

- SUBJECT:** Registering and enforcing protective orders issued by other states
- COMMITTEE:** Juvenile Justice and Family Issues — committee substitute recommended
- VOTE:** 7 ayes — Goodman, A. Reyna, P. King, Menendez, Morrison, Naishtat, Tillery
- 0 nays
- 2 absent — E. Reyna, Nixon
- WITNESSES:** For — Bree Buchanan, Texas Council on Family Violence; Hannah Riddering, Texas National Organization for Women; Harry Tindall, Texas Commission on Uniform State Laws
- Against — None
- BACKGROUND:** Family Code, Title 4, subtitle B lays out rules related to applying for, receiving, and enforcing court orders designed to protect family members from family violence (protective orders). Sec. 71.008 defines protective orders issued in other jurisdictions (foreign orders) under Title 4. Sec. 86.005 authorizes law enforcement officials to enforce foreign orders if they receive a copy of such an order, are told by the person protected by the order that it is still in effect, and do not know that the order has expired. The statute also extends immunity from civil and criminal liability to law enforcement officers who act in good faith when enforcing foreign orders.
- Family Code, ch. 88 states that foreign protective orders are presumed to be valid if they appear authentic on their face and must be enforced as if they were the orders of a Texas court. Enforcement of a foreign order does not depend upon its being registered with the Department of Public Safety (DPS). It is an affirmative defense to a suit that seeks to enforce a foreign protective order that the respondent did not receive reasonable notice and opportunity for a hearing, either before the order was issued or, after its issuance, within the time required by the issuing jurisdiction, but not later than a “reasonable” time.

DIGEST: CSHB 919 would rewrite Family Code, ch. 88 to adopt the Uniform Interstate Enforcement of Domestic Violence Protective Orders Act. It also would amend Family Code, sec. 86.005 with regard to law enforcement procedures for dealing with a protective order from another jurisdiction and would repeal Family Code, sec. 71.008.

Judicial enforcement. CSHB 919 would provide for judicial enforcement of foreign protective orders, including those with provisions related to child custody or child support.

The bill would define a “protective order” as an injunction or other order to prevent someone from harassing, threatening, committing violent acts against, contacting, communicating with, or being in proximity to another individual. It would define a “foreign protective order” as a protective order issued by a tribunal of another state. These definitions, together with repeal of Family Code, sec. 71.008, would eliminate the provision of current law that allows only enforcement of foreign protective orders aimed at “family violence” as defined in Family Code, sec. 71.004.

The bill would define a foreign protective order as valid if it:

- ! contained the names of the protected individual and the person against whom enforcement was sought (the respondent);
- ! was currently in effect; and
- ! was issued by a tribunal — defined as a court, agency, or other entity authorized to issue protective orders — that had jurisdiction over the parties and subject matter.

The bill would retain the provision of current law that a respondent who has not received due process, including reasonable notice and an opportunity to be heard, has an affirmative defense to a suit to enforce a protective order.

CSHB 919 would require Texas tribunals to enforce foreign protective orders even if the Texas tribunal itself otherwise could not provide the relief granted by the foreign order. Texas tribunals, however, would have to follow Texas procedural rules in enforcing foreign protective orders.

The bill would require a Texas tribunal to enforce child-custody provisions of a foreign protective order and would allow courts to enforce child-support provisions as long as those provisions met jurisdictional requirements in the issuing state. It would allow a Texas tribunal to enforce child-support provisions as long as the order was issued in accordance with jurisdictional requirements of state and federal laws regarding the interstate enforcement of child support.

The bill would maintain the provision of current law that a Texas tribunal may not enforce the provisions of a foreign protective order in favor of a respondent and against the person requesting enforcement unless the respondent affirmatively sought the protective order in the foreign tribunal and the tribunal made findings in the respondent's favor.

Nonjudicial enforcement. CSHB 919 would maintain the directive to law enforcement officers to enforce foreign protective orders as if they were issued by a Texas tribunal. However, it would change the requirement that an officer see a copy of the order before enforcing it. Instead, the bill would permit an officer to enforce any order that he or she has probable cause to believe exists. The officer could determine that probable cause existed if the protected individual presented a foreign protective order identifying the protected individual and the respondent and if the order was current on its face. A certified copy would not be required, and an electronic copy of the foreign protective order would be sufficient to permit nonjudicial enforcement. Otherwise, the officer could rely on "any relevant information" to determine probable cause.

CSHB 919 would maintain the current immunity clause for law enforcement officials who act in good faith to enforce a protective order in compliance with the statute. However, the bill also would extend the immunity to cover state and local agencies and officials, prosecutors, and court clerks who are acting in their official capacity. The immunity also would be broadened to protect against liability for detentions, arrests, and registrations of foreign protective orders as provided by the bill.

Furthermore, CSHB 919 would amend the law to require law enforcement officers to inform a respondent of the order if they found that they could not enforce an otherwise valid foreign protective order because the respondent

had not received notice of or been served with the order. The bill also would require the officer to make a reasonable effort to serve the respondent with the order and to give the respondent an opportunity to comply before enforcing it.

Registration of protective orders. CSHB 919 specifically would maintain the provision of current law allowing foreign protective orders to be enforced without first being registered. However, the bill also would amend the statute to provide specific guidance on how the registration process should operate.

Under CSHB 919, a person could register a foreign protective order in state and local registries either by presenting a certified copy to a sheriff, constable, or police chief responsible for registering such orders or by presenting a certified copy to DPS and asking DPS to register it in the statewide law enforcement system. The person seeking registration also would have to present an affidavit from the person protected by the order stating that the order was still in effect to the best of the affiant's knowledge. As under current law, the bill would require no fee to register a foreign protective order.

CSHB 919 also would require agencies responsible for registering orders to register the foreign orders they receive and to issue a copy of the registered order to the person registering the order. The bill would allow correction of errors in registered foreign protective orders and the removal of expired orders from the registry in accordance with state law.

Other provisions. The bill would modify the statute to specify which jurisdictional orders a Texas tribunal must enforce. These would include orders of the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, all U.S. territories and possessions, military tribunals, Indian tribes or bands, and Alaskan native villages.

CSHB 919 also would state explicitly that someone seeking to enforce a protective order under the new Family Code, ch. 88 also could pursue other remedies against the respondent.

Finally, the bill would express the Legislature's intention that the amended law be construed to promote uniformity among Texas and other states that

enact the Uniform Enforcement of Domestic Violence Protective Orders Act (the Uniform Act).

CSHB 919 would take effect September 1, 2001, and would apply to all suits to enforce a protective order filed after that date.

SUPPORTERS
SAY:

CSHB 919 would remedy numerous problems with the current law related to enforcing foreign protective orders. In fixing those problems, the bill would redraft Texas law to conform it to the Uniform Act in most respects.

Enforcement. One reason that foreign protective orders often are not enforced is that, under current law, the officer first must have or see a copy of the order. CSHB 919 would give law enforcement officers the same flexibility they now exercise in determining the existence of a Texas-issued protective order. Since the person protected by a foreign order often does not have a copy of the order, the police cannot enforce the order, and the person who needs protection is left at risk. The bill would eliminate this problem by allowing law enforcement officials to enforce protective orders if they found probable cause to believe that an order existed. For example, probable cause might arise from statements of the protected person and/or the respondent, from contacting DPS' Texas Criminal Information Center, which maintains a database of protective orders, or by calling the jurisdiction in which an order was issued to verify that the order existed.

CSHB 919 also would correct a problem that arises when a respondent claims that he or she never received a copy of the protective order. Since a respondent must have been served before the order can be enforced, such a claim delays or prevents enforcement for the protected person. The bill would remedy this problem by requiring police to inform the respondent of the foreign protective order's existence and to serve a copy of that order on the respondent if possible. Service by police officers responding to a request for enforcement would be efficient and effective, since an officer responding to the protected person's request for help would have a good chance of actually making contact with the respondent.

Moreover, while CSHB 919 would facilitate service, it would not do so in a way that was unfair to the respondent. The law enforcement officer would have to give the respondent an opportunity to comply with the order before

enforcing it against him or her. This provision also would limit the possibility that an officer might enforce a nonexistent order. In such a situation, the alleged respondent almost certainly would claim that he or she was unaware of the order. The law enforcement officer then would have to notify the alleged respondent of what the officer believed were the terms of the order (based on probable cause) and would have to give the alleged respondent a reasonable opportunity to comply with those terms before making an arrest.

The bill would continue to provide immunity for law enforcement officers who enforce protective orders in good faith and would extend that immunity to the officers' probable-cause determinations and service functions, thus encouraging the enforcement of foreign protective orders.

CSHB 919 properly would expand the kinds of foreign protective orders that are enforceable to include foreign orders that protect against all violence, not just "family violence." Though Texas law requires protective orders to be issued to protect against family violence, not all other states have such requirements. A person does not have to be related, married to, divorced from, or have a child with someone to be at risk from them. Thus, the bill would ensure that all foreign orders in which a court had determined that an individual needed protection from violence and harassment would receive full faith and credit from Texas tribunals.

Finally, CSHB 919 would clarify that child-custody and support orders that are part of a protective order are enforceable if the court issuing them had jurisdiction to make them. When a foreign protective order is issued but the parties are not divorcing, the order often includes arrangements for exchanging custody of and providing support for the children. Currently, Texas courts are uncertain about whether they can enforce these provisions of foreign protective orders because they do not fall within the categories of enforceable orders — i.e., orders that are issued in suits affecting the parent-child relationship or those that fall within the current definition of protective orders against family violence. Thus, the bill would give the courts needed guidance and help ensure enforcement of all child-custody and support orders.

Registration. CSHB 919 would clarify how a foreign protective order can be registered. Even though current law allows enforcement of an unregistered

foreign protective order, it does not specify how to register such an order. By providing a specific procedure for registering a foreign protective order within Texas' law enforcement information system, the bill would encourage registration of more orders. If an order is registered, the police can determine that an order exists by contacting the Texas Criminal Information Center, which many officers can access from their in-car computers. Thus, CSHB 919 would facilitate law enforcement's determination of whether an enforceable foreign protective order exists. By so doing, the bill would reduce both the instances in which valid orders are not enforced and the instances in which invalid or expired orders are enforced erroneously.

Furthermore, the bill would ensure that sheriffs, police chiefs, and constables who received foreign protective orders for registration actually would register them because the bill would direct them specifically to do so. Presently, about 110 counties have not registered any foreign protective orders. Thus, the local law enforcement agencies responsible for registering the orders may not know that they are supposed to register foreign protective orders that are presented to them. This bill would clarify not only that foreign protective orders may be registered but that they *must* be registered in both the local and statewide databases.

The bill also would protect the officials who must register foreign protective orders from civil lawsuits and criminal prosecution if they performed their registration functions in good faith. This would encourage registration of orders by eliminating the concern that respondents would sue local officials who registered a foreign protective order if the order later was found to be expired or otherwise invalid.

**OPPONENTS
SAY:**

CSHB 919 largely is unnecessary because Texas law already includes most of the provisions of this bill. For example, Texas law already:

- ! makes foreign protective orders enforceable if the applicant for enforcement sought the order and received findings in his or her favor, the issuing court had jurisdiction, and the respondent had notice and an opportunity to be heard;
- ! allows registration of foreign protective orders; and
- ! provides immunity to law enforcement officers who enforce foreign protective orders in good faith.

The changes proposed by CSHB 919 would give law enforcement officers too much discretion in determining whether a protective order existed. An officer could find probable cause based on “any relevant information.” The bill’s language would not offer the officer enough guidance and could result in enforcement of nonexistent orders.

OTHER
OPPONENTS
SAY:

CSHB 919 would provide too much protection to those who have violated a foreign protective order. Under this bill, all that a respondent would need do to avoid punishment for violating a protective order would be to claim that they had not received notice or service of the order. At that point, the enforcing officer would have to give the respondent an opportunity to comply with the terms of the order before enforcing it. Thus, a respondent would get away with violating the foreign protective order.

Furthermore, CSHB 919 would provide no mechanism for recording and publicizing service of a foreign protective order to a respondent. Thus, the respondent could continue to violate the foreign protective order and avoid punishment as long as: (1) a different officer responded to the protected person’s calls for help each time and (2) the respondent claimed not to know of the order each time.

NOTES:

The committee substitute differs from the original bill by:

- ! retaining the portion of Family Code, sec. 86.005 that directs law enforcement agencies to establish procedures for officers to receive information about protective orders issued by another jurisdiction;
- ! specifically including the U.S. Virgin Islands and military tribunals in the definition of “state”;
- ! adding the provision directing Texas tribunals to use their own procedural rules;
- ! adding the provision allowing registration of a foreign protective order by presenting it to a constable, sheriff, or police chief responsible for registering protective orders in local and state databases;
- ! adding the requirement that a person who presents a foreign protective order to DPS must request that the order be registered;
- ! adding the statements that these remedies are not exclusive and that the Legislature intends that the law be construed to promote uniformity among states that adopt the Uniform Act;

- ! amending the provision for correcting errors in the registry;
- ! eliminating a distinction between civil and criminal proceedings as the source of the protective order;
- ! eliminating the provision that prevents courts from enforcing child-support orders that are part of foreign protective orders and inserting language that specifically permits it;
- ! eliminating the requirement that an order may not have been modified to be “valid” and thus enforceable; and
- ! deleting the provision that electronic copies of foreign protective orders were insufficient for registration.

A related bill, SB 479 by West, which would require registration of Texas-issued protective orders in DPS’ statewide law enforcement database, passed the Senate on February 19. The House Public Safety Committee reported SB 479 favorably, without amendment on March 12 and recommended for the Local, Consent, and Resolutions Calendar.

Another related bill, SB 68 by Moncrief, which would allow issuance of protective orders to prevent dating violence, passed the Senate on February 15. The House Juvenile Justice & Family Issues Committee reported SB 68 favorably, without amendment, on March 20 and recommended it for the Local, Consent, and Resolutions Calendar.