BILL ANALYSIS

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Civil protective orders (POs), which prohibit batterers and assailants from interacting with their victims, are essential tools in securing the safety of sexual assault and family violence survivors. Current statutory language creates unintended obstacles for survivors who seek protective orders. To ensure that these laws function as they were intended and that survivors are able to receive the protective orders they need, S.B. 801 amends the Family Code and Code of Criminal Procedure to clarify when a hearing can be held and whether the violation of an agreed order is enforceable as a criminal offense and to expand standing to apply for a PO on behalf of a child or an adult under guardianship.

First, S.B. 801 clarifies that an agreed PO is criminally enforceable even if, in order to facilitate settlement, the court omits a finding that family violence has occurred and is likely to occur in the future. Second, S.B. 801 clarifies that courts may render a default judgment for a PO as long as the respondent was served 48 hours in advance and proof of service is on file with the court. Third, S.B. 801 eliminates unnecessary restrictions on which adults may intervene in sexual abuse on behalf of children and vulnerable adults by granting standing to any adult to apply for a sexual assault, stalking, or human trafficking PO on behalf of a child or an adult who is under guardianship.

These recommendations were developed through a 2018 working group of advocates and attorneys who represent survivors of domestic and sexual violence from The Texas Association Against Sexual Assault, the Williamson County Attorney's Office, The University of Texas at Austin School of Law, the Texas Advocacy Project, the Texas Council on Family Violence, Texas RioGrande Legal Aid, and the Texas Legal Services Center.

As proposed, S.B. 801 amends current law relating to protective orders.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 85.005(a) and (b), Family Code, as follows:

> (a) Authorizes the parties to a proceeding, to facilitate settlement, to agree in writing to a protective order, as provided by Sections 85.021 (Requirements of Order Applying to Any Party) and 85.022 (Requirements of Order Applying to Person Who Committed Family Violence), rather than to the terms of a protective order as provided by Section 85.021. Prohibits the court from approving an agreement that requires the applicant for the protective order to do or refrain from doing an act under Section 85.022.

> (b) Provides that an agreed protective order is enforceable civilly or criminally, regardless of whether the court makes the findings required by Section 85.001 (Required Findings and Orders). Deletes existing text relating to a respondent's written agreement and a court's approval to the terms of the protective order.

SECTION 2. Amends Section 85.006(a), Family Code, as follows:

(a) Makes nonsubstantive changes. Authorizes a court, notwithstanding Rule 107 (Return of Service), Texas Rules of Civil Procedure, to render a protective order that is binding on a respondent who does not attend a hearing if:

(1) creates this subdivision from existing text; and

(2) proof of service was filed with the court before the hearing.

SECTION 3. Amends Article 7A.01(a), Code of Criminal Procedure, as follows:

(a) Authorizes the following persons to file an application for a protective order under this chapter (Protective Order For Victims of Sexual Assault or Abuse, Stalking, or Trafficking) without regard to the relationship between the applicant and the alleged offender:

(1) a person who is the victim of an offense under Section 20A.02 (Trafficking of Persons), 20A.03 (Continuous Trafficking of Persons), 21.02 (Continuous Sexual Abuse of Young Child or Children), 21.11 (Indecency With a Child), 22.011 (Sexual Assault), 22.021 (Aggravated Sexual Assault), or 42.072 (Stalking), or 43.05 (Compelling Prostitution), rather than under Section 21.02, 21.11, 22.011, 22.021, or 42.072, Penal Code;

(2) any adult acting on behalf of a child or on behalf of an adult ward who is the victim of an offense listed in Subdivision (1), rather than a person who is the victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code; or

(3) a prosecuting attorney acting on behalf of a person described by Subdivision (1) or (2), rather than by Subdivisions (1), (2), (3), or (4).

Deletes existing text of Subdivision (3) relating to a parent or guardian acting on behalf of a person younger than 17 who is the victim of an offense listed in Subdivision (1) and deletes existing Subdivision (4) relating to a parent or guardian acting on behalf of a person younger than 18 who is a victim of a crime relating to Subdivision (2). Redesignates Subdivision (5) as Subdivision (3) and makes nonsubstantive changes throughout.

SECTION 4. Amends Article 7A.07, Code of Criminal Procedure, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Authorizes the following persons to file at any time an application with the court to rescind the protective order:

(1) a victim of an offense listed in Article 7A.01(a)(1) who is 18, rather than 17, years of age or older;

(2) subject to Subsection (c), a parent or guardian acting on behalf of a victim of an offense listed in Article 7A.01(a)(1) who is younger than 18, rather than 17, years of age; or

(3) the person who filed the application for the protective order.

(c) Creates this subsection from existing Subdivision (2). Prohibits a parent or guardian from filing an application to rescind the protective order under Subsection (b)(2) if the parent or guardian is the alleged offender subject to the protective order, rather than authorizing a victim of an offense listed in Article 7A.01(a)(2) or a parent or guardian acting on behalf of a victim who is younger than 18 years of age to file at any time an application with the court to rescind the protective order.

SECTION 5. Makes application of Section 85.005 (Agreed Order), Family Code, as amended by this Act, prospective.

SECTION 6. Makes application of Section 85.006 (Default Order), Family Code, as amended by this Act, prospective.

SECTION 7. Makes application of Chapter 7A, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 8. Effective date: September 1, 2019.