

SUBJECT: Extending the duration of emergency protective orders

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Hinojosa, Dunnam, Green, Keel, Smith, Talton, Wise
1 nay — Garcia
1 absent — Nixon

SENATE VOTE: On final passage, March 9 — voice vote

WITNESSES: None

BACKGROUND: Under Code of Criminal Procedure, art. 17.292, magistrates may issue emergency protective orders when defendants appear before them after an arrest for a family violence or stalking offense. The orders are effective upon issuance and remain in effect until 31 days after they are issued.

DIGEST: SB 23 would extend to 61 days the length of time that emergency protective orders in family violence or stalking cases remain in effect.

SB 23 would take effect September 1, 1999, and would apply only to emergency protective orders issued on or after that date.

SUPPORTERS SAY: SB 23 would provide additional protection to victims of family violence in the most serious cases — those in which a magistrate concludes that an emergency protective order should be issued. SB 23 would extend emergency protective orders for only a short period, and they still would be much shorter than permanent orders, which generally are good for one year.

Family violence is a serious problem in Texas, and the law should be expanded to protect victims adequately. The Department of Public Safety reported 181,773 incidents of family violence in 1997, 32 percent more than in 1991. Family violence accounts for about 23 percent of all violent crimes in Texas.

SB 23 would help defuse potentially volatile family-violence situations and would give victims adequate time to make arrangements for their safety. The current 31-day period does not allow enough time for victims to arrange other housing, secure civil protections, make transportation or day-care arrangements, or obtain social services. In some cases, it can take three to five weeks to obtain a permanent protective order.

While SB 23 could result in a person's being kept away from their family or home for a longer period of time, in some cases that is exactly what needs to occur. However, in cases in which children are not involved in the violence, arrangements could be made to allow them to see their parent.

If victims decide that they do not want a protective order to be in place for 61 days, they could ask the magistrate to rescind the order.

**OPPONENTS
SAY:**

SB 23 would go too far in extending protective orders. SB 23 could result in persons who are only *accused* of crimes being denied access to their children, homes, and belongings for two months. The current 31 days is adequate time for persons to secure permanent protective orders or to make any other arrangements. The Legislature should not continue to craft a specific set of laws and procedures for persons accused of one type of crime.

Making an emergency protective order good for two months would result in the orders functioning more like permanent protective orders, without giving persons who only have been accused their full due-process rights. SB 23 could be especially harmful in cases in which false allegations were made.