

SUBJECT: Confidentiality of family-law filings until after respondent is served

COMMITTEE: Juvenile Justice and Family Issues — favorable, without amendment

VOTE: 6 ayes — Dutton, Goodman, Baxter, Castro, Hodge, Reyna
0 nays
3 absent — Dunnam, J. Moreno, Morrison

WITNESSES: For — Charles Bacarisse; Capt. Dick Henderson, Harris County Sheriff's Office; Cecil Lacey, Harris County Constable Precinct No. 4; Susan Myres, HBA Family Law
Against — None
On — Judge Georgia Dempster

BACKGROUND: Family Code, ch. 6, subch. E provides rules and procedures for divorce cases; ch. 102 provides rules and procedures for child custody suits; ch. 82 provides rules and procedures for protective orders; and ch. 83 provides rules and procedures for receiving an emergency temporary protective order without first notifying the party to be restrained (ex parte order).
Government Code, ch. 552 generally requires court records to be open to the public and available on request.

DIGEST: HB 2964 would prohibit disclosure of any pleadings or other materials filed in a divorce or child custody suit until after service had been effected in the suit or until the 31st day after the filing date, whichever was sooner.
The bill would prohibit releasing an application for a protective order to anyone but the respondent until after it was served or after the hearing on the application, whichever was sooner. It would prohibit releasing an application for a temporary ex parte order to anyone but the respondent before the court or law enforcement officer informed the respondent of the court's order.

These provisions would apply only to a county with 3.4 million or more residents (currently, Harris County).

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

HB 2964 would prevent the problem of a spouse, parent, or alleged abuser finding out that a suit had been filed against them before the complaining party could prepare for any consequences that might arise from the filing. This would be especially important when an application for a protective order was filed, since the respondent might have violent tendencies that could be triggered by the request and the applicant might need time to find a safe place to live.

When respondents have advance notice of a protective order, it endangers the officers who must serve them because it eliminates the element of surprise. Respondents who learn of protective orders before they are served with them might try to evade service or take out their aggression on the officer.

Some attorneys' offices monitor court filings to gather names of defendants and respondents to whom they can offer their services. This can result in a respondent finding out about a suit filed against him within hours of the filing, although the plaintiff had believed that the respondent would not be informed for several days.

The bill appropriately would balance the needs of those who file suits or seek protective orders against the public's right to have access to public records. In this case, the danger that could result from early disclosure outweighs the public's right to know. Also, the bill would maintain confidentiality for only 31 days at the most, which would not be too great a burden on the public's right to know.

**OPPONENTS
SAY:**

HB 1391 would establish a blanket policy of nondisclosure of court filings in family law situations regardless of the individual circumstances. The public's interest in leaving public records open should not be overridden without good reason and solid proof that disclosure would cause harm that outweighed the public's interest. For example, the bill would hamper people's ability to learn whether their spouses had filed for divorce, because they would have to check court filings themselves.

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**OTHER
OPPONENTS
SAY:**

HB 1391 should apply to all counties, because the dangers that the bill seeks to address exist throughout the state.

NOTES:

A similar bill during the 77th Legislature, HB 2964 by Hamric, passed the House late in the session but died in the Senate Jurisprudence Committee.