

By: Rodríguez

S.B. No. 737

A BILL TO BE ENTITLED

AN ACT

relating to certain protective orders and magistrate's orders for emergency protection.

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

SECTION 1. Article 17.292, Code of Criminal Procedure, is amended by amending Subsections (a), (c), (g), (h), and (k) and adding Subsections (h-1), (i-1), and (k-1) to read as follows:

(a) At a defendant's appearance before a magistrate after arrest for an offense involving family violence or an offense under Section 20A.02, 20A.03, 22.011, 22.021, or 42.072, 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.

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

- (1) committing:
 - (A) family violence or an assault on the person protected under the order; or
 - (B) an act in furtherance of an offense under Section 20A.02 or 42.072, Penal Code;

- (2) communicating:

1 (A) directly with a member of the family or
2 household or with the person protected under the order in a
3 threatening or harassing manner; or

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

6 (3) going to or near:

7 (A) the residence, place of employment, or
8 business of a member of the family or household or of the person
9 protected under the order; or

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

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

16 (g) An order for emergency protection issued under this
17 article must contain the following statements printed in bold-face
18 type or in capital letters:

19 "A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED
20 BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY
21 CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR OR BY BOTH. AN ACT THAT
22 RESULTS IN FAMILY VIOLENCE OR A STALKING OR TRAFFICKING OFFENSE MAY
23 BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE, AS
24 APPLICABLE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE,
25 IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS.
26 THE POSSESSION OF A FIREARM BY A PERSON, OTHER THAN A PEACE OFFICER,
27 AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN

1 EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR
2 POLITICAL SUBDIVISION, WHO IS SUBJECT TO THIS ORDER MAY BE
3 PROSECUTED AS A SEPARATE OFFENSE PUNISHABLE BY CONFINEMENT OR
4 IMPRISONMENT.

5 "NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS
6 ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY
7 PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS
8 VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT
9 UNLESS A COURT CHANGES THE ORDER."

10 (h) As soon as possible but not later than the next business
11 day after the date the [The] magistrate issues [issuing] an order
12 for emergency protection under this article, the magistrate shall
13 send a copy of the order to the chief of police in the municipality
14 where the member of the family or household or individual protected
15 by the order resides, if the person resides in a municipality, or to
16 the sheriff of the county where the person resides, if the person
17 does not reside in a municipality. If the victim of the offense is
18 not present when the order is issued, the magistrate issuing the
19 order shall order an appropriate peace officer to make a good faith
20 effort to notify, within 24 hours, the victim that the order has
21 been issued by calling the victim's residence and place of
22 employment. The clerk of the court shall send a copy of the order to
23 the victim at the victim's last known address as soon as possible
24 but not later than the next business day after the date the order is
25 issued.

26 (h-1) A magistrate or clerk of the court may delay sending a
27 copy of the order under Subsection (h) only if the magistrate or

1 clerk lacks information necessary to ensure service and
2 enforcement.

3 (i-1) The copy of the order and any related information may
4 be sent under Subsection (h) or (i) electronically or in another
5 manner that can be accessed by the recipient.

6 (k) To ensure that an officer responding to a call is aware
7 of the existence and terms of an order for emergency protection
8 issued under this article, not later than the third business day
9 after the date of receipt of the copy of the order by the applicable
10 law enforcement agency with jurisdiction over the municipality or
11 county in which the victim resides, the law enforcement agency
12 shall enter the information required under Section 411.042(b)(6),
13 Government Code, into the statewide law enforcement information
14 system maintained by the Department of Public Safety [each
15 ~~municipal police department and sheriff shall establish a procedure~~
16 ~~within the department or office to provide adequate information or~~
17 ~~access to information for peace officers of the names of persons~~
18 ~~protected by an order for emergency protection issued under this~~
19 ~~article and of persons to whom the order is directed. The police~~
20 ~~department or sheriff may enter an order for emergency protection~~
21 ~~issued under this article in the department's or office's record of~~
22 ~~outstanding warrants as notice that the order has been issued and is~~
23 ~~in effect].~~

24 (k-1) A law enforcement agency may delay entering the
25 information required under Subsection (k) only if the agency lacks
26 information necessary to ensure service and enforcement.

27 SECTION 2. Article 17.292(m), Code of Criminal Procedure,

1 is amended by adding Subdivision (3) to read as follows:

2 (3) "Business day" means a day other than a Saturday,
3 Sunday, or state or national holiday.

4 SECTION 3. Section 85.042, Family Code, is amended by
5 amending Subsections (a) and (d) and adding Subsections (f), (g),
6 and (h) to read as follows:

7 (a) Not later than the next business day after the date [~~The~~
8 ~~clerk of~~] the court issues [~~issuing~~] an original or modified
9 protective order under this subtitle, the clerk of the court shall
10 send a copy of the order, along with the information provided by the
11 applicant or the applicant's attorney that is required under
12 Section 411.042(b)(6), Government Code, to:

13 (1) the chief of police of the municipality in which
14 the person protected by the order resides, if the person resides in
15 a municipality;

16 (2) the appropriate constable and the sheriff of the
17 county in which the person resides, if the person does not reside in
18 a municipality; and

19 (3) the Title IV-D agency, if the application for the
20 protective order indicates that the applicant is receiving services
21 from the Title IV-D agency.

22 (d) The applicant or the applicant's attorney shall provide
23 to the clerk of the court:

24 (1) the name and address of each law enforcement
25 agency, child-care facility, school, and other individual or entity
26 to which the clerk is required to send [~~mail~~] a copy of the order
27 under this section; and

1 (2) any other information required under Section
2 [411.042\(b\)\(6\)](#), Government Code.

3 (f) A clerk of the court may transmit the order and any
4 related information electronically or in another manner that can be
5 accessed by the recipient.

6 (g) A clerk of the court may delay sending a copy of the
7 order under Subsection (a) only if the clerk lacks information
8 necessary to ensure service and enforcement.

9 (h) In this section, "business day" means a day other than a
10 Saturday, Sunday, or state or national holiday.

11 SECTION 4. Section [86.0011](#), Family Code, is amended to read
12 as follows:

13 Sec. 86.0011. DUTY TO ENTER INFORMATION INTO STATEWIDE LAW
14 ENFORCEMENT INFORMATION SYSTEM. (a) On receipt of an original or
15 modified protective order from the clerk of the issuing court, a law
16 enforcement agency shall immediately, but not later than the third
17 business [~~10th~~] day after the date the order is received, enter the
18 information required by Section [411.042\(b\)\(6\)](#), Government Code,
19 into the statewide law enforcement information system maintained by
20 the Department of Public Safety.

21 (b) In this section, "business day" means a day other than a
22 Saturday, Sunday, or state or national holiday.

23 SECTION 5. Section [411.042\(b\)](#), Government Code, is amended
24 to read as follows:

25 (b) The bureau of identification and records shall:
26 (1) procure and file for record photographs, pictures,
27 descriptions, fingerprints, measurements, and other pertinent

1 information of all persons arrested for or charged with a criminal
2 offense or convicted of a criminal offense, regardless of whether
3 the conviction is probated;

4 (2) collect information concerning the number and
5 nature of offenses reported or known to have been committed in the
6 state and the legal steps taken in connection with the offenses, and
7 other information useful in the study of crime and the
8 administration of justice, including information that enables the
9 bureau to create a statistical breakdown of:

10 (A) offenses in which family violence was
11 involved;

12 (B) offenses under Sections 22.011 and 22.021,
13 Penal Code; and

14 (C) offenses under Sections 20A.02 and 43.05,
15 Penal Code;

16 (3) make ballistic tests of bullets and firearms and
17 chemical analyses of bloodstains, cloth, materials, and other
18 substances for law enforcement officers of the state;

19 (4) cooperate with identification and crime records
20 bureaus in other states and the United States Department of
21 Justice;

22 (5) maintain a list of all previous background checks
23 for applicants for any position regulated under Chapter 1702,
24 Occupations Code, who have undergone a criminal history background
25 check under Section 411.119, if the check indicates a Class B
26 misdemeanor or equivalent offense or a greater offense;

27 (6) collect information concerning the number and

1 nature of protective orders and magistrate's orders of emergency
2 protection and all other pertinent information about all persons
3 subject to ~~[on]~~ active ~~[protective]~~ orders, including pertinent
4 information about persons subject to conditions of bond imposed for
5 the protection of the victim in any family violence, sexual assault
6 or abuse, or stalking case. Information in the law enforcement
7 information system relating to an active ~~[protective]~~ order shall
8 include:

9 (A) the name, sex, race, date of birth, personal
10 descriptors, address, and county of residence of the person to whom
11 the order is directed;

12 (B) any known identifying number of the person to
13 whom the order is directed, including the person's social security
14 number or driver's license number;

15 (C) the name and county of residence of the
16 person protected by the order;

17 (D) the residence address and place of employment
18 or business of the person protected by the order, unless that
19 information is excluded from the order under Section 85.007, Family
20 Code, or Article 17.292(e), Code of Criminal Procedure;

21 (E) the child-care facility or school where a
22 child protected by the order normally resides or which the child
23 normally attends, unless that information is excluded from the
24 order under Section 85.007, Family Code, or Article 17.292(e), Code
25 of Criminal Procedure;

26 (F) the relationship or former relationship
27 between the person who is protected by the order and the person to

1 whom the order is directed;

2 (G) the conditions of bond imposed on the person
3 to whom the order is directed, if any, for the protection of a
4 victim in any family violence, sexual assault or abuse, or stalking
5 case; ~~and~~

6 (H) any minimum distance the person subject to
7 the order is required to maintain from the protected places or
8 persons; and

9 (I) the date the order expires;

10 (7) grant access to criminal history record
11 information in the manner authorized under Subchapter F;

12 (8) collect and disseminate information regarding
13 offenders with mental impairments in compliance with Chapter 614,
14 Health and Safety Code; and

15 (9) record data and maintain a state database for a
16 computerized criminal history record system and computerized
17 juvenile justice information system that serves:

18 (A) as the record creation point for criminal
19 history record information and juvenile justice information
20 maintained by the state; and

21 (B) as the control terminal for the entry of
22 records, in accordance with federal law and regulations, federal
23 executive orders, and federal policy, into the federal database
24 maintained by the Federal Bureau of Investigation.

25 SECTION 6. The changes in law made by this Act apply to a
26 protective order or magistrate's order of emergency protection
27 issued on or after the effective date of this Act, regardless of

1 whether the conduct on which the order is based occurred before, on,
2 or after that date.

3 SECTION 7. This Act takes effect September 1, 2015.