

BILL ANALYSIS

C.S.H.B. 297
By: Goodman
Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It is not uncommon for a family member to move to a different location due to family violence or after a stalking incident has taken place, and file for a temporary emergency protective order in their new county of residence. C.S.H.B. 297 adds language which specifies that a condition imposed by a subsequent protective order under Chapter 85, Subtitle B, Title 4, Family Code, or under Title 1 or Title 5 of the Family Code has precedence over a condition imposed by an order under the provisions of a magistrate's order for emergency protection. The bill also adds language which addresses the situation when an order issued under Chapter 83, Subtitle B, Title 4, of the Family Code conflicts with a magistrate's order for emergency protection. C.S.H.B. 297 specifies the circumstances and provisions for modifying a magistrate's order for emergency protection because current law is silent on this issue.

Finally, C.S.H.B. 297 clarifies which courts have the jurisdiction to modify a magistrate's order for emergency protection by providing that the issuing court or the criminal court that assumes jurisdiction for the criminal case are the only courts that can modify a magistrate's order for emergency protection.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

SECTION BY SECTION ANALYSIS

Section 1. Amends Article 17.292, Code of Criminal Procedure, to provide that a protective order issued under Chapter 85, Subtitle B, Title 4, Family Code or under Title 1 or Title 5, Family Code, issued subsequent to a magistrate's order for emergency protection prevails to the extent that a conflict exists. The bill further provides that if an order issued under Article 17.292 conflicts with a subsequent order issued under Chapter 83, Subtitle B, Title 4, Family Code, the conditions imposed by the order issued under Article 17.292 prevail unless the court issuing the order under Chapter 83, Family Code is informed of the existence of the order issued under Article 17.292 and the court makes a finding in the Chapter 83, Family Code order that the court is superseding the order issued under Article 17.292.

Additionally, the bill provides that after notice and a hearing, the issuing court may modify an order if the court finds that: the order as originally issued is unworkable; the modification will not place the victim of the offense at greater risk than did the original order; and the modification will not endanger a person protected under the order. Furthermore, the bill clarifies continuing jurisdiction to modify a magistrate's order for emergency protection by providing that only the issuing court or criminal court assuming jurisdiction over the criminal case may modify such.

Section 2. This Act takes effect September 1, 2003, and applies only to an order for emergency protection issued under Article 17.292, Code of Criminal Procedure, as amended by this Act, on or after that date.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 297 modifies the original H.B. 297 by adding language which provides that if an order issued under Article 17.292 conflicts with a subsequent order issued under Chapter 83, Subtitle B, Title 4, Family Code, the conditions imposed by the order issued under Article 17.292 prevail unless the court issuing the order under Chapter 83, Family Code is informed of the existence of the order issued under Article 17.292, and the court makes a finding in the order under Chapter 83, of the Family Code, that the court is superseding the order issued under Article 17.292.