

- SUBJECT:** Electronic service of orders for emergency protection
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 9 ayes — Herrero, Carter, Burnam, Canales, Hughes, Leach, Moody, Schaefer, Toth
- 0 nays
- WITNESSES:** For — Rodney Adams, City of Irving Municipal Court; (*Registered, but did not testify*: Lon Craft, Texas Municipal Police Association; Deanna L. Kuykendall, Texas Municipal Courts Association; Allen Place, Texas Criminal Defense Lawyers Association)
- Against — None
- BACKGROUND:** Code of Criminal Procedure, art. 17.292 provides for the issuance of orders of emergency protection to defendants by magistrates following arrests for certain offenses involving family violence, sexual assault, aggravated sexual assault, or stalking. Issuance of these orders is mandatory when a family violence offense also involved serious bodily injury to the victim or the use or exhibition of a deadly weapon during the commission of an assault. The order must be served to the defendant in open court.
- DIGEST:** CSHB 570 would require a magistrate to serve an order of emergency protection issued under Code of Criminal Procedure, art. 17.292 to the defendant in person or electronically. The bill would require magistrates to make a separate record of the service of an order in written or electronic format.
- The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.
- SUPPORTERS SAY:** By allowing for the electronic issuance of protective orders, CSHB 570 would benefit everyone involved in this court process, including magistrates, law enforcement officers, and defendants. Defendants who

receive emergency protective orders are often in jail when the order is issued. Requiring orders to be served in open court means that defendants must be shackled and transported by jail staff, which puts law enforcement officers, court staff, and sometimes the defendants themselves at risk. Allowing these orders to be served electronically would alleviate the safety concerns that are always associated with transportation of detained individuals.

CSHB 570 would allow existing means of electronic communication that link courts and jails for other purposes to be applied to the issuance of orders of protection to defendants who were not physically present before the magistrate. Similar practices in place in some jurisdictions include videoconferencing between courts and jails and e-mailing documents to jail staff to print and deliver to defendants. These means of electronic communication would be permitted under the bill.

Courts choosing to take advantage of CSHB 570 would establish procedures for this type of service and would be required to follow those procedures. The bill would be permissive and would allow courts with these systems in place to take advantage of them when issuing orders for emergency protection. CSHB 570 also would ensure that service of the order was properly completed by requiring the magistrate to make a separate record of the service.

OPPONENTS
SAY:

Allowing remote or electronic service of emergency protective orders would create more room for human error in the process. By relying on jail staff to forward the notice to the defendant, more opportunities would arise for the order to be mishandled, misdirected, or fail to reach the defendant.

Requiring the magistrate to make a separate record is a good first step, but the bill also should require a signature or thumbprint from the defendant to ensure successful completion of service. Without such a safeguard, it would be difficult to ensure that the defendant received the order as required by law.

NOTES:

The committee substitute differs from HB 570 as introduced in that it would require that the magistrate make a separate record of the service and specify that the magistrate issue the order.