

By: Strama

H.B. No. 3040

A BILL TO BE ENTITLED

AN ACT

relating to a magistrate's order for an emergency protective order for sexual assaults.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 17, Code of Criminal Procedure, Article 17.292, is amended as follows:

Art. 17.292. MAGISTRATE'S ORDER FOR EMERGENCY PROTECTION.

(a) At any of a defendant's appearances before a magistrate after an arrest for an offense involving family violence, an offense under Section 42.072, Penal Code, or an offense under Section 22.011 or 22.021, Penal Code, the magistrate may issue an order for emergency protection on the magistrate's own motion or on the request of:

- (1) the victim of the offense;
- (2) the guardian of the victim;
- (3) a peace officer; or
- (4) the attorney representing the state.

(b) At a defendant's appearance before a magistrate after arrest for an offense involving family violence, the magistrate shall issue an order for emergency protection if the arrest is for an offense that also involves:

- (1) serious bodily injury to the victim; or
- (2) the use or exhibition of a deadly weapon during the commission of an assault.

1 (b-1) A defendant is prohibited from waiving magistration if a
2 request for a Magistrate's Order for Emergency Protection is
3 pending.

4 (c) The magistrate in the order for emergency protection may
5 prohibit the arrested party from:

6 (1) committing:

7 (A) family violence or an assault on the person protected under
8 the order; or

9 (B) an act in furtherance of an offense under Section 42.072,
10 Penal Code;

11 (2) communicating:

12 (A) directly with a member of the family or household or with the
13 person protected under the order in a threatening or harassing
14 manner; or

15 (B) a threat through any person to a member of the family or
16 household or to the person protected under the order;

17 (3) going to or near:

18 (A) the residence, place of employment, or business of a member of
19 the family or household or of the person protected under the order;
20 or

21 (B) the residence, child care facility, or school where a child
22 protected under the order resides or attends; or

23 (4) possessing a firearm, unless the person is a peace officer, as
24 defined by Section 1.07, Penal Code, actively engaged in employment
25 as a sworn, full-time paid employee of a state agency or political
26 subdivision.

27 SECTION 2. This ACT takes effect immediately if it receives a vote

H.B. No. 3040

1 of two-thirds of all the members elected to each house, as provided
2 by Section 39, Article III, Texas Constitution. If this ACT does
3 not receive the vote necessary for immediate effect, this Act takes
4 effect September 1, 2005.