

BILL ANALYSIS

C.S.H.B. 570
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law authorizes a magistrate to issue an order for emergency protection at a defendant's appearance before the magistrate after being arrested for an offense involving family violence or certain other offenses to prevent the offender from committing further acts of violence against a victim and the victim's family members. While the law does not specify the required venue for the issuance of such an order, it requires a copy of the order to be served on the defendant in open court. Interested parties note that this requirement is impractical because these orders often are issued while the offender is imprisoned, thus serving a copy of the order to a defendant in open court could create safety concerns for the magistrate, law enforcement officers, and members of the general public present in the courtroom. Thus, the parties contend that such orders should be served by electronic means while the offender is confined in jail. In an effort to alleviate these safety risks, C.S.H.B. 570 removes the requirement that the defendant be served a copy of the emergency order for protection in open court and provides the option of serving the copy electronically to a defendant, including a defendant in jail.

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.

ANALYSIS

C.S.H.B. 570 amends the Code of Criminal Procedure to require a copy of an order for emergency protection issued by a magistrate for a victim of an offense involving family violence or of sexual assault, aggravated sexual assault, or stalking to be served to the defendant by the magistrate in person or electronically, rather than served to the defendant in open court, and to require the magistrate to make a separate record of the service in written or electronic format. The bill specifies that such a victim need not be present, rather than not be present in court, when the order for emergency protection is issued.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 570 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Articles 17.292(d) and (j),	SECTION 1. Articles 17.292(d) and (j),

Code of Criminal Procedure, are amended to read as follows:

(d) The victim of the offense need not be present ~~[in-court]~~ when the order for emergency protection is issued.

(j) An order for emergency protection issued under this article is effective on issuance, and the defendant shall be served a copy of the order in person or electronically ~~[open-court]~~.

An order for emergency protection issued under Subsection (a) or (b)(1) of this article remains in effect up to the 61st day but not less than 31 days after the date of issuance. An order for emergency protection issued under Subsection (b)(2) of this article remains in effect up to the 91st day but not less than 61 days after the date of issuance. After notice to each affected party and a hearing, the issuing court may modify all or part of an order issued under this article if the court finds that:

- (1) the order as originally issued is unworkable;
- (2) the modification will not place the victim of the offense at greater risk than did the original order; and
- (3) the modification will not in any way endanger a person protected under the order.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

Code of Criminal Procedure, are amended to read as follows:

(d) The victim of the offense need not be present ~~[in-court]~~ when the order for emergency protection is issued.

(j) An order for emergency protection issued under this article is effective on issuance, and the defendant shall be served a copy of the order by the magistrate in person or electronically. The magistrate shall make a separate record of the service in written or electronic format ~~[open-court]~~. An order for emergency protection issued under Subsection (a) or (b)(1) of this article remains in effect up to the 61st day but not less than 31 days after the date of issuance. An order for emergency protection issued under Subsection (b)(2) of this article remains in effect up to the 91st day but not less than 61 days after the date of issuance. After notice to each affected party and a hearing, the issuing court may modify all or part of an order issued under this article if the court finds that:

- (1) the order as originally issued is unworkable;
- (2) the modification will not place the victim of the offense at greater risk than did the original order; and
- (3) the modification will not in any way endanger a person protected under the order.

SECTION 2. Same as introduced version.