By:  Meza, et al. (Senate Sponsor - Whitmire) H.B. No. 1432

(In the Senate - Received from the House May 1, 2023; May 1, 2023, read first time and referred to Committee on Criminal Justice; May 19, 2023, reported favorably by the following vote: Yeas 7, Nays 0; May 19, 2023, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Whitmire        X

Flores          X

Bettencourt     X

Hinojosa        X

Huffman         X

King            X

Miles           X

A BILL TO BE ENTITLED

AN ACT

relating to required findings for the issuance of a protective order.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 81.001, Family Code, is amended to read as follows:

Sec. 81.001.  ENTITLEMENT TO PROTECTIVE ORDER. A court shall render a protective order as provided by Section 85.001(b) if the court finds that family violence has occurred [~~and is likely to occur in the future~~].

SECTION 2.  Section 81.0015, Family Code, is amended to read as follows:

Sec. 81.0015.  PRESUMPTION. For purposes of this subtitle, there is a presumption that family violence has occurred [~~and is likely to occur in the future~~] if:

(1)  the respondent has been convicted of or placed on deferred adjudication community supervision for any of the following offenses against the child for whom the petition is filed:

(A)  an offense under Title 5, Penal Code, for which the court has made an affirmative finding that the offense involved family violence under Article 42.013, Code of Criminal Procedure; or

(B)  an offense under Title 6, Penal Code; and

(2)  the respondent's parental rights with respect to the child have been terminated[~~; and~~

[~~(3) the respondent is seeking or attempting to seek contact with the child~~].

SECTION 3.  Sections 85.001(a), (b), and (c), Family Code, are amended to read as follows:

(a)  At the close of a hearing on an application for a protective order, the court shall find whether[~~:~~

[~~(1)~~] family violence has occurred[~~; and~~

[~~(2) family violence is likely to occur in the future~~].

(b)  If the court finds that family violence has occurred [~~and that family violence is likely to occur in the future~~], the court:

(1)  shall render a protective order as provided by Section 85.022 applying only to a person found to have committed family violence; and

(2)  may render a protective order as provided by Section 85.021 applying to both parties that is in the best interest of the person protected by the order or member of the family or household of the person protected by the order.

(c)  A protective order that requires the first applicant to do or refrain from doing an act under Section 85.022 shall include a finding that the first applicant has committed family violence [~~and is likely to commit family violence in the future~~].

SECTION 4.  Section 85.002, Family Code, is amended to read as follows:

Sec. 85.002.  EXCEPTION FOR VIOLATION OF EXPIRED PROTECTIVE ORDER.  If the court finds that a respondent violated a protective order by committing an act prohibited by the order as provided by Section 85.022, that the order was in effect at the time of the violation, and that the order has expired after the date that the violation occurred, the court, without the necessity of making the finding [~~findings~~] described by Section 85.001(a), shall render a protective order as provided by Section 85.022 applying only to the respondent and may render a protective order as provided by Section 85.021.

SECTION 5.  Section 85.025(a-1), Family Code, is amended to read as follows:

(a-1)  The court may render a protective order sufficient to protect the applicant and members of the applicant's family or household that is effective for a period that exceeds two years if the court finds that the person who is the subject of the protective order:

(1)  committed an act constituting a felony offense involving family violence against the applicant or a member of the applicant's family or household, regardless of whether the person has been charged with or convicted of the offense;

(2)  caused serious bodily injury to the applicant or a member of the applicant's family or household; or

(3)  was the subject of two or more previous protective orders rendered:

(A)  to protect the person on whose behalf the current protective order is sought; and

(B)  after a finding by the court that the subject of the protective order[~~:~~

[~~(i)~~]  has committed family violence[~~; and~~

[~~(ii) is likely to commit family violence in the future~~].

SECTION 6.  Article 7B.052, Code of Criminal Procedure, is amended to read as follows:

Art. 7B.052.  REQUIRED FINDINGS; ISSUANCE OF PROTECTIVE ORDER.  The court shall issue a protective order in the manner provided by Title 4, Family Code, if, in lieu of the finding that family violence occurred [~~and is likely to occur in the future~~] as required by Section 85.001, Family Code, the court finds that:

(1)  probable cause exists to believe that an offense under Section 42.072, Penal Code, was committed; and

(2)  the nature of the scheme or course of conduct engaged in by the defendant in committing the offense indicates the defendant is likely in the future to engage in conduct prohibited by Section 42.072(a)(1), (2), or (3), Penal Code.

SECTION 7.  Article 7B.102, Code of Criminal Procedure, is amended to read as follows:

Art. 7B.102.  REQUIRED FINDINGS; ISSUANCE OF PROTECTIVE ORDER.  The court shall issue a protective order in the manner provided by Title 4, Family Code, if, in lieu of the finding that family violence occurred [~~and is likely to occur in the future~~] as required by Section 85.001, Family Code, the court finds that:

(1)  probable cause exists to believe that an offense under Title 5, Penal Code, or Section 28.02, 28.03, or 28.08, Penal Code, was committed;

(2)  the defendant committed the offense because of bias or prejudice; and

(3)  the nature of the scheme or course of conduct engaged in by the defendant in committing the offense indicates the defendant is likely in the future to:

(A)  engage in conduct prohibited by Title 5, Penal Code, or Section 28.02, 28.03, or 28.08, Penal Code; and

(B)  engage in that conduct described by Paragraph (A) because of bias or prejudice.

SECTION 8.  The changes in law made by this Act apply only to a protective order rendered on or after the effective date of this Act. A protective order rendered before the effective date of this Act is governed by the law in effect on the date the order was rendered, and the former law is continued in effect for that purpose.

SECTION 9.  This Act takes effect September 1, 2023.

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