OF MOTION TO MODIFY. Sets forth the terms under which notice of a motion to modify a protective order is sufficient.

SUBTITLE C. REPORTING FAMILY VIOLENCE

CHAPTER 91. REPORTING FAMILY VIOLENCE

Sec. 91.001. DEFINITIONS. Defines "family violence" and "medical professional."

Sec. 91.002. REPORTING BY WITNESSES ENCOURAGED. Provides that a person who witnesses family violence is encouraged to report the family violence to a local law enforcement agency.

Sec. 91.003. INFORMATION PROVIDED BY MEDICAL PROFESSIONALS. Sets forth the procedure by which a medical professional who treats a person for injuries that the medical professional has reason to believe were caused by family violence is required to provide the person with information regarding the nearest family violence shelter; document certain information in the person's medical file; and give the person a written notice in a prescribed format.

Sec. 91.004. APPLICATION OF SUBTITLE. Provides that this subtitle does not affect a duty to report child abuse under Chapter 261.

CHAPTER 92. IMMUNITY

Sec. 92.001. IMMUNITY. Sets forth the conditions under which a person who reports family violence or provides information under Section 91.003 is immune from civil liability. Provides that a person who reports the person's own conduct or who otherwise reports family violence in bad faith is not protected for liability.

SECTION 2. Repealer: Title 4, Family Code (Protection of the Family).

SECTION 3. Makes application of this Act prospective.

SECTION 4. Emergency clause.

Effective date: upon passage.