

**SUBJECT:** Extending detention period after posting bail in family violence cases

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 7 ayes — Hinojosa, Dunnam, Garcia, Keel, Nixon, Smith, Wise  
0 nays  
2 absent — Green, Talton

**WITNESSES:** For — Ches Williams, Dallas Chief of Police Bennie R. Click; Bree Buchanan, Texas Council on Family Violence; John Healey  
Against — None

**BACKGROUND:** Code of Criminal Procedure, art. 17.29 requires persons in the custody of law enforcement authorities to be released from custody if they pay a court-established bond. Art. 17.291 allows persons arrested or held without warrant in the prevention of family violence to be held for up to four hours after they have posted bond if there is probable cause to believe that the violence will continue if the person is released. A person can be held for up to 24 hours after the initial four hours if a magistrate concludes that the violence would continue if the person were released. The magistrate must authorize in writing any detention longer than the initial four hours.

**DIGEST:** CSHB 577 would extend from 24 hours to 48 hours the maximum period that someone arrested or held without warrant in prevention of family violence could be held after bail had been posted and after the initial four-hour period. If the detention period exceeded an additional 24 hours, the magistrate would have to have concluded that there was probable cause to believe that the person had committed an offense.  
  
CSHB 577 would take effect September 1, 1999, and would apply only to persons detained after that date.

**SUPPORTERS SAY:** CSHB 577 would provide additional protection to victims of family violence in the most serious cases — those in which a magistrate concludes that there is probable cause to believe that the jailed person committed a crime. In 1991,

the Legislature acted to protect family violence victims by allowing the detention of persons in some family violence situations. CSHB 577 merely would expand those protections.

Family violence is a serious problem in Texas, and the law should be expanded to protect victims adequately. The Department of Public Safety reported 181,773 incidents of family violence in 1997, 32 percent more than in 1991. Family violence accounts for about 23 percent of all violent crimes in Texas.

CSHB 577 would help defuse potentially volatile family violence situations and give victims adequate time to make arrangements for their safety. The period immediately following family violence can be dangerous. CSHB 577 would give perpetrators time to cool off and, if alcohol or drugs were involved in the case, allow their effects to wear off. In cases of serious family violence, the current 24-hour detention period may not be enough to allow victims to be accepted into a shelter or arrange other housing, to secure civil protections, or to obtain social services. These tasks could be especially difficult to accomplish in 24 hours if the family violence occurred on a weekend.

CSHB 577 would not be abused or lead to wholesale 48-hour detention of all offenders accused of family violence. The detention period could be extended only if a magistrate specifically concluded that there was probable cause to suspect that a person had committed a crime and that the violence would continue if the person were released. Since a magistrate's directive to hold the person for 48 hours would have to be written, magistrates could be held accountable by defense lawyers, the public, and the media for their decisions.

OPPONENTS  
SAY:

CSHB 577 would be an unwise expansion of the ability of law enforcement authorities to hold people who should be released. When people pay bail, they should be free as soon as possible because they have not been convicted of anything and remain innocent until proven guilty. CSHB 577 would create an even harsher pretrial punishment than under current law for persons *suspected* of domestic violence. The Legislature should not continue to craft a specific set of laws and procedures for persons accused of one type of crime.

There is no proof that additional detention of persons accused of family violence would have a beneficial effect on a family's situation. In fact, a jail

is hardly an ideal “cooling off” place for a person suspected of committing family violence. The longer a person sits in jail, the angrier he or she is likely to become.

CSHB 577 could result in abuses because magistrates could find it hard to deny an extension of the detention period. This could result in 48 hours becoming the standard detention time.

NOTES:

The committee substitute added the provision that the detention period could be extended past an additional 24 hours only if the magistrate concluded that there was probable cause to believe the person had committed an offense.

The companion bill, SB 482 by Nelson, has been referred to the Senate Criminal Justice Committee.