

BILL ANALYSIS

Senate Research Center

S.B. 1458
By: Zaffirini
Jurisprudence
4/12/2021
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Courts do not use a standardized form to issue protective orders, magistrates orders for emergency protection, and temporary ex parte orders, some of which prohibit a person from possessing a firearm unless he or she is a peace officer. The variation in paperwork issued can delay the Department of Public Safety of the State of Texas (DPS) in uploading information to the Federal Bureau of Investigation's National Instant Background Check System (NICS). Accordingly, subjects of protective orders could pass a background check and purchase a firearm before DPS enters their information into the NICS database, which could have deadly consequences. Courts issue protective orders in cases of family violence, sexual assault, human trafficking, and stalking. Persons against whom courts issue protective orders could take drastic retaliatory action, especially when there is a long-term abusive relationship involved.

S.B. 1458 would require persons applying for protective orders and courts and magistrates issuing protective orders to use standardized forms, allowing DPS to discern immediately if a protective order prohibits a person from possessing a firearm. This change would ensure information regarding these orders is submitted quickly and efficiently to the Federal Bureau of Investigation's database of persons prohibited from possessing a firearm. This change would save lives by preventing persons from buying a gun shortly after a protective order is issued when the possibility that the situation will escalate is substantial.

As proposed, S.B. 1458 amends current law relating to standardized forms and materials for the issuance of protective orders, magistrate's orders for emergency protection, and temporary ex parte 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 Article 7B.001, Code of Criminal Procedure, by adding Subsection (c), to require a person filing an application under Article 7B.001 (Application for Protective Order) to use the protective order application form created by the Office of Court Administration of the Texas Judicial System (OCA) under Section 72.036, Government Code, that is available on OCA's Internet website.

SECTION 2. Amends Article 7B.002, Code of Criminal Procedure, to conform to Chapter 955 (S.B. 194), Acts of the 86th Legislature, Regular Session, 2019, and further amends it as follows:

Art. 7B.002. TEMPORARY EX PARTE ORDER. (a) Creates this subsection from existing text. Authorizes the court, if the court finds from the information contained in an application for a protective order that there is a clear and present danger of certain harms, including indecent assault, without further notice to the alleged offender and without a hearing, to issue a temporary ex parte order for the protection of the applicant or any other member of the applicant's family or household.

(b) Requires the court to use the standardized temporary ex parte order form created by OCA under Section 72.036, Government Code, to issue a temporary ex parte order under this article.

SECTION 3. Amends Article 7B.003, Code of Criminal Procedure, by adding Subsection (c), to require the court to use the standardized protective order form created by OCA under Section 72.036, Government Code, to issue a protective order under Article 7B.003 (Required Findings; Issuance of Protective Order).

SECTION 4. Amends Article 17.292, Code of Criminal Procedure, by adding Subsection (d-1), to require the magistrate to use the standardized order for emergency protection form created by OCA under Section 72.036, Government Code, to issue an order for emergency protection under Article 17.292 (Magistrate's Order for Emergency Protection).

SECTION 5. Amends Section 82.004, Family Code, as follows:

Sec. 82.004. New heading: FORM AND CONTENT OF APPLICATION. Requires a person filing an application under Chapter 82 (Applying for Protective Order) to use the protective order application form created by OCA under Section 72.036, Government Code, that is available on OCA's Internet website, and to include certain information in the application. Makes a nonsubstantive change.

SECTION 6. Amends Chapter 83, Family Code, by adding Section 83.007, as follows:

Sec. 83.007. STANDARD TEMPORARY EX PARTE ORDER FORM. Requires the court to use the standardized temporary ex parte order form created by OCA under Section 72.036, Government Code, to issue a temporary ex parte order under Chapter 83 (Temporary Ex Parte Orders).

SECTION 7. Amends Subchapter B, Chapter 85, Family Code, by adding Section 85.0225, as follows:

Sec. 85.0225. STANDARD PROTECTIVE ORDER FORM. Requires the court to use the standardized protective order form created by OCA under Section 72.036, Government Code, to issue a protective order under Chapter 85 (Issuance of Protective Order).

SECTION 8. Amends Subchapter C, Chapter 72, Government Code, by adding Section 72.036, as follows:

Sec. 72.036. PROTECTIVE ORDER APPLICATIONS, FORMS, AND MATERIALS.
(a) Requires OCA to develop and make available on OCA's Internet website standardized forms and other materials necessary to apply for, issue, deny, revise, rescind, serve, and enforce any of the following:

(1) a protective order under Title 4 (Protective Orders and Family Violence), Family Code, or Subchapter A (Protective Order for Victims of Sexual Assault or Abuse, Stalking, or Trafficking), Chapter 7B (Protective Orders), Code of Criminal Procedure;

(2) a magistrate's order for emergency protection under Article 17.292, Code of Criminal Procedure; or

(3) a temporary ex parte order under Chapter 83, Family Code, or Article 7B.002, Code of Criminal Procedure.

(b) Requires that each standardized form developed under Subsection (a) to be used by a magistrate or court issuing an order include the prohibitions and requirements imposed on the respondent, the duration of the order, the potential

consequences of violating the order, and any other admonishments or warnings required by law.

(c) Requires that the materials developed under Subsection (a) include a procedure to ensure that a copy of the order is transmitted to all required parties and all relevant information is entered into the statewide law enforcement information system maintained by the Department of Public Safety of the State of Texas under Section 411.042 (Bureau of Identification and Records) and any other applicable databases.

(d) Requires OCA, in developing the required applications, forms, and materials, to consult with individuals and organizations with knowledge and experience in the issues of protective orders, including the Texas Council on Family Violence, and to give consideration to promoting uniformity of law among the states that enact the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

SECTION 9. Requires OCA, as soon as practicable after the effective date of this Act, but not later than June 1, 2022, to create and make available on OCA's Internet website all forms and materials required by Section 72.036, Government Code, as added by this Act. Requires OCA, if OCA completes the forms and materials required by Section 72.036, Government Code, as added by this Act, before June 1, 2022, to notify each court clerk, judge, magistrate, and prosecution agency in Texas of the availability of the forms and materials.

SECTION 10. Makes application of Article 7B.001, Code of Criminal Procedure, as amended by this Act, and Section 82.004, Family Code, as amended by this Act, prospective to June 1, 2022.

SECTION 11. Makes application of Articles 7B.002, 7B.003, and 17.292, Code of Criminal Procedure, as amended by this Act, and Sections 83.007 and 85.0225, Family Code, as added by this Act, prospective to June 1, 2022.

SECTION 12. Provides that, to the extent of any conflict, this Act prevails over another Act of the 87th Legislature, Regular Session, 2021, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 13. Effective date: upon passage or September 1, 2021.