

- SUBJECT:** Required emergency protective order in some family violence cases
- COMMITTEE:** Juvenile Justice and Family Issues — committee substitute recommended
- VOTE:** 8 ayes — Goodman, Pickett, Isett, P. King, Morrison, Naishtat, A. Reyna, E. Reyna  
0 nays  
1 absent — Truitt
- WITNESSES:** For — Rosemary Welsh, Webb County Domestic Violence Coalition;  
Roberto Balli  
  
Against — Robert L. Green, Texas Fathers Alliance
- BACKGROUND:** Under Code of Criminal Procedure, art. 17.292, a magistrate is authorized to issue an emergency protective order when a defendant appears before the magistrate after an arrest for a family violence offense or for stalking. The order can be issued on magistrate’s own motion or on the request of the victim, the guardian of the victim, a peace officer, or a prosecutor.  
  
Under Penal Code, sec. 30.05, criminal trespass is committed if a person enters or remains on property of another without consent if the person had notice that entry was forbidden or received notice to leave but failed to do so.
- DIGEST:** CSHB 2124 would require a magistrate to issue an emergency protective order when a defendant appeared before the magistrate after an arrest for a family violence offense involving serious bodily injury to the victim or the use or exhibition of a deadly weapon during the commission of an assault.  
  
CSHB 2124 would expand the definition of notice under the Penal Code’s criminal trespass statute to include written communications contained in a court order posted on the property or delivered to a person if the communication prohibited the individual from going to or near a specific location. This would include a temporary ex parte order, a protective order issued under the Family

Code's provisions for family violence protective orders, and a magistrate's emergency protective order issued in a family violence case.

The definition of family violence would be amended so that fear of physical harm threatened by a family member would no longer be limited to fear of imminent harm.

CSHB 2124 would take effect September 1, 1999.

**SUPPORTERS  
SAY:**

CSHB 2124 would provide greater protection to family violence victims in the most severe cases – when an arrest has been made after the victim suffered serious bodily injury or a deadly weapon was involved in the course of the assault. In these situations, protection of victims, not judicial discretion, should be the overriding concern. CSHB 2124 applies only to emergency, 30-day protective orders. After the immediate crisis is over, the judge still would be able to use discretion to issue orders and make findings.

Family violence is a serious problem in Texas, and the law should be strengthened to protect victims adequately. The Department of Public Safety reported 181,773 incidents of family violence in 1997, 32 percent more than in 1991.

In the situations affected by CSHB 2124, a police officer already would have enough probable cause to make an arrest. Requiring a judge to issue an emergency protective order, good for 30 days, would give the victim enough time to make necessary arrangements for safety. The victims might need to make new living arrangements, find an attorney, get a non-emergency protective order, and more. The emergency protective order also might help diffuse potentially volatile family violence situations by keeping the parties apart for a full month.

Allowing a communication posted on property to provide notice under the criminal trespass statutes would give law enforcement officers another tool to arrest individuals violating certain types of court orders. Some law enforcement officers are reluctant to make arrests for violations of temporary ex parte or other orders.

By removing the word "imminent," CSHB 2124 also would remove the requirement that a threat must place someone in fear of immediate physical

harm in order for it to qualify as family violence. This would ensure that the definition covered situations when a threat produced a fear of harm that was reasonable and sincere. For example, a husband could call his wife and threaten to come over and harm her the following day. Some law enforcement officers might not interpret this as a threat of imminent harm. CSHB 2124 would make it clear that any threat that places someone in reasonable fear of harm would fall under the definition of family violence.

OPPONENTS  
SAY:

CSHB 2124 would unwisely restrict the discretion of judges in some family violence cases by requiring that they issue emergency protective orders. Judges should continue to have broad authority to make decisions about emergency protective orders as they see fit.

In the situations covered by CSHB 2124, individuals who have not been found guilty of anything but are only *suspected* of a crime would be affected. The Legislature should not continue to craft a special set of laws and procedures for people accused of one type of crime.

The definition of family violence should not be broadened to remove the requirement that a threat must place someone in fear of immediate harm. This could mean that any threat, no matter how long ago it was made, could fall under the definition.

OTHER  
OPPONENTS  
SAY:

At a minimum, CSHB 2124 should require that a judge hold some type of hearing before automatically issuing an emergency protective order.

NOTES:

The original bill would have eliminated the current discretion of magistrates to issue emergency protective orders in some situations, requiring them to issue emergency orders when a defendant appeared before them after an arrest for an offense involving family violence or for stalking. The original bill also would have removed a rebuttable presumption used to determine custody in child custody cases if there were a finding of a history of family violence against the child. The presumption that would have been removed is that the standard possession order provides reasonable minimum possession of a child for parents named possessory conservators or joint managing conservators and is in the best interest of the child.