



TEXAS COUNCIL ON FAMILY VIOLENCE 79th TEXAS LEGISLATIVE SESSION

The following report summarizes some of the important legislative developments relating to family violence.

Appropriations

Funding for family violence services adopted at \$46 million for the biennium, a \$2 million increase over last biennium.

Family violence advocates went into this session with significant concerns about whether funding could be maintained for family violence services. Previously, the bulk of the State funding for family violence services had come from the Crime Victims' Compensation Fund, but there were issues with the solvency of that fund --- expenditures going out faster than revenues coming in was chipping away very quickly at what had once been a significant surplus in the Fund. The Legislature was able to find other sources of funding to support family violence services and even funded an additional \$2 million to increase access to family violence services statewide. Senators Judith Zaffirini (D-Laredo) and Jane Nelson (R-Lewisville) and Representatives Vilma Luna (D-Corpus Christi), John Davis (R-Houston) and Dawnna Dukes (D-Austin) were instrumental in supporting this increase in funding.

Funding for Battering Intervention and Prevention Programs maintained at \$2.5 million for the biennium.

We began this session with a draft budget that eliminated funding for Battering Intervention and Prevention Programs (BIPPs). With the help of advocates and the leadership of certain members of the House Appropriations Committee and Senate Finance Committee who understand the value of these programs, we saw that funding was restored by the end of the session at the same level as in the past biennium. Senators John Whitmire (D-Houston), Florence Shapiro (R-Plano) and Kip Averitt (R-McGregor) and Representative Sylvester Turner (D-Houston) were champions for the BIPP funding.

Housing

Lease termination without penalty for victims of family violence who have protective orders.

SB 1186. Author, Sen. Jane Nelson (R-Lewisville); Sponsors, Rep. Ryan Guillen (D-Rio Grande City) and Rep. Melissa Noriega (D-Houston)

This legislation allows a victim of family violence who has been living with her batterer and who has a protective order under Chapter 85 of the Family Code or a temporary injunction under Chapter 6 of the Family Code to terminate her lease without penalty, if she needs to leave home in order to be safe. This legislation was the subject of considerable negotiation and ultimately had the full support of two interest groups without whom the bill would not have passed: the Texas Low-Income Housing Information Service and the Texas Apartment Association. Of the legislation that passed this session affecting policies on family violence, this is, perhaps, the most significant of all. Only a handful of other states have such legislation, and we are very pleased that Texas is now among them. Victims of family violence will now be able to leave a rental property without fear of the economic consequences in early termination penalties or bad credit history that could previously have hindered their ability to move on to independence.

Adds §92.016 to the Texas Property Code. Becomes effective January 1, 2006.

Criminal Law

Warrantless arrest for dating violence and offense enhancement for subsequent incidents of dating violence.

SB 91. Author, Sen. Juan "Chuy" Hinojosa (D-McAllen); Sponsor, Rep. Debbie Riddle (R-Tomball)

Previously adopted Texas law allowed law enforcement officials to make a warrantless arrest when they had probable cause to believe that an assault had been committed against a member of the person's family or household. This included the narrow definition of "family violence" but did not include dating violence situations. With this legislation, dating violence is now included. Additionally, Texas law had provided that a subsequent offense of assault against a member of the family or household, after

Criminal Law (continued)

a prior conviction for the same, would be a more serious penalty than the first offense: a felony rather than a misdemeanor. Dating violence was not included in that offense enhancement, but now it is. Further, the statute providing for an increased penalty if it is a subsequent offense now also provides that previous convictions under similar laws in other states will cause the subsequent offense – even if it is the first in Texas – to be a felony rather than a misdemeanor.

Amends §§22.01 and 22.02 of the Texas Penal Code and Article 14.03 of the Texas Code of Criminal Procedure. Becomes effective September 1, 2005.

Notice to prosecutor before bail is reduced.

SB 56. Author, Sen. Jane Nelson (R-Lewisville); Sponsor, Rep. Elvira Reyna (R-Mesquite)

Inspired by an egregious family violence case in the Dallas-Fort Worth area a few years ago, this legislation requires that before a judge can reduce the bail charged to a defendant in certain violent crimes, the judge must give notice to the prosecutor and the prosecutor can request a hearing on the bail reduction. This will provide the ability to better protect and inform victims of violent crimes.

Adds Article 17.091 to the Texas Code of Criminal Procedure. Becomes effective September 1, 2005.

Protective Orders

Agreed protective orders are both criminally and civilly enforceable.

HB 1059. Author, Rep. Elliott Naishtat (D-Austin); Sponsor, Sen. Jeff Wentworth (R-San Antonio)

Originally, some advocates had asked for legislation that would require judges to make findings of family violence in agreed protective orders (such findings are required in contested protective orders) in order to provide better protection for the victims. Law enforcement officials in some jurisdictions were reluctant to make arrests for violations of agreed protective orders because those orders did not include a finding that family violence had occurred. However, some District Attorneys' offices, as well as some Legal Aid offices, expressed concern that if judges were required to make findings in agreed protective orders that some judges would no longer issue such orders or respondents would no longer agree to such orders and force every protective order to a hearing, resulting in possibly less protection to victims overall. So, a compromise was developed to provide clearly in the statute that agreed protective orders are civilly and criminally enforceable.

Amends §85.005 of the Texas Family Code. Effective immediately.

Protective orders may be appealed in certain circumstances.

HB 260. Author, Rep. Toby Goodman (R-Arlington); Sponsor, Sen. Kip Averitt (R-McGregor)

The ability to appeal issuance of protective orders was controversial this session and was not supported by TCFV. The opinions of advocates and prosecutors about the implications of appealing protective orders for victims of family violence were somewhat mixed, but mostly opposed. While the end result would not have been our preference overall, we are pleased that the appeal of protective orders provision was amended by Senator Hinojosa (D-McAllen) to provide some greater protection to victims who are engaged in divorce or custody actions. Under this legislation, the issuance of a protective order may now be appealed. However, if the parties to the protective order are engaged in a divorce or custody action, the appeal of the protective order may not be taken until the divorce or custody action is complete.

Adds §81.009 to the Texas Family Code. Effective immediately, for protective orders issued after the bill passed.

Magistrates' Orders of Emergency Protection (MOEPs) can last up to 91 days.

SB 1275. Author, Sen. Mike Jackson (R-La Porte); Sponsor, Rep. John Davis (R-Houston)

This legislation extends the possible term of a MOEP from 61 days to 91 days in cases involving the use or exhibition of a deadly weapon during the commission of an assault.

Amends Article 17.292 of the Code of Criminal Procedure. Effective immediately.

Reforms to Child and Adult Protective Services.

SB 6. Author, Sen. Jane Nelson (R-Lewisville); Sponsor, Rep. Suzanna Gratia Hupp (R-Lampasas)

This was one of the most significant pieces of legislation this session. It was an issue designated an “emergency” by Governor Rick Perry (R- Texas). The legislation and accompanying appropriations allow for the hiring of thousands more caseworkers, which will lower the individual caseload for each worker. The bill also allows for privatization of case management and placement in the foster care system. There are far too many details to list in this brief summary, but among the most noteworthy is that knowingly making a false report of child abuse “with the intent to deceive” is now a felony, rather than a misdemeanor. This was in response to the belief held by some proponents of this bill that Child Protective Services is burdened by false reports of child abuse that are made in order to gain advantage in custody determinations. Additionally, the bill makes the Family Protection Fee (divorce filing fee) mandatory rather than discretionary, allows counties to increase it to \$30, and requires that half of the fee must go to the child abuse and neglect prevention trust fund.

Amends §261.107 and many other sections of the Texas Family Code and other codes. Effective September 1, 2005.

Allowing for “parenting coordinators” in contentious custody matters and requiring those coordinators to have training in the dynamics of family violence.

HB 252. Author, Rep. Toby Goodman (R-Arlington); Sponsor, Sen. Chris Harris (R-Arlington)

The bill allows, but does not require, the use of “parenting coordinators” to help develop a “parenting plan” (formerly known as conservatorship agreements) in contentious custody actions. Originally, this bill did not address family violence at all, but when TCFV raised concerns, the bill’s proponents and author, Rep. Toby Goodman (R-Arlington) were agreeable to changes in the bill to address family violence. The bill now provides that if family violence is an issue, a party may object to the involvement of a parenting coordinator (similar to the objection that can be made to ordering mediation in cases involving family violence). Unless a hearing is requested on such an objection and the objection is found to be without merit, a judge will not order parties to work with the parenting coordinator or to be involved in any mediation-type process if there is family violence. Also, the bill now requires that anyone seeking to serve as a parenting coordinator must have at least eight hours of training in family violence dynamics by a family violence service provider.

Adds Subchapter J to Chapter 153 of the Family Code. Effective September 1, 2005.

Judges may decline to enter mediated settlements in custody cases if family violence has affected the ability of the victim to make good judgments in the mediation and if the settlement is not in the child’s best interest.

HB 260. Author, Rep. Toby Goodman (R-Arlington); Sponsor, Sen. Kip Averitt (R-McGregor)

The law currently allows for a party to a custody action to object to being ordered to mediation if family violence is involved. This policy recognizes that family violence is inherently a serious imbalance of power that defeats the very concept of mediation and that having to be in a mediation setting – less formal and more intimate than a courtroom, typically – with the batterer may potentially endanger the victim. This new provision allows that if for some reason, perhaps the failure to object, parties have gone through mediation and developed a settlement, the judge may refuse to enter that settlement as an order if the judge finds that one party was a victim of family violence and “that circumstance impaired the party’s ability to make decisions” and the resulting settlement is not in the child’s best interest.

Amends §153.0071 of the Texas Family Code. Effective September 1, 2005, for custody actions filed after that date.

Revision of language in the Family Code

HCR 153. Author, Rep. Harold Dutton (D-Houston); Sponsor, Sen. Royce West (D-Dallas)

This resolution orders that between now and the next legislative session, the Texas Legislative Council (the lawyers who draft all legislation at the Capitol) schedule a revision of the Texas Family Code to use neutral terms such as “parenting plans” and “parenting time” and eliminate use of terms such as “managing conservator” and “possessory conservator”. This is apparently a national trend toward language that is arguably clearer and more neutral. TCFV will try to follow the revision of the Family Code as it happens over the interim.

TCFV THANKS LEGISLATORS & CAPITOL STAFF

Governor Rick Perry
Lt. Governor David Dewhurst
Senator Kip Averitt
Senator Robert Duncan
Senator Juan "Chuy" Hinojosa
Senator Eddie Lucio
Senator Jane Nelson
Senator Steve Ogden
Senator Florence Shapiro
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Representative Fred Brown
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ML Calcote
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Colin Coe
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Danielle Delgadillo
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Joe Dyer
Damian Duarte
Paul Emerson
Jonathan English
Don Green
Jerry Haddican
Joy Hughes
Robert McVey
Joshua Meeks
Dave Nelson
David Quin
Ian Randolph
Claudia Russell
Nelson Salinas
Candice Smith
Jennifer Thompson
Mary Throop
Nancy Walker
Brent Whitaker

TCFV THANKS ADVOCATES

Jann Brown
Pam Brown
Torie Camp
Lawrence Collins
Patty Connors
Corie Cormie
Troy Cotton
Annalynn Cox
Anne Crews
Ally Crowley
Judge Mike Denton
Robert Doggett
Cindy Dyer
Shannon Edmonds
Aimee Edwards
Paige Flink
MariCarmen Garza
Tom Gaylor
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Shannon Noble
Danny Perez
Jackie Pontello
Laura Pressley
Barri Rosenbluth
Jason Sabo
Shannon Sandra
Catrina Steinocher
Harold Thomas
Kim Vickers
Jane Waters
Kelly Young

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