HOUSE
RESEARCH
ORGANIZATION bill analysis　　　3/25/2003

HB 297
Goodman
(CSHB 297 by Hodge)

SUBJECT:	Allowing modification of orders for emergency protection
COMMITTEE:	Juvenile Justice and Family Issues — committee substitute recommended
VOTE:	5 ayes — Dutton, Goodman, Baxter, Hodge, Reyna
	0 nays
	4 absent — Castro, Dunnam, J. Moreno, Morrison
WITNESSES:	For — Debbie M. Carter, Texas Council on Family Violence
	Against — None

BACKGROUND:　Code of Criminal Procedure, art. 17.292 authorizes a magistrate to issue an order for emergency protection after a defendant is arrested for an offense involving family violence or stalking and is brought before the magistrate. The magistrate must issue an order if the arrest is for an offense that involves serious bodily injury to the victim or the use or exhibition of a deadly weapon during the commission of the assault. The magistrate may issue an order in other cases involving family violence or stalking at the victim's, the peace officer's, or the prosecutor's request, or on its own motion.

An order for emergency protection may prohibit the arrested party from committing acts of family violence or stalking, from communicating directly with the protected person or from communicating a threat to the protected person, from going to or near the residence, place of employment, or child-care facility of the protected person, and from possessing a firearm, among other things.

Orders for emergency protection remain in effect at least 31 days after the date of issuance and up to the 61st day after the date of issuance.

Family Code, Chapter 85, establishes procedures for an applicant to obtain a longer-term protective order, which a court must render if it finds that family violence has occurred and is likely to occur in the future. Protective orders under Chapter 85 remain in effect for up to two years and may contain

provisions similar to those found in emergency protective orders. Before obtaining a protective order, notice of an application for a protective order must be served on the respondent, and the court must set a hearing to determine whether family violence has occurred and is likely to occur in the future.

Family Code, Chapter 83 provides procedures for an applicant to obtain a temporary *ex parte* order while an application for a protective order is pending under Chapter 85. If the court finds from the information contained in an application for a protective order that there is a clear and present danger of family violence, the court may issue a temporary *ex parte* order without notice to the respondent or a hearing. Such an order is valid for up to 20 days.

Family Code, Title 1 addresses the marriage relationship, and Title 5 addresses suits affecting the parent-child relationship. Sec. 6.504 allows a court to enter a protective order as provided by Chapter 85 when a party to a suit for dissolution of marriage moves for a protective order.

Penal Code, sec. 25.07 makes it a Class A misdemeanor (punishable by up to one year in jail and/or a maximum fine of $4,000) to violate an order for emergency protection, a protective order issued under Chapter 85, or a protective order issued under Family Code, sec. 6.504. This list excludes temporary *ex parte* protective orders. An offense under Penal Code, sec. 25.07 is a third-degree felony (punishable by two to 10 years in prison and an optional fine of up to $10,000) if the defendant previously has been convicted at least twice of violating a protective order, or if the defendant violated the protective order by assaulting or stalking the protected person.

DIGEST: CSHB 297 would specify that if a condition imposed by an order of emergency protection issued under the Code of Criminal Procedure conflicts with a condition of a protective order issued under Title 1, Title 5, or Chapter 85 of the Family Code, the condition imposed by the order issued under the Family Code would prevail.

If a condition imposed by an order of emergency protection conflicted with a condition of a temporary *ex parte* order issued under Chapter 83 of the Family Code, the condition imposed by the order for emergency protection would prevail, unless the court issuing the temporary *ex parte* order was informed of

the existence of the order for emergency protection and made a finding that the court was superseding it.

A court that issued an order for emergency protection could modify the order if it found that the order was unworkable, that the modification would not place the victim of the offense at greater risk than did the original order, and that the modification would not endanger a person protected under the order.

The bill would allow a party to transfer the order for emergency protection to the court with jurisdiction over the criminal case that gave rise to the order originally. The criminal court assuming jurisdiction could modify the order in the same way as the issuing court.

The bill would take effect September 1, 2003.

SUPPORTERS
SAY:

CSHB 297 would establish a logical hierarchy among protective orders and would eliminate the confusion that arises when such orders conflict. Multiple orders are not uncommon. A person protected under an order for emergency protection might decide to apply for a longer-term protective order under the Family Code. Also, offenders, after having an order for emergency protection issued against them, may decide to retaliate by applying for a protective order against the protected party.

Under CSHB 297, conditions imposed by an order for emergency protection ordinarily would trump conditions imposed by a temporary *ex parte* order. This hierarchy makes sense, because orders for emergency protection are criminally enforceable and are issued after an offender is arrested, unlike temporary *ex parte* orders, which simply require the filing of an application. It also makes sense for longer-term protective orders issued under the Family Code to trump orders for emergency protection, because the former require notice and a hearing and also are criminally enforceable.

CSHB 297 would prevent an offender from undermining an order for emergency protection by obtaining a conflicting temporary *ex parte* order. After being released from jail, an offender sometimes hires an attorney to obtain a temporary *ex parte* protective order, which does not require notice or a hearing, against the protected party. The offender might hope to negate the conditions of the original order by creating confusion. CSHB 297 would

remove the incentive for an offender to obtain a conflicting order by specifying that the order for emergency protection would trump the temporary order unless the court issuing the temporary order was informed of the existence of the order for emergency protection and made a specific finding to supersede it.

By allowing parties to modify an order of emergency protection, CSHB 297 would enable courts to remain flexible and respond to practical problems with the original order. Orders for emergency protection are issued quickly, and legitimate reasons to modify them arise. For example, a magistrate might issue an order for emergency protection that prohibits a man from going near his child's school. If the man happened to work at that school, he would have a valid reason to seek a modification. An offender also might seek a modification due to changed circumstances or to care for a sick or elderly relative who lived with the protected party.

CSHB 297 would clarify the procedure for modifying orders for emergency protection, which parties already are undertaking in a disorganized, ad hoc manner. Currently, confusion exists as to who has jurisdiction to modify these orders and whether the Code of Criminal Procedure allows modifications. Parties sometimes ask courts that have nothing to do with either the criminal case or the original order to modify it. Furthermore, some courts modify orders for emergency protection without holding hearings. By requiring notice and a hearing and specifying the courts that have jurisdiction, CSHB 297 would ensure that modifications occur in an orderly manner with appropriate safeguards for the affected parties.

CSHB 297 would continue to ensure the safety of victims, because a court could not modify an order for emergency protection unless it found that the modification would not place the victim at greater risk than did the original order and that the modification would not endanger a person protected under the order. Both parties would receive notice of the modification and would have an opportunity to attend the hearing. A judge, after considering the evidence and observing the parties, can be trusted to determine whether or not a modification would jeopardize a victim's safety.

OPPONENTS
SAY:

By facilitating modifications of protective orders, CSHB 297 could work against a victim's best interests. A court issues such an order in the first place

only because the offender has assaulted or stalked the victim, who may be in grave danger. Any conditions that the original court imposed were there for a reason. While victims of such crimes may change their minds about needing an order during the "honeymoon" phase of a relationship, the victim's safety likely will remain at risk over time.

NOTES:

The committee substitute added the section that specifies the procedure when an order of emergency protection conflicts with a condition of a temporary *ex parte* order issued under Family Code, Chapter 83.

A similar bill during the 77th Legislature in 2001, HB 601 by Goodman, was left pending in the House Juvenile Justice and Family Issues Committee.