

BILL ANALYSIS

C.S.H.B. 2727
By: Lucio III
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the authorization to apply for a writ to enter a residence and retrieve specific items of personal property while accompanied by a peace officer should be extended to those unable to enter a residence because the current occupant poses a clear and present danger of family violence to the applicant or the applicant's dependent. C.S.H.B. 2727 seeks to offer protection for those at risk of family violence when retrieving property by providing for such extension.

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. 2727 amends the Property Code to add, as an alternative to the requirement that an application for a writ to authorize the applicant to enter a residence and retrieve specific items of personal property accompanied by a peace officer certify the applicant's inability to enter the residence because the current occupant of the residence has denied the applicant access to the residence, that the application certify the applicant's inability to enter the residence because the current occupant poses a clear and present danger of family violence to the applicant or the applicant's dependent. The bill removes the condition that an applicant's dependent who requires certain personal items located in the residence be a minor in order to meet application requirements and includes copies of electronic records containing legal or financial documents among the items that the applicant or the applicant's dependent may retrieve under a writ.

C.S.H.B. 2727 authorizes a justice of the peace to issue such a writ for entry and property retrieval without providing to the current occupant notice and opportunity to be heard if the justice finds at a hearing on the application that certain conditions for the writ are established, that the current occupant poses a clear and present danger of family violence to the applicant or the applicant's dependent, and that the personal harm to be suffered by the applicant or the applicant's dependent will be immediate and irreparable if the application is not granted. The bill authorizes a justice of the peace issuing such a writ to waive requirements relating to providing a bond to the court. The bill authorizes the justice of the peace to recess a hearing on a writ application to notify the current occupant by telephone that the current occupant may attend the hearing or bring to the court the personal property listed in the application and requires the justice of the peace to reconvene the hearing before 5 p.m. that day regardless of whether the current occupant attends the hearing or brings the personal property to the court. The bill

requires that a temporary ex parte writ state the period, not to exceed five days, during which the writ is valid. The bill extends to an applicant or occupant, as applicable, under a temporary ex parte writ the procedure for a peace officer to assist the applicant in making authorized entry and retrieving items and the procedure for an occupant to make a complaint. The bill expands the conduct that constitutes the offense relating to interfering with a person or peace officer entering a residence and retrieving personal property under the authority of a writ to include interfering with a person or peace officer entering a residence and retrieving personal property under the authority of a temporary ex parte writ.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2727 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. Chapter 24A, Property Code, is amended by amending Sections 24A.001 and 24A.002 and adding Section 24A.0021 to read as follows:

Sec. 24A.001. DEFINITIONS

~~[DEFINITION]~~. In this chapter:

(1) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(2) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(3) "Peace [~~peace~~] officer" means a person listed under Article 2.12(1) or (2), Code of Criminal Procedure.

Sec. 24A.002. WRIT ~~[ORDER]~~
AUTHORIZING ENTRY AND

PROPERTY RETRIEVAL; PEACE OFFICER TO ACCOMPANY. (a) If a person is unable to enter the person's residence or former residence to retrieve personal property belonging to the person or the person's dependent because the current occupant is denying the person entry, the person may apply to the justice court for a writ ~~[an order]~~ authorizing the person to enter the residence accompanied by a peace officer to retrieve specific items of personal property.

(b) An application under Subsection (a) must:

(1) certify that the applicant is unable to enter the residence because the current occupant of the residence;

(A) has denied the applicant access to the

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 24A, Property Code, is amended by amending Sections 24A.001 and 24A.002 and adding Section 24A.0021 to read as follows:

Sec. 24A.001. DEFINITIONS

~~[DEFINITION]~~. In this chapter:

(1) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(2) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(3) "Peace [~~peace~~] officer" means a person listed under Article 2.12(1) or (2), Code of Criminal Procedure.

Sec. 24A.002. WRIT ~~[ORDER]~~
AUTHORIZING ENTRY AND

PROPERTY RETRIEVAL; PEACE OFFICER TO ACCOMPANY. (a) If a person is unable to enter the person's residence or former residence to retrieve personal property belonging to the person or the person's dependent because the current occupant is denying the person entry, the person may apply to the justice court for a writ ~~[an order]~~ authorizing the person to enter the residence accompanied by a peace officer to retrieve specific items of personal property.

(b) An application under Subsection (a) must:

(1) certify that the applicant is unable to enter the residence because the current occupant of the residence;

(A) has denied the applicant access to the

residence; or

(B) poses a clear and present danger of family violence to the applicant or the applicant's dependent;

(2) certify that, to the best of the applicant's knowledge, the applicant is not:

(A) the subject of an active protective order under Title 4, Family Code, a magistrate's order for emergency protection under Article 17.292, Code of Criminal Procedure, or another court order prohibiting entry to the residence; or

(B) otherwise prohibited by law from entering the residence;

(3) allege that the applicant or the applicant's ~~minor~~ dependent requires personal items located in the residence that are only of the following types:

(A) medical records;

(B) medicine and medical supplies;

(C) clothing;

(D) child-care items;

(E) legal or financial documents;

(F) checks or bank or credit cards in the name of the applicant;

(G) employment records; ~~or~~

(H) personal identification documents; or

(I) copies of electronic records containing legal or financial documents;

(4) describe with specificity the items that the applicant intends to retrieve;

(5) allege that the applicant or the applicant's dependent will suffer personal harm if the items listed in the application are not retrieved promptly; and

(6) include a lease or other documentary evidence that shows the applicant is currently or was formerly authorized to occupy the residence.

(c) Before the justice of the peace may issue a writ ~~[an order]~~ under this section, the applicant must execute a bond that:

(1) has two or more good and sufficient non-corporate sureties or one corporate surety authorized to issue bonds in this state;

(2) is payable to the occupant of the residence;

(3) is in an amount required by the justice; and

(4) is conditioned on the applicant paying all damages and costs adjudged against the applicant for wrongful property retrieval.

(d) The applicant shall deliver the bond to the justice of the peace issuing the writ ~~[order]~~ for the justice's approval. The bond

residence; or

(B) poses a clear and present danger of family violence to the applicant or the applicant's dependent;

(2) certify that, to the best of the applicant's knowledge, the applicant is not:

(A) the subject of an active protective order under Title 4, Family Code, a magistrate's order for emergency protection under Article 17.292, Code of Criminal Procedure, or another court order prohibiting entry to the residence; or

(B) otherwise prohibited by law from entering the residence;

(3) allege that the applicant or the applicant's ~~minor~~ dependent requires personal items located in the residence that are only of the following types:

(A) medical records;

(B) medicine and medical supplies;

(C) clothing;

(D) child-care items;

(E) legal or financial documents;

(F) checks or bank or credit cards in the name of the applicant;

(G) employment records; ~~or~~

(H) personal identification documents; or

(I) copies of electronic records containing legal or financial documents;

(4) describe with specificity the items that the applicant intends to retrieve;

(5) allege that the applicant or the applicant's dependent will suffer personal harm if the items listed in the application are not retrieved promptly; and

(6) include a lease or other documentary evidence that shows the applicant is currently or was formerly authorized to occupy the residence.

(c) Before the justice of the peace may issue a writ ~~[an order]~~ under this section, the applicant must execute a bond that:

(1) has two or more good and sufficient non-corporate sureties or one corporate surety authorized to issue bonds in this state;

(2) is payable to the occupant of the residence;

(3) is in an amount required by the justice; and

(4) is conditioned on the applicant paying all damages and costs adjudged against the applicant for wrongful property retrieval.

(d) The applicant shall deliver the bond to the justice of the peace issuing the writ ~~[order]~~ for the justice's approval. The bond

shall be filed with the justice court.

(e) On sufficient evidence of urgency and potential harm to the health and safety of any person and after sufficient notice to the current occupant and an opportunity to be heard, the justice of the peace may grant the application under this section and issue a writ ~~[an order]~~ authorizing the applicant to enter the residence accompanied by a peace officer and retrieve the property listed in the application if the justice of the peace finds that:

(1) the applicant is unable to enter the residence because the current occupant of the residence has denied the applicant access to the residence to retrieve the applicant's personal property or the personal property of the applicant's dependent;

(2) the applicant is not:

(A) the subject of an active protective order under Title 4, Family Code, a magistrate's order for emergency protection under Article 17.292, Code of Criminal Procedure, or another court order prohibiting entry to the residence; or

(B) otherwise prohibited by law from entering the residence;

(3) there is a risk of personal harm to the applicant or the applicant's dependent if the items listed in the application are not retrieved promptly;

(4) the applicant is currently or was formerly authorized to occupy the residence according to a lease or other documentary evidence; and

(5) the current occupant received notice of the application and was provided an opportunity to appear before the court to contest the application.

Sec. 24A.0021. TEMPORARY EX PARTE WRIT AUTHORIZING ENTRY AND PROPERTY RETRIEVAL. (a) If a justice of the peace finds at the hearing on an application for a writ under Section 24A.002 that

the conditions of Sections 24A.002(e)(1)-(4) are established and that the current occupant poses a clear and present danger of family violence to the applicant or the applicant's dependent, the justice may:

shall be filed with the justice court.

(e) On sufficient evidence of urgency and potential harm to the health and safety of any person and after sufficient notice to the current occupant and an opportunity to be heard, the justice of the peace may grant the application under this section and issue a writ ~~[an order]~~ authorizing the applicant to enter the residence accompanied by a peace officer and retrieve the property listed in the application if the justice of the peace finds that:

(1) the applicant is unable to enter the residence because the current occupant of the residence has denied the applicant access to the residence to retrieve the applicant's personal property or the personal property of the applicant's dependent;

(2) the applicant is not:

(A) the subject of an active protective order under Title 4, Family Code, a magistrate's order for emergency protection under Article 17.292, Code of Criminal Procedure, or another court order prohibiting entry to the residence; or

(B) otherwise prohibited by law from entering the residence;

(3) there is a risk of personal harm to the applicant or the applicant's dependent if the items listed in the application are not retrieved promptly;

(4) the applicant is currently or was formerly authorized to occupy the residence according to a lease or other documentary evidence; and

(5) the current occupant received notice of the application and was provided an opportunity to appear before the court to contest the application.

Sec. 24A.0021. TEMPORARY EX PARTE WRIT AUTHORIZING ENTRY AND PROPERTY RETRIEVAL. (a) A justice of the peace may issue a writ under Section 24A.002 without providing notice and hearing under Section 24A.002(e)(5) if the justice finds at a hearing on the application that:

(1) the conditions of Sections 24A.002(e)(1)-(4) are established;

(2) the current occupant poses a clear and present danger of family violence to the applicant or the applicant's dependent; and

(3) the personal harm to be suffered by the applicant or the applicant's dependent will be immediate and irreparable if the

(1) waive the requirements relating to providing:

(A) a bond under Sections 24A.002(c) and (d); and

(B) notice and opportunity to be heard under Section 24A.002(e)(5); and

(2) grant the application and issue a temporary ex parte writ authorizing the applicant to enter the residence accompanied by a peace officer and retrieve the property listed in the application.

(b) The justice of the peace may recess a hearing under Subsection (a) to notify the current occupant by telephone that the current occupant may attend the hearing or bring to the court the personal property listed in the application. The justice of the peace shall reconvene the hearing before 5 p.m. that day regardless of whether the current occupant attends the hearing or brings the personal property to the court.

(c) A temporary ex parte writ issued under Subsection (a) must state the period, not to exceed five days, during which the writ is valid.

SECTION 2. Sections 24A.003(a), (b), and (c), Property Code, are amended

SECTION 3. Section 24A.004, Property Code, is amended

SECTION 4. Sections 24A.005(a) and (c), Property Code, are amended

SECTION 5. Section 24A.006(a), Property Code, is amended

SECTION 6. Chapter 24A, Property Code, as amended by this Act, applies only to an application filed on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 2017.

application is not granted.

(b) A justice of the peace issuing a writ under this section may waive the bond requirements under Sections 24A.002(c) and (d).

(c) The justice of the peace may recess a hearing under Subsection (a) to notify the current occupant by telephone that the current occupant may attend the hearing or bring to the court the personal property listed in the application. The justice of the peace shall reconvene the hearing before 5 p.m. that day regardless of whether the current occupant attends the hearing or brings the personal property to the court.

(d) A temporary ex parte writ issued under Subsection (a) must state the period, not to exceed five days, during which the writ is valid.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

