

BILL ANALYSIS

Senate Research Center

S.B. 920
By: Whitmire
Criminal Justice
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Last session, H.B. 2486 created a procedural process by which individuals can seek help in entering the home for the limited purpose of retrieving certain property. The law was meant to help people who have reported being unable to access prescription medications and/or necessities that they need to care for themselves or their children upon being suddenly dispossessed of access to their residence.

This difficult situation is only exacerbated in cases of domestic violence, when a person is in fear of returning to their residence to retrieve necessary personal belongings due to circumstances creating a severe risk to their health and safety. In these situations, it may be necessary, for the protection of a person or their dependents, for a court to take the extraordinary step of undertaking an ex parte court proceeding in order to allow a person to enter a property to retrieve important personal property.

S.B. 920 allows the court to issue a temporary ex parte writ authorizing entry and property retrieval to a residence if the current occupant poses a clear and present danger of family violence, as defined under Section 71.004, Family Code, to an applicant or to an applicant's dependent. In issuing this writ, the justice of the peace (JP) may waive the bond requirements and the requirement that the current occupant be given notice and opportunity to be heard. A person granted this writ may only enter their residence if accompanied by a peace officer, and may only retrieve the items specifically authorized to be retrieved.

A JP may recess a hearing to issue a temporary ex parte writ authorizing entry and property retrieval in order to notify the current occupant that they may attend the hearing, or bring the items sought by the applicant of the writ to court.

However, the JP must reconvene the hearing before 5 p.m. the same day, regardless of whether the current occupant attends the hearing, or brings the items to court. This type of writ is only valid for five days.

S.B. 920 also adds "copies of electronic records containing legal or financial documents" to the list of personal property that may be retrieved under a writ authorizing entry and property retrieval and defines what is considered an electronic record.

Finally, S.B. 920 changes the title of the instrument from an "order" to a "writ." This conforms the title with similar instruments that justice courts currently oversee such as a writ of reentry, located under Section 92.0081, Property Code.

S.B. 920 amends current law relating to access to a residence or former residence to retrieve personal property, including access based on danger of family violence.

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 Chapter 24A, Property Code, by amending Sections 24A.001 and 24A.002 and adding Section 24A.0021, as follows:

Sec. 24A.001. New heading: DEFINITIONS. Defines “electronic record” and “family violence” and makes a nonsubstantive change.

Sec. 24A.002. New heading: WRIT AUTHORIZING ENTRY AND PROPERTY RETRIEVAL; PEACE OFFICER TO ACCOMPANY. (a) Changes a reference to an order to a reference to a writ.

(b) Requires that an application for a writ:

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

(2) makes no changes to this subdivision;

(3) allege that the applicant or the applicant’s dependent, rather than the applicant’s minor dependent, requires copies of electronic records containing legal or financial documents located in the residence, among certain other personal items. Makes nonsubstantive changes;

(4) through (6) makes no changes to these subdivisions.

(c) Requires the applicant to execute a certain bond before the justice of the peace (JP) is authorized to issue a writ, rather than an order, under this section.

(d) Makes a conforming change.

(e) Makes a conforming change.

Sec. 24A.0021. TEMPORARY EX PARTE WRIT AUTHORIZING ENTRY AND PROPERTY RETRIEVAL. (a) Authorizes a JP to issue a writ under Section 24A.002 without providing notice and hearing under Section 24A.002(e)(5) (relating to the granting of an application to enter a residence and retrieve property if the JP finds that the current occupant received notice of the application and was provided an opportunity to appear before the court to contest the application) if the justice finds at a hearing on the application that:

(1) the conditions of certain sections 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 application is not granted.

(b) Authorizes a JP issuing a writ under this section to waive the bond requirements under Sections 24A.002(c) and (d) (relating to requiring the applicant to deliver the bond to the JP issuing the writ for the JP’s approval and requiring that the bond be filed with the justice court).

(c) Authorizes the JP to 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. Requires the JP 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.

(d) Requires that a temporary ex parte writ state the period, not to exceed five days, during which the writ is valid.

SECTION 2. Amends Sections 24A.003(a), (b), and (c), Property Code, as follows:

(a) Requires a peace officer, if the JP grants an application under Section 24A.002 or Section 24A.0021, to accompany and assist the applicant in certain ways.

(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 writ, rather than the court order, authorizing the entry and property retrieval.

(c) Makes a conforming change.

SECTION 3. Amends Section 24A.004, Property Code, to provide that a landlord or landlord's agent permitting or facilitating entry into a residence in accordance with a writ, rather than court order, issued under this chapter (Access to Residence or Former Residence to Retrieve Personal Property) is not civilly or criminally liable.

SECTION 4. Amends Sections 24A.005(a) and (c), Property Code, as follows:

(a) Includes Section 24A.0021 as one of the sections under which 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 writ, rather than a court order.

(c) Provides that it is a defense to prosecution that the actor did not receive a copy of the writ, rather than court order, or other notice authorizing entry or property retrieval.

SECTION 5. Amends Section 24A.006(a), Property Code, to authorize the occupant of a residence that is the subject of a writ issued under Section 24A.002 or 24A.0021, not later than a certain date, to file a complaint in the court that issued the writ that makes a certain allegation, rather than authorizes the occupant of a residence that is the subject of a court order issued under Section 24A.002, not later than a certain date, to file a complaint in the court that issued the order that makes a certain allegation.

SECTION 6. Makes application of Chapter 24A, Property Code, as amended by this Act, prospective.

SECTION 7. Effective date: September 1, 2017.