

BILL ANALYSIS

C.S.H.B. 1438
By: Lucio III
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The duration of a magistrate's order for emergency protection can generally last anywhere from 31 to 91 days after the date of issuance. Interested parties assert that, in a situation where the person against whom the order is issued goes to jail on an unrelated charge, the protective order may lapse and no longer serve its purpose, as the person is incarcerated with no access to the person protected under the order. C.S.H.B. 1438 seeks to address this issue by extending the period for which an emergency protective order is effective with respect to a confined or imprisoned person who is the subject of the order.

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. 1438 amends the Code of Criminal Procedure to extend the period for which a magistrate's order for emergency protection is effective, if the person who is the subject of the order is confined or imprisoned on the date the order is due to expire, by providing that the order expires on the 31st day after the date the person is released from confinement or imprisonment.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1438 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

SECTION 1. Article 17.292, Code of Criminal Procedure, is amended by amending Subsection (j) and adding Subsections (j-1), (j-2), and (j-3) to read as follows:

(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 open court.

(j-1) An order for emergency protection

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Article 17.292, Code of Criminal Procedure, is amended by amending Subsection (j) and adding Subsections (j-1), (j-2), and (j-3) to read as follows:

(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 open court.

(j-1) An order for emergency protection

83R 25478

13.117.394

Substitute Document Number: 83R 23630

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.

(j-2) If a person who is the subject of an order for emergency protection is confined or imprisoned on the date the order is due to expire under Subsection (j-1), the period for which the order is effective is extended, and the order expires not later than the 31st day after the date the person is released from confinement or imprisonment.

(j-3) 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. The change in law made by this Act to Article 17.292, Code of Criminal Procedure, applies only to a magistrate's order for emergency protection that is issued on or after the effective date of this Act. A magistrate's order for emergency protection that was issued before the effective date of this Act is governed by the law in effect on the date the order was issued, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2013.

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.

(j-2) If a person who is the subject of an order for emergency protection is confined or imprisoned on the date the order is due to expire under Subsection (j-1), the period for which the order is effective is extended, and the order expires on the 31st day after the date the person is released from confinement or imprisonment.

(j-3) 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.

SECTION 3. Same as introduced version.