

BILL ANALYSIS

C.S.H.B. 3128
By: Dale
Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties observe that a court that makes certain findings regarding family violence may issue an ex parte protective order without notice to the individual who is alleged to have committed family violence. The parties continue that, once issued, this order must be served to the respondent of the order for it to become effective and that victims can be left in a vulnerable position for too long while the alleged offender is being located. C.S.H.B. 3128 seeks to establish certain requirements for local law enforcement to follow when serving protective orders.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3128 amends the Family Code to require a constable's office or law enforcement agency with the responsibility for serving a notice of an application for a protective order together with an associated temporary ex parte order in a case involving family violence to make the initial attempt to serve the notice and order, and two additional attempts if necessary, within the 48-hour period immediately following receipt of the notice and order by the office or agency. The bill requires the constable's office or law enforcement agency, if the initial attempt to serve the notice and order is unsuccessful, to make at least one of the subsequent two attempts at a different location than the location of the initial attempt, except in cases where a different location is unknown and cannot be identified through a background check of the respondent conducted by the constable's office or law enforcement agency. The bill requires the constable's office or law enforcement agency to send a copy of the notice and order to the respondent by first class mail to the respondent's last known mailing address within the 24-hour period immediately following receipt of the notice and order by the office or agency, unless personal service is completed during that period or a mailing address for the respondent is unknown.

C.S.H.B. 3128 requires a constable's office or law enforcement agency that is unable to personally serve a notice of an application for a protective order and an associated temporary ex parte order within the required 48-hour period after at least three attempts made in compliance with the bill's provisions to seek a court order authorizing the office or agency to serve the respondent by affixing the notice and order to the front door of the respondent's last known residence. The bill requires the office or agency to provide the court with a sworn statement that describes the efforts made to personally serve the respondent, including the times and locations of each attempt to provide personal service. The bill establishes that, if the court orders that

alternate method of service of affixing the notice and order to the front door of the respondent's last known residence, the method of service is sufficient to subject the respondent to being taken into custody for a violation of the temporary ex parte order that occurs after service of the order.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3128 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 82.043, Family Code, is amended by adding Subsections (c-1), (c-2), and (c-3) to read as follows:

(c-1) A constable's office or law enforcement agency with responsibility for serving a notice of an application for a protective order together with an associated temporary ex parte order issued under Section 83.001 shall:

(1) make the initial attempt to serve the notice and order, and two additional attempts if necessary, within the 48-hour period immediately following receipt of the notice and order by the office or agency;

(2) if the initial attempt to serve the notice and order is unsuccessful, make at least one of the subsequent two attempts at a different location than the location of the initial attempt, except as provided by Subsection (c-2); and

(3) send a copy of the notice and order to the respondent by first class mail to the respondent's last known mailing address within the 24-hour period immediately following receipt of the notice and order by the office or agency, unless personal service is completed during that period or a mailing address for the respondent is unknown.

(c-2) Subsection (c-1)(2) does not apply if a different location is unknown and cannot be identified through a background check of the respondent conducted by the constable's office or law enforcement agency.

(c-3) A constable's office or law enforcement agency that is unable to

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 82.043, Family Code, is amended by adding Subsections (c-1), (c-2), (c-3), and (c-4) to read as follows:

(c-1) A constable's office or law enforcement agency with responsibility for serving a notice of an application for a protective order together with an associated temporary ex parte order issued under Section 83.001 shall:

(1) make the initial attempt to serve the notice and order, and two additional attempts if necessary, within the 48-hour period immediately following receipt of the notice and order by the office or agency;

(2) if the initial attempt to serve the notice and order is unsuccessful, make at least one of the subsequent two attempts at a different location than the location of the initial attempt, except as provided by Subsection (c-2); and

(3) send a copy of the notice and order to the respondent by first class mail to the respondent's last known mailing address within the 24-hour period immediately following receipt of the notice and order by the office or agency, unless personal service is completed during that period or a mailing address for the respondent is unknown.

(c-2) Subsection (c-1)(2) does not apply if a different location is unknown and cannot be identified through a background check of the respondent conducted by the constable's office or law enforcement agency.

(c-3) A constable's office or law enforcement agency that is unable to

personally serve a notice of an application for a protective order and an associated temporary ex parte order issued under Section 83.001 within the 48-hour period required by Subsection (c-1) after at least three attempts made in compliance with Subsection (c-1) may serve the respondent by affixing the notice and order to the front door of the respondent's last known residence.

The method of service authorized by this subsection:

(1) does not require a court order directing that method of service, notwithstanding any other provision of law or the Texas Rules of Civil Procedure;

(2) is sufficient to subject the respondent to being taken into custody for a violation of the temporary ex parte order that occurs after service of the order, as provided by Section 25.07, Penal Code, and Section 11c, Article I, Texas Constitution; and

(3) does not affect any other method of service authorized by law or the Texas Rules of Civil Procedure.

SECTION 2. Section 82.043, Family Code, as amended by this Act, applies only to a notice of an application for a protective order and associated temporary ex parte order received by a constable's office or law enforcement agency on or after the effective date of this Act. An application for a protective order and associated temporary ex parte order received by a constable's office or law enforcement agency before the effective date of this Act is governed by the law in effect on the date the application and order are received, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2015.

personally serve a notice of an application for a protective order and an associated temporary ex parte order issued under Section 83.001 within the 48-hour period required by Subsection (c-1) after at least three attempts made in compliance with Subsection (c-1) shall seek a court order authorizing the office or agency to serve the respondent by affixing the notice and order to the front door of the respondent's last known residence. The office or agency shall provide the court with a sworn statement that describes the efforts made to personally serve the respondent, including the times and locations of each attempt to provide personal service.

(c-4) If the court orders the alternate method of service described by Subsection (c-3), that method of service is sufficient to subject the respondent to being taken into custody for a violation of the temporary ex parte order that occurs after service of the order, as provided by Section 25.07, Penal Code, and Section 11c, Article I, Texas Constitution.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.