

SUBJECT: Family violence protective orders

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 8 ayes — Goodman, Staples, J. Jones, McClendon, McReynolds, Naishtat, Smith, Williams

0 nays

1 absent — A. Reyna

SENATE VOTE: On final passage, April 23 — voice vote

WITNESSES: For — Christina Schneider, Texas Council on Family Violence; Jeana Lungwitz, John J. Sampson

Against — Robert L. (Bob) Green, Jr., Primary Nurturing Fathers of Texas and Texas Fathers Alliance; David Shelton, Texas Fathers Alliance

On — Sue Catchings

DIGEST: CSSB 1253 would amend several Family Code provisions addressing family violence protective orders.

Protective order fees and costs. The bill would expand prohibitions against fees being charged to applicants for protective orders. It would prohibit fees from being charged against attorneys representing applicants; add sheriffs, constables or other public employees to the list of persons who could not charge fees to the applicant; and delineate those fees that could not be charged, including court reporter fees, judicial fund fees, fees for certifying copies or comparing copies to originals, and fees for any other services related to a protective order.

The bill would grant courts more discretion to assess fees against the party found to have committed family violence by allowing judges to waive the fee upon a showing of good cause. Also, the court could specify a due date for payment of fees and costs in the order rather than having to follow the current statutorily imposed 60-day due date. If the court did not specify a

due date in the order, the 60-day deadline would still apply. The court could order a party against whom an agreed protective order was rendered to pay a protective order fee.

Protective orders and other family law suits. A court could not dismiss a pending application for a protective order or delay a hearing on the application on the grounds that a divorce suit or suit affecting the parent-child relationship (SAPCR) was filed after the date the application was filed.

If a divorce suit or SAPCR was pending, a party to the suit could apply for a protective order against another party to the suit only by filing an application in the same court in which the suit was pending.

If a final order had been rendered in a divorce suit or SAPCR, an application for a protective order filed in the same county by one former party against another former party would have to be filed in the same court that rendered the final order.

If a protective order was rendered before a divorce suit or SAPCR was filed or while it was pending, the court that rendered the order would be required, upon the motion of a party or its own motion, to transfer enforcement of the order to the court having jurisdiction over the divorce suit or SAPCR upon the motion of a party or on the court's own motion.

If a protective order that affected a party's right to possession of or access to a child was rendered after the date of a final order in a SAPCR, the court that rendered the protective order would be required, upon the motion of a party or on its own motion, to transfer enforcement of the order to the court having continuing, exclusive jurisdiction of the SAPCR.

Other provisions. The bill would stipulate that a prosecuting attorney or an attorney employed by the Department of Protective and Regulatory Services (DPRS) would represent the interests of the state and not the interest of any other party. An attorney-client privilege could not be created between these attorneys and any other party.

The bill would also:

- specify that a finding of a history of family violence involving the parents of a child would remove the presumption that appointment of the parents as joint managing conservators was in the best interest of the child;
- specify that a valid temporary protective order prevailed over any other court order made in a suit affecting the parent-child relationship, to the extent of any conflict between the orders;
- allow applicants for protective orders to provide their mailing address rather than a physical address and allow persons covered by protective orders to change their address or telephone number with the court;
- set a 20-day deadline for hearings on protective order applications that would be applicable statewide; and
- require that persons ordered to attend a battering intervention and prevention program or other counseling provide evidence of completion.

CSSB 1253 would take effect September 1, 1997.

**SUPPORTERS
SAY:**

CSSB 1253 would clarify and modify several Family Code provisions addressing protective orders to ensure protection of family violence victims. For example, the bill would protect family violence victims representing themselves in court by allowing them to give their mailing address, rather than their home address, on the notice for an application for a protective order. In addition, it would resolve the continuing problems that domestic violence victims with protective orders face when they move, change jobs, or their children change schools or day care by providing a simple process for modifying that information in protective orders. CSSB 1253 would also make several other changes to improve state laws involving family violence protective orders.

The bill would appropriately stipulate that temporary protective orders granted in emergency situations should prevail over other orders that were granted under outdated circumstances. It would also protect children by

removing the presumption of joint managing conservatorship if a parent had a history of family violence.

The bill would close a loophole in current law that requires batterers to show that they have started a court-ordered counseling program, but does not require them to show that they have completed it. The bill would require the respondent to provide verification that the ordered program or counseling was completed.

The courts would be allowed greater latitude regarding fees and costs involved in protective orders. A respondent would not have to be technically indigent to have fees waived, and the court could give extra time to a respondent who needed more than 60 days to pay costs.

CSSB 1253 would provide uniformity in Family Code provisions regarding time limits for hearings on applications for protective orders. Several judicial districts in Texas contain more than one county, making it difficult for judges to meet the 14-day deadline for hearings. It is practically impossible for them to coordinate their rotation schedule to accommodate protective order hearings every 14 days in addition to their numerous other hearings and trials. Rather than just bracketing out certain counties for a 20-day time limit, the bill would establish a uniform 20-day time limit.

**OPPONENTS
SAY:**

CSSB 1253 would unnecessarily increase the time that victims of family violence in some counties must wait before getting an enforceable protective order by establishing a statewide 20-day hearing deadline, applicable even to those counties that currently are able to meet their current 14-day time limit. Because the bill would allow for 20 days to pass before a protective order application was heard, it could jeopardize the safety of families who need enforceable protective orders sooner rather than later.

The provision requiring public attorneys to give an applicant written notice that they are not the applicant's attorney could discourage battered women from seeking protective orders.

**OTHER
OPPONENTS
SAY:**

The bill should add a provision to the Family Code addressing protective order applicants that make knowingly false statements to obtain a protective order. Penalties should be imposed on a parent who abuses the protective

order process as a preemptive strike against the other parent in a custody battle.

NOTES:

The committee substitute used the new Family Code section numbers from SB 797 and SB 334 by Harris, which recodified Titles 1 and 4 of the Family Code. The substitute added provisions addressing public attorneys, hearing dates on protective orders, change of address in a protective order by a person protected by the order, and the relationship between protective orders, divorce suits and SAPCRs.

A related bill, SB 299 by Ratliff, which would also address hearing deadlines on applications for protective orders, passed the House, as amended, on May 21.