

SUBJECT: Allowing some emergency protective orders to ban all communications

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Herrero, Moody, Canales, Hunter, Shaheen, Simpson
0 nays
1 absent — Leach

WITNESSES: For — (*Registered, but did not testify:* Justin Wood, Harris County District Attorney's Office; Chris Kaiser, Texas Association Against Sexual Assault; Aaron Setliff, The Texas Council on Family Violence; Lon Craft, TMPA; Jeffrey Knoll; Katherine McAnally; Heather Ross)

Against — None

On — Patricia Cummings, Texas Criminal Defense Lawyers Association

BACKGROUND: Code of Criminal Procedure, art. 17.292 allows magistrates to issue emergency protective orders after an arrest under certain circumstances. Orders can be issued for offenses involving family violence and for sexual assault, aggravated sexual assault, or stalking. The order may be issued on the magistrate's own motion or on the request of victims, victims' guardians, peace officers, or prosecutors.

Art. 17.292(c) lists actions that the orders can prohibit the arrested person from doing, including communicating directly in a threatening or harassing manner with the person under the order or a member of their family or household.

DIGEST: CSHB 1076 would add communicating in any manner to the list of actions that could be prohibited by a magistrate through an emergency protective order issued for family violence offenses or for sexual assault, aggravated sexual assault, or stalking. Specifically, the magistrate, with good cause, could prohibit an arrested person from communicating in any manner with

a person protected under the order or with a member of the family or household of the protected person. Communication would be allowed through an attorney or a person appointed by the court.

This 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, 2015.

**SUPPORTERS
SAY:**

CSHB 1076 is needed to give victims of family violence, sexual assault, and stalking the safety and stability necessary to recover immediately after an incident. While current law allows for emergency protective orders to be issued in these cases, the orders can restrict the accused only from communicating directly with victims and their families or households in a threatening or harassing manner. In some cases, any contact with the perpetrator can be harmful to victims, exacerbate their trauma, and increase the risk of long-term injury, including physical or mental health problems.

The bill would address this situation by allowing emergency protective orders in certain cases to prohibit communicating in any manner with victims or their families or households. This would allow a cooling-off period in which there was no communication between the alleged offender and the victim and their family and household. Victims could feel safe, take stock of their situation, and get any necessary help.

The ability to issue these orders would be limited to appropriate cases. The orders could be issued only in cases involving family violence and for sexual assault, aggravated sexual assault, or stalking. Magistrates would continue to have discretion over issuing the orders and would evaluate each circumstance individually. Given the seriousness of the offenses included in the bill and the need for swift action to protect victims, the bill would require the appropriate threshold that good cause be shown. These orders are issued for a short period, and other issues could be considered if standard protective orders are pursued. Any necessary communications could occur through the parties' lawyers.

CSHB 1076 would parallel Code of Criminal Procedure, art. 7A provisions for protective orders for victims of sexual assault or abuse, stalking, or trafficking that allow orders to be issued prohibiting individuals from communicating in any manner with victims or their families or households.

OPPONENTS
SAY:

CSHB 1076 should contain an additional threshold or test to ensure that sweeping emergency protective orders cutting off all communication would be issued only when appropriate, especially in cases involving parents and children. In these cases, it might be best to require a finding that an order issued under the bill would be in the best interest of the child, similar to findings required in some family court situations.

NOTES:

CSHB 1076 differs from the bill as filed in that the caption of the substitute indicates that the bill would amend provisions subject to a criminal penalty.

The Senate companion bill, SB 112 by V. Taylor, was passed by the Senate on April 13.