

CHAPTER 583

S.B. No. 869

An Act relating to the prevention of family violence and the duties and authority of law enforcement officers, prosecutors, and courts in family violence cases; defining 'family'; providing criminal penalties for the violation of certain court orders; amending the Code of Criminal Procedure, 1965, as amended, by adding a new Chapter 5 and by amending Article 14.03; amending Subsections (a) and (b), Section 25.08, Penal Code; and Subdivision (3), Subsection (b), Section 71.01, Family Code, as amended.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The Code of Criminal Procedure, 1965, is amended by adding Chapter 5 to read as follows:

"CHAPTER 5. FAMILY VIOLENCE PREVENTION

"Article 5.01. LEGISLATIVE STATEMENT.* (a) *Family violence is a serious danger and threat to society and its members. Victims of family violence are entitled to the maximum protection from harm or abuse or the threat of harm or abuse as is permitted by law.

"(b) In any law enforcement, prosecutorial, or judicial response to allegations of family violence, the responding law enforcement or judicial officers shall protect the victim, without regard to the relationship between the alleged offender and victim.

***"Article 5.02. DEFINITIONS.* In this chapter, 'family violence,' 'family,' 'household,' and 'member of a household' have the meanings assigned by Section 71.01, Family Code.**

***"Article 5.03. FAMILY OR HOUSEHOLD RELATIONSHIP DOES NOT CREATE AN EXCEPTION TO OFFICIAL DUTIES.* A general duty prescribed for an officer by Chapter 2 of this code is not waived or excepted in any family violence case or investigation because of a family or household relationship between an alleged violator and the victim of family violence. A peace officer's or a magistrate's duty to prevent the commission of criminal offenses, including acts of family violence, is not waived or excepted because of a family or household relationship between the potential violator and victim.**

Article 5.04. DUTIES OF PEACE OFFICERS. (a) *The primary duties of a peace officer who investigates a family violence allegation or who responds to a disturbance call that may involve family violence are to protect any potential victim of family violence, enforce the law, and make lawful arrests of violators.*

“(b) A peace officer who investigates a family violence allegation or who responds to a disturbance call that may involve family violence shall advise any possible adult victim of all reasonable means to prevent further family violence, including giving written notice of a victim’s legal rights and remedies and of the availability of shelter or other community services for family violence victims.

“(c) A written notice required by Subsection (b) of this article is sufficient if it is in substantially the following form with the required information in English and in Spanish inserted in the notice:

“NOTICE TO ADULT VICTIMS OF FAMILY VIOLENCE

“It is a crime for any person to cause you any physical injury or harm EVEN IF THAT PERSON IS A MEMBER OR FORMER MEMBER OF YOUR FAMILY OR HOUSEHOLD.

“Please tell the investigating peace officer:

“IF you, your child, or any other household resident has been injured; or

“IF you feel you are going to be in danger when the officer leaves or later.

“You have the right to:

“ASK the local prosecutor to file a criminal complaint against the person committing family violence; and

“APPLY to a court for an order to protect you (you should consult a legal aid office, a prosecuting attorney, or a private attorney). For example, the court can enter an order that:

“(1) the abuser not commit further acts of violence;

“(2) the abuser not threaten, harass, or contact you at home;

“(3) directs the abuser to leave your household; and

“(4) establishes temporary custody of the children and directs the abuser not to interfere with the children or any property.

“A VIOLATION OF CERTAIN PROVISIONS OF COURT-ORDERED PROTECTION (such as (1) and (2) above) IS A CRIMINAL OFFENSE.

“CALL THE FOLLOWING VIOLENCE SHELTERS OR SOCIAL ORGANIZATIONS IF YOU NEED PROTECTION:

“ _____ ,
 “ _____ ,

Article 5.05. REPORTS AND RECORDS. (a) *A peace officer who has reason to believe that an offense involving family violence has occurred shall make a written report, including but not limited to:*

“(1) the names of the suspect and complainant;

“(2) the date, time, and location of the incident;

“(3) any visible or reported injuries; and

“(4) a description of the incident and a statement of its disposition.

“(b) Each local law enforcement agency shall establish a departmental code for identifying and retrieving family violence reports as outlined in Subsection (a) of this section. A district or county attorney or an assistant district or county attorney exercising authority in the county where the law enforcement agency maintains records under this section is entitled to access to the records.

“(c) In order to ensure that officers responding to calls are aware of the existence and terms of protective orders, each municipal police department and sheriff shall establish procedures within the department or office to provide adequate information or access to information for law enforcement officers of the names of persons protected by a protective order and of persons to whom protective orders are directed.

“(d) Each law enforcement officer shall accept a certified copy of a protective order as proof of the validity of the order and it is presumed the order remains valid unless the order contains a termination date or is more than one year old from its execution date.

Article 5.06. DUTIES OF PROSECUTING ATTORNEYS AND COURTS HAVING JURISDICTION OF CRIMES. *Neither a prosecuting attorney nor a court may:*

“(1) dismiss or delay any criminal proceeding that involves a prosecution for an offense that constitutes family violence because a civil proceeding is pending or not pending; or

“(2) require proof that a complaining witness, victim, or defendant is a party to a suit for the dissolution of a marriage or a suit affecting the parent-child relationship before presenting a criminal allegation to a grand jury, filing an information, or otherwise proceeding with the prosecution of a criminal case.”

SECTION 2. Article 14.03, Code of Criminal Procedure, 1965, as amended, is amended to read as follows:

"Article 14.03. **AUTHORITY OF PEACE OFFICERS.** (a) Any peace officer may arrest, without warrant:

"(1) ~~[(a)]~~ persons found in suspicious places and under circumstances which reasonably show that such persons have been guilty of some felony or breach of the peace, or threaten, or are about to commit some offense against the laws; ~~[(or)]~~

"(2) ~~[(b)]~~ persons who the peace officer has probable cause to believe have committed an assault resulting in bodily injury to another person and the peace officer has probable cause to believe that there is ~~immediate~~ danger of further bodily injury to that person; or

"(3) persons who the peace officer has probable cause to believe have committed the offense defined by Section 25.08, Penal Code (violation of Court Order), whether or not the offense is committed in the presence of the peace officer.

"(b) If necessary to verify an allegation of a violation of a protective order, a peace officer shall follow the procedures established under Section 71.18, Family Code, without leaving the scene of the investigation if there is a possibility of the further commission of family violence."

SECTION 3. Subsections (a) and (b), Section 25.08, Penal Code, are amended to read as follows:

"(a) A person commits an offense if, in violation of an order issued under Section 3.581, ~~[(or)]~~ Section 71.11, or Section 71.12, Family Code, he knowingly or intentionally:

"(1) commits family violence;

"(2) directly communicates with a member of the family or household in a threatening or harassing manner; or

"(3) goes to or near the residence or place of employment or business of a member of the family or household as specifically described in the protective order.

"(b) For the purposes of this section, 'family violence,' 'family,' 'household,' and 'member of a household' have the ~~following~~ meanings assigned by ~~[(; as given in)]~~ Section 71.01, Family Code ~~[(;)]~~:

"~~[(1)]~~ 'Family violence' means the intentional use or threat of physical force by a member of a family or household against another member of the family or household, but does not include the reasonable discipline of a child by a person having that duty.

"~~[(2)]~~ 'Family' includes individuals related by consanguinity or affinity, individuals who are former spouses of each other, and a foster child and foster parent, whether or not those individuals reside together.

"~~[(3)]~~ 'Household' means a unit composed of persons living together in the same dwelling, whether or not they are related to each other.

"~~[(4)]~~ 'Member of a household' includes a former member of a household who has filed an application or for whom protection is sought as provided by Subsection (e) of Section 71.04, Family Code."

SECTION 4. Subdivision (3), Subsection (b), Section 71.01, Family Code, as amended, is amended to read as follows:

"(3) 'Family' includes individuals related by consanguinity or affinity, individuals who are former spouses of each other, individuals who are the biological parents of the same child, without regard to marriage or legitimacy, and a foster child and foster parent, whether or not those individuals reside together."

SECTION 5. This Act takes effect September 1, 1985.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 30, 1985, by a viva-voce vote; Senate concurred in House amendments on May 27, 1985, by a viva-voce vote; passed the House, with amendments, on May 21, 1985, by a non-record vote.

Approved: June 13, 1985

Effective: September 1, 1985