

SUBJECT: Allowing civil and criminal enforcement of agreed protective orders

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 5 ayes — Dutton, Goodman, Castro, Nixon, Strama
0 nays
4 absent — Y. Davis, Dunnam, J. Moreno, Thompson

WITNESSES: For — Annalynn Cox, Travis County Attorney's Office; Laura Wolf, Texas Council on Family Violence
Against — None

BACKGROUND: An adult member of a family or household may file an application for a protective order to protect the applicant and any other family member from another family member. An application also may be filed for the protection of any person alleged to be a victim of family violence by a prosecuting attorney or the Department of Family and Protective Services.

After notice and a hearing, and upon a showing that family violence has occurred and likely will occur again, a court may issue a protective order prohibiting a party from performing certain acts, including:

- committing family violence;
- directly or indirectly communicating with a family member;
- going near the residence or place of employment of the family member;
- possession of a child;
- stalking a family member; or
- possessing a firearm, unless the party is an on-duty peace officer authorized to carry firearms.

In some cases, parties can agree to a protective order to facilitate settlement without a hearing. Under Family Code, sec. 85.005(b), a party may agree in writing to the terms of a protective order if the court approves. After approval, the court will issue an agreed protective order

that is in the best interest of the applicant, the family or household, or a member of the family or household.

DIGEST: CSHB 1059 would amend sec. 85.005(b) by providing that an agreed protective order approved by a court would be civilly and criminally enforceable.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

SUPPORTERS SAY: CSHB 1059 would clarify to law enforcement that agreed protective orders can be enforced both criminally and civilly. Because a court can approve an agreed protective order without a hearing, findings are not required, and many judges never issue them. In some jurisdictions, as a result, agreed protective orders that do not include findings of family violence are not enforced consistently. Criminal enforceability is needed in these cases, otherwise agreed protective orders are just pieces of paper that have little value to a person seriously in need of protection from a family or household member. If the orders are not enforced, applicants or other family members are left susceptible to further harm or harassment.

According to numerous studies conducted, agreed protective orders help prevent violence. The law needs to be clarified to ensure that protective orders are properly enforced as often as possible.

OPPONENTS SAY: The bill should require judges who approve agreed protective orders to render findings of family violence. This would ensure that a party was not coerced into agreeing to certain terms of a protective order that were unnecessary or unsubstantiated.

NOTES: The substitute differs from the original bill in that it would not require a court to render a finding of family violence before approving an agreed protective order.