

SUBJECT: Peace officer standby assistance to a victim of family violence

COMMITTEE: Civil Practices - favorable without amendment

VOTE: 5 ayes — Hunter, Culberson, Moffat, Tillery, Zbranek

4 absent — Hilbert, Alvarado, Hartnett, Sadler

SENATE VOTE: On final passage, February 1 — voice vote

WITNESSES: For — Georgie Rasco, Texas Council on Family Violence.

Against — Bill Whitehurst, Texas Trial Lawyers Association

BACKGROUND: The doctrine of sovereign immunity exempts the state and other governmental units from liability for the acts of their officers and employees. The state, however, has waived its immunity in the Texas Tort Claims Act (Civil Practices and Remedies Code, Chapter 101 *et seq.*). The Tort Claims Act allows the state or local governmental units to be sued for torts caused by public employees in the scope of their duties, and limits the liability of the governmental body. The act also provide for indemnification (reimbursement for damages) of public employees who are sued individually for actions done within the scope of their duties.

DIGEST: SB 284 would allow peace officers to provide "standby assistance" to victims of family violence in order to protect and allow the victim to take any personal property of the victim or a child in the care of a victim to a place of safety in an orderly manner.

A peace officer providing assistance to a victim would not be civilly liable for an act or omission arising in connection with providing or making the determination of providing assistance. In addition, the officer could not be held civilly or criminally liable for the wrongful appropriation of any personal property by the victim.

The bill would take effect immediately if passed by a two-thirds vote of each house.

**SUPPORTERS
SAY:**

SB 284 would give police departments an important tool to help them keep the peace without the threat of lawsuits that might arise from helping family violence victims move out. Research has shown that victims of domestic violence are in greater danger of serious or fatal injury when they leave the abuser than when they stay. Often the victims seek assistance from their local police department to help ensure safety as the victim removes personal effects.

If victims are not asking the police to investigate a crime that has already been committed, the assistance offered by the police is often called "civil standby." Civil standby often causes great concern for police departments fearing civil litigation by the victim's spouse, with some police departments refusing to provide this type of assistance.

Police departments that have provided this type of "standby assistance" have reported positive results. Studies have shown that these departments have set forth very strict guidelines for protecting victims without making any decision regarding the couples' division of personal property. Any definition of what constitutes "personal property" should be left to local police departments to determine.

Without SB 284, police departments are open to very real possibilities of suits by victims, if the department is alerted to the possibility of a potentially explosive situation and fails to act. SB 284 would alleviate concerns by the local law enforcement agencies in acting in these types of volatile situations when "standby assistance" is requested.

**OPPONENTS
SAY:**

The provision relating to "personal property" is too broadly drawn. Victims, with the assistance of the police, could wrongly take their spouse's property. There should be clearer language that explains what constitutes personal property.