BILL ANALYSIS

Senate Research Center   S.B. 48

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Jurisprudence
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Orders for emergency protection and protective and temporary ex parte orders may be issued in family violence, sexual assault, human trafficking, and stalking cases and may prohibit defendants from possessing firearms. Currently, courts do not use standardized forms when issuing these orders. The paperwork variations can result in delays when the Department of Public Safety (DPS) updates information regarding persons prohibited from possessing firearms into the FBI's National Instant Criminal Background Check System (NICS), which could allow an abuser to pass a background check and have deadly consequences for a person under the court's protection.

S.B. 48 would require persons applying for protective orders (PO) and courts and magistrates issuing POs to use standardized forms, allowing DPS to discern immediately if a protective order prohibits a person from possessing a firearm. Failure, however, to use the required form would not affect the order's validity. This bill would allow DPS to transfer the information regarding these orders quickly and efficiently to the FBI's database and help better protect the lives of crime victims.

S.B. 48 amends current law relating to the issuance and effectiveness 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 72.039, Government Code, that is available on OCA's Internet website.

SECTION 2. Amends Subchapter A, Chapter 7B, Code of Criminal Procedure, by adding Article 7B.0021, as follows:

Art. 7B.0021. STANDARD TEMPORARY EX PARTE ORDER FORM. (a) Requires the court to use the standardized temporary ex parte order form created by OCA under Section 72.039, Government Code, to issue a temporary ex parte order under Article 7B.002 (Temporary Ex Parte Order).

(b) Provides that a court's failure to use the standardized temporary ex parte order form as required by Subsection (a) does not affect the validity or enforceability of the temporary ex parte order issued.

SECTION 3. Amends Article 7B.003, Code of Criminal Procedure, by adding Subsections (d) and (e), as follows:

(d) Requires the court to use the standardized protective order form created by OCA under Section 72.039, Government Code, to issue a protective order under Article 7B.003 (Required Findings; Issuance of Protective Order).

(e) Provides that a court's failure to use the standardized protective order form as required under Subsection (d) does not affect the validity or enforceability of the protective order issued.

SECTION 4. Amends Article 17.292, Code of Criminal Procedure, by adding Subsections (d-1) and (d-2), as follows:

(d-1) Requires the magistrate to use the standardized order for emergency protection form created by OCA under Section 72.039, Government Code, to issue an order for emergency protection under Article 17.292 (Magistrate's Order for Emergency Protection).

(d-2) Provides that a magistrate's failure to use the standardized order for emergency protection form as required under Subsection (d-1) does not affect the validity or enforceability of the order for emergency protection issued.

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 72.039, Government Code, that is available on OCA's Internet website and requires an applicant to include certain information in the application.

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

Sec. 83.007. STANDARD TEMPORARY EX PARTE ORDER FORM. (a) Requires the court to use the standardized temporary ex parte order form created by OCA under Section 72.039, Government Code, to issue a temporary ex parte order under Chapter 83 (Temporary Ex Parte Orders).

(b) Provides that a court's failure to use the standardized temporary ex parte order form as required by Subsection (a) does not affect the validity or enforceability of the temporary ex parte order issued.

SECTION 7. Amends Subchapter B, Chapter 85, Family Code, by adding Section 85.0221, as follows:

Sec. 85.0221. STANDARD PROTECTIVE ORDER FORM. (a) Requires the court to use the standardized protective order form created by OCA under Section 72.039, Government Code, to issue a protective order under Chapter 85 (Issuance of Protective Order).

(b) Provides that a court's failure to use the standardized protective order form as required by Subsection (a) does not affect the validity or enforceability of the protective order issued.

SECTION 8. Amends Subchapter C, Chapter 72, Government Code, by adding Section 72.039, as follows:

Sec. 72.039. 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, Indecent Assault, Stalking, or Trafficking), Chapter 7B, 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:

(1) the prohibitions and requirements imposed on the respondent;

(2) the duration of the order;

(3) the potential consequences of violating the order; and

(4) 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 required by Section 411.042(b)(6) (relating to the collection of certain information pertaining to protective orders) is entered into the statewide law enforcement information system maintained by the Department of Public Safety of the State of Texas (DPS) 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:

(1) consult with individuals, organizations, and state agencies that have knowledge and experience in the issues of protective orders, including:

(A) the Texas Council on Family Violence;

(B) DPS;

(C) nonprofit organizations that advocate for the survivors of sexual assault or family violence;

(D) individuals, organizations, and state agencies that provide training to judges, prosecutors, and law enforcement officers;

(E) the judges or justices of courts of varying jurisdictions;

(F) law enforcement agencies;

(G) prosecutors; and

(H) an organization that receives federal funding under the legal assistance for victims grant program and that has expertise in issues related to family violence, sexual assault, or stalking; and

(2) give consideration to promoting uniformity of law among the states that enact the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

SECTION 9. (a) Defines "office" and "protective order."

    (b) Requires OCA to conduct a study on the effectiveness of protective orders in protecting victims of violence in this state.

    (c) Requires DPS, notwithstanding any other law, to assist OCA in conducting the study required by this section by providing OCA criminal history records at the time and in the form requested by OCA.

    (d) Requires OCA to create a report based on the study conducted under this section. Requires that the report include:

        (1) an evaluation of the effectiveness of protective orders in protecting victims of violence in this state by deterring the person who is the subject of the order from engaging in the conduct prohibited under those orders; and

        (2) legislative recommendations on methods to improve the enforcement of protective orders in this state.

    (e) Requires OCA, not later than September 1, 2024, to submit the report required under Subsection (c) of this section to the governor, lieutenant governor, speaker of the house of representatives, and appropriate committees of the legislature.

    (f) Provides that this section expires January 1, 2025.

SECTION 10. Requires OCA, as soon as practicable after the effective date of this Act, but not later than June 1, 2024, to create and make available on OCA's Internet website all forms and materials required by Section 72.039, Government Code, as added by this Act. Requires OCA, if OCA completes the forms and materials required by Section 72.039, Government Code, as added by this Act, before June 1, 2024, to notify each court clerk, judge, magistrate, and prosecution agency in the state of the availability of the forms and materials.

SECTION 11. 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, 2024.

SECTION 12. Makes application of Articles 7B.003 and 17.292, Code of Criminal Procedure, as amended by this Act, Article 7B.0021, Code of Criminal Procedure, as added by this Act, and Sections 83.007 and 85.0221, Family Code, as added by this Act, prospective to June 1, 2024.

SECTION 13. Effective date: upon passage or September 1, 2023.