

BILL ANALYSIS

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S.B. 257
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Victims of sexual assault or abuse, stalking, or human trafficking have eligibility to receive court-issued protective orders. These protective orders legally shield the victim, or their family or household, from certain actions from their assailant, including direct or indirect communication, going near the victim's residence, place of employment, or school, and possession of a firearm. While the duration of protective orders may last as long as the life of the victim or perpetrator, a loophole in state law unfairly enables perpetrators to challenge these terms. Specifically, perpetrators can re-litigate protective orders by calling both parties back into court to demonstrate a "continuing need," or potential threat of future violence. Texas legally permits these challenges for all protective orders, even though applicants for sexual assault, stalking, and human trafficking protective orders, unlike applicants for family violence protective orders, need not prove a threat of future violence to obtain the order in the first place. This effectively adds an additional evidentiary burden on victims of sexual assault, stalking, and human trafficking for the duration of the order that they were not required to satisfy at the time the order was issued. If the additional benchmark of threat of future violence is not met, a protective order may terminate prematurely, even if originally issued for life. This makes sexual assault protective orders harder to maintain than they were to originally acquire. Further, a perpetrator may challenge a protective order annually without limit. Interested parties contend that the annual burden to prove a continuing need enables perpetrators to use courts as tools of harassment and intimidation.

S.B. 257 reforms the protective order re-litigation process by closing this loophole. The bill limits a perpetrator's ability to challenge a protective order issued to family violence victims for longer than two years to two instances. The first of two motions may not be filed earlier than one year after the original order was rendered. If the duration of the protective order exceeds two years, then a second motion may not be filed earlier than one year after the conclusion of the first motion. Further, the bill exempts protective orders issued to child abuse and sexual assault victims from further challenge by their assailant. These changes strengthen victims' rights while closing a loophole that has been abused within the justice system.

As proposed, S.B. 257 amends current law relating to judicial review of protective orders and the duration of those 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 Section 85.025, Family Code, by amending Subsection (b) and adding Subsections (b-1), (b-2), and (b-3), as follows:

(b) Authorizes a person who is the subject of a protective order to file a motion not earlier than a certain date.

(b-1) Creates this subsection from existing text. Prohibits a person who is the subject of an issued protective order that is effective for a certain period, following the filing of a

motion, from filing more than one subsequent motion requesting that the court review the protective order and determine whether there is a continuing need for the order, rather than authorizing a person who is the subject of a protective order that is effective for a certain period to file a subsequent motion requesting that the court review the protective order and determine whether there is a continuing need for the order. Prohibits the subsequent motion from being filed earlier than a certain date.

(b-2) Creates this subsection from existing text. Provides that the protective order, after a hearing on a motion under Subsection (b) or (b-1), rather than after a hearing on the motion, if the court does not make a finding that there is no continuing need for the protective order, remains in effect until the date the order expires.

(b-3) Provides that Subsection (b) does not apply to a protective order issued under Chapter 7A (Protective Order for Victims of Sexual Assault Or Abuse, Stalking, Or Trafficking), Code of Criminal Procedure.

SECTION 2. Repealer: Article 7A.07(c) (relating to the duration of a protective order), Code of Criminal Procedure.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2017.