

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 117
By: Hinojosa
Jurisprudence
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The dissolution of a family relationship is difficult even under the best circumstances. This difficult situation is only exacerbated when one family member refuses to allow another to return home to retrieve personal belongings. There have been multiple reports of women denied entry to their homes and access to any of their clothing or personal items. In some cases, women have reported being unable to access critical medications and retrieve items necessary for the care of their children. C.S.S.B. 117 safeguards a spouse's property rights by creating a procedural means by which he or she can seek assistance in accessing the home.

Once a spouse has been denied entry to the home, he or she can seek a court order authorizing entry. The applicant must attest to an inability to enter the home, specify the items that need to be retrieved, and certify that he or she is not legally enjoined from accessing the home. The application must also state the harm that will result if the application is denied. When the application is approved and the order issued, the applicant will be accompanied and protected by a peace officer when he or she returns to the home.

This bill represents a simple but critical means by which to mitigate the risk of violence and safeguard an individual's right to return to his or her own home to retrieve personal property.

C.S.S.B. 117 amends current law relating to the right of a person to enter the person's residence or former residence accompanied by a peace officer to recover certain personal property and provides penalties.

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 Title 4, Property Code, by adding Chapter 24A, as follows:

CHAPTER 24A. ACCESS TO RESIDENCE OR FORMER RESIDENCE TO RETRIEVE PERSONAL PROPERTY

Sec. 24A.001. ORDER AUTHORIZING ENTRY AND PROPERTY RETRIEVAL; PEACE OFFICER TO ACCOMPANY. (a) Authorizes a person who 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 refuses to allow the person entry to apply to the justice court for an order authorizing the person to enter the residence accompanied by a peace officer to retrieve specific items of personal property.

(b) Requires an application under Subsection (a) to:

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

(2) certify that, to the best of the applicant's knowledge, the applicant is not the subject of an active protective order under Title 4 (Protective Orders and Family Violence), Family Code, a magistrate's order for emergency protection under Article 17.292 (Magistrate's Order for Emergency Protection), Code of Criminal Procedure, or another court order prohibiting entry to the residence or otherwise prohibited by law from entering the residence;

(3) allege that the applicant or the applicant's dependent requires personal items located in the residence, including medical records, medicine and medical supplies, clothing, child-care items, legal documents, financial documents, including checks or bank or credit cards, employment records, personal identification documents, educational or work-related books and supplies, including electronic devices, and items pertaining to personal safety;

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

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

(c) Authorizes the justice of the peace, on sufficient evidence of hardship and urgency, to grant the application under this section and issue an order authorizing the applicant to enter the residence and retrieve the property listed in the application accompanied by a peace officer 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 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 otherwise prohibited by law from entering the residence; and

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

Sec. 24A.002. **AUTHORIZED ENTRY PROCEDURES; DUTIES OF PEACE OFFICER.** (a) Requires a peace officer, if the justice of the peace grants an application under Section 24A.001, to accompany and assist the applicant in making the authorized entry and retrieving the property listed in the application.

(b) Requires the peace officer, if the current occupant of the residence is present at the time of the entry, to provide the occupant with a copy of the court order authorizing the entry and property retrieval.

(c) Requires the applicant, before removing the property listed in the application from the residence, to submit all property retrieved to the peace officer assisting the applicant under this section to be inventoried. Requires the peace officer to create an inventory listing the items taken from the residence, provide a copy of the inventory to the applicant, provide a copy of the inventory to the current occupant or, if the current occupant is not present, leave the copy in a conspicuous place in the residence, and return the property to be removed from the residence to the applicant. Requires the officer to file the original inventory with the court that issued the order authorizing the entry and property retrieval.

(d) Authorizes a peace officer to use reasonable force in providing assistance under this section.

(e) Provides that a peace officer who provides assistance under this section in good faith and with reasonable diligence is not civilly liable for an act or omission of the officer that arises in connection with providing the assistance or civilly or criminally liable for the wrongful appropriation of any personal property by the person the officer is assisting.

Sec. 24A.003. OFFENSE. (a) Provides that a person commits an offense if the person interferes with a person or peace officer entering a residence and retrieving personal property under the authority of a court order issued under Section 24A.001.

(b) Provides that an offense under this section is a Class B misdemeanor.

(c) Provides that it is a defense to prosecution under this section that the actor did not receive a copy of the court order or other notice that the entry or property retrieval was authorized.

Sec. 24A.004. HEARING; REVIEW. (a) Authorizes the occupant of a residence that is the subject of a court order issued under Section 24A.001, not later than the 10th day after the date of the authorized entry, to file a complaint in the court that issued the order alleging that the applicant has appropriated property belonging to the occupant.

(b) Requires the court to promptly hold a hearing on a complaint submitted under this section and rule on the disposition of the disputed property.

(c) Provides that this section does not limit the occupant's remedies under any other law for recovery of the occupant's property.

SECTION 2. Effective date: September 1, 2013.