

- SUBJECT:** Creating a family violence exception to the waiting period for divorces
- COMMITTEE:** Judiciary and Civil Jurisprudence — committee substitute recommended
- VOTE:** 9 ayes — Hunter, Hughes, Alonzo, Branch, Jackson, Leibowitz, Madden, Martinez, Woolley
- 0 nays
- 1 present not voting — Hartnett
- 1 absent — Lewis
- WITNESSES:** For — Jessica Bennett, Texas Association for Marriage and Family Therapy; Steve Bresnen, Texas Family Law Foundation; Ken Fuller, Family Law Foundation, State Bar of Texas; Aaron Setliff, Texas Council on Family Violence; (*Registered, but did not testify*: Lauren Rose, Texas Association Against Sexual Assault)
- Against — None
- BACKGROUND:** Family Code, sec. 6.702 prohibits a court from granting a divorce before the 60th day after the date the suit for divorce was filed. The 60-day waiting period gives couples seeking to divorce an opportunity for reconciliation. Current law provides no exceptions to the waiting period.
- When an actor commits an offense involving family violence against another, the aggrieved party, a member of the party’s family or household, a prosecuting attorney, or the Department of Protective or Regulatory Services may request a protective order from a court. A protective order may set restrictions on an offending actor's right to access or contact the aggrieved party or members of the party's household or family. Under Code of Criminal Procedure, art. 17.292, a magistrate also may issue an order for emergency protection similar to a protective order when a defendant appears before the magistrate after an arrest for a family violence offense.
- Under Family Code, sec. 71.004, “family violence” is any non-defensive act by a family or household member that is intended to cause or that

threatens physical harm, bodily injury, assault or sexual assault against another family or household member. Family violence also includes dating violence.

DIGEST: CSHB 72 would create two exceptions to the 60-day waiting period for a divorce. It would waive the waiting period when the respondent to a suit for divorce had been finally convicted of or received deferred adjudication for family violence against the petitioner or a member of the petitioner's household. It also would waive the waiting period when the petitioner had obtained a protective order or a magistrate's order for emergency protection against the respondent because of family violence committed during the marriage.

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, 2009. The bill would apply only to a suit for divorce filed on or after its effective date.

SUPPORTERS SAY: CSHB 72 would make it easier for victims of family violence to leave abusive marriages. The current waiting requirement subjects victims who file for divorce to a protracted, often dangerous period during which a perpetrator of family violence may commit additional abusive acts in an attempt to reassert control over the relationship. Victims who flee their abusers, often with minimal financial resources or means of transportation, also must bear the inconvenience and risk of having to finalize their divorces by returning to the county with jurisdiction over the proceedings, which frequently is where their abusers reside.

CSHB 72 would provide an appropriate balance between protecting victims of family violence and respecting the general public policy preference for a 60-day "cooling off" period for couples seeking a divorce. The committee substitute would create a narrowly targeted family violence exception that would affect only a small number of divorce cases.

OPPONENTS SAY: CSHB 72 should expand the exception to the waiting requirement by authorizing a judge to grant a divorce in cases in which the judge had sufficient evidence to believe that family violence had occurred, even if there had not been a final conviction.

NOTES:

The committee substitute differs from the bill as filed by authorizing a court to grant an expedited divorce where the respondent has received deferred adjudication for an offense involving family violence; incorporating the definition of “family violence” in Family Code, sec. 71.004, including family violence offenses against any member of a divorce petitioner’s household or family; and deleting language that would have allowed a judge to grant an expedited divorce if the court found evidence sufficient that the respondent had committed family violence during the marriage.

The companion bill, SB 24 by Zaffirini, was reported favorably as substituted by the Senate Jurisprudence Committee on April 20 and recommended for the Local and Uncontested Calendar.

A related bill, HB 3632 by Hartnett, and its Senate companion, SB 1783 by Janek, were considered by the 80th Legislature during the 2007 regular session, but were not enacted. Those bills would have waived the 60-day waiting requirement for a petitioner whose spouse had been finally convicted of an offense that included an element of an assault or threat against the petitioner. SB 1783 passed the Senate on the Local and Uncontested Calendar and was reported favorably by the House State Affairs Committee, but was recommitted on a point of order when it was considered in the House on the General State Calendar in lieu of HB 3632.