

SUBJECT: Extending the duration of protective orders

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 7 ayes — Goodman, Pickett, Isett, P. King, Morrison, A. Reyna, Truitt
0 nays
2 absent — Naishtat, E. Reyna

SENATE VOTE: On final passage, March 9 — voice vote

WITNESSES: For — Michelle Clark, Safe Place; Bree Buchanan, Shannon Noble, Texas Council on Family Violence

Against — Robert L. Green, Jr., Texas Father's Alliance

BACKGROUND: Under current law, a protective order expires after one year. It cannot be renewed unless a violation of the order has occurred during the period the order was in effect. A protective order is issued, after notice and hearing, upon a showing that a person has committed a violent act against another member of the family. An order prohibits a person from: committing family violence; directly or indirectly communicating with a member of the family; going near the residence or place of employment of the party seeking the order; removing a child from the possession of the party; stalking the party; and engaging in conduct likely to harass, annoy, alarm, abuse, torment, or embarrass the party.

Family violence is defined by the Family Code as an act of by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault or sexual assault, or poses a threat that reasonably places the family member in fear that such harm will occur to the member.

DIGEST: CSSB 50 would amend the Family Code to provide a mechanism for extending a protective order upon a finding by a court that there was a continuing need for one. The maximum period an order could be in effect would be extended from one year to two years.

The bill would require that an application for a protective order that was filed after a previously rendered protective order had expired would include either:

- ! a description of the violation of the expired protective order, if the application was alleging a violation of the terms of the former protective order before it expired; or
- ! a description of the threatened harm that reasonably placed the applicant in fear of imminent physical harm, bodily injury, assault, or sexual assault; and
- ! if a violation of the expired order is alleged, that there was no other comparable order in effect.

The bill also would allow for the application for a protective order filed before the expiration of a previously rendered protective order. If the order was due to expire not later than the 30th day after the date the application was filed, the application for a subsequent order would have to include:

- ! a copy of the previously rendered protective order attached to the application or a statement that the order was unavailable and would be provided to the court before the hearing on the application; and
- ! a description of the threatened harm that reasonably placed the applicant in fear of imminent injury.

The requirements for an original application for a requested protective order would be the same. The protective order would be in effect for two years unless:

- ! the person subject to the protective order was imprisoned or confined, in which case the protective order would expire one year after the person was released.
- ! a motion was filed by a person who was the subject of the protective order petitioning the court to review whether there was a continuing need for the it. This only could be done after the protective order had been in effect for a year. If the court found that there was a continuing need, then the order

would expire as specified in the extension order. If there was no need, the protective order would expire at a date determined by the court.

The bill would require that a warning statement appear on a protective order or temporary ex parte order indicating that no person could give permission to anyone to ignore or violate the protective order, including the person who was protected by the order. It would state that the person who was subject to the protective order would not be allowed to possess a firearm or ammunition.

The bill would prohibit a protective order from being modified to extend the period of the order's validity beyond the second year after the date the original order was rendered. It also would prohibit extension beyond the one-year period after the subject of an order had been released from imprisonment or confinement.

CSSB 50 would take effect September 1, 1999, and would apply to protective orders filed on or after this date.

**SUPPORTERS
SAY:**

CSSB 50 would provide needed protections to individuals threatened by family violence by allowing the extension of a protective order for one year. The bill would help buy time for a family violence victim. It would provide a mechanism for an order to be extended without having to wait until after it had expired to go before the courts to seek renewed protection. Thus, there would be no gaps in the effectiveness of an order. There would be no period, however brief, in which the protections lapsed, potentially giving the subject of a protective order a window of opportunity to take actions otherwise prohibited by the order.

A two-year period for a protective order could be crucial. In many cases, heightened emotions resulting from a divorce may persist well beyond the first year, especially if divorce proceeding had been protracted and bitter. Statistics show that almost half of the women who have been given protective orders wind up being victimized again within two years.

Other states have extended periods for protective orders. California has procedures for protective orders allowing them to remain in effect for three years. Illinois, Maine, and Ohio provide a period of two years.

CSSB 50 would leave extension of a protective order to the discretion of a judge. The bill would give a judge the flexibility to craft a protective order according to the particular requirements of a case. If a threatened family member needed more than one year to establish a new life after marriage, the bill would allow a judge to fashion such a remedy.

The interests of a party subject to a protective order also would be protected. The bill would provide a procedure through which the subject could request that a judge vacate the protective order or modify the order. After a court review of the circumstances, the judge would have the discretion to rescind an order if there were no real justification to continue it.

OPPONENTS
SAY:

CSSB 50 would place an unreasonable restraint on individual liberty to an extent that may be constitutionally suspect. A person could be restrained from movement, from carrying a firearm or possessing ammunition, and from certain speech for as long as two years because of a protective order issued simply on the basis of a perceived threat. For a person who was confined or jailed, the order could be extended for one year following release.

Mere perception of threat is too subjective a basis for authorizing an extended protective order. A person who is the subject of a protective order, and who has honestly fulfilled the terms of the protective order, could again be subjected to the terms of such an order based on a judge's decision that this person could possibly cause fear to a family member in the future.

The bill may be open to due process challenges. The bill also could violate an individual's constitutional right to bear arms. It would allow a judge to take an action that would prohibit an individual with no felony convictions from carrying a gun.

NOTES:

The substitute would change the Senate version by adding that a protective order could remain effective for two years rather than five years. The substitute also added provisions for review of the need for the extension by the courts if requested by the subject of the order and the requirements for warnings to appear on the temporary ex parte order.