

- SUBJECT:** Notice to military in domestic violence cases
- COMMITTEE:** Defense and Veterans' Affairs — committee substitute recommended
- VOTE:** 8 ayes — Pickett, Sheffield, Berman, Farias, Flynn, Perry, Scott, V. Taylor
0 nays
1 absent — Landtroop
- WITNESSES:** For — Mike Gentry, Central Texas Family Violence Task Force and Texas Police Chiefs Association; Todd Jermstad, Central Texas Domestic Violence Task Force; Erica Surprenant, Texas Criminal Justice Coalition
Against — None
- BACKGROUND:** Family Code, sec. 85.042 requires a court clerk to send a copy of a domestic violence-related protective order to the chief of police and county sheriff where the protected person lives. If the order is modified or withdrawn, the clerk must notify the chief and the sheriff.

Code of Criminal Procedure, Art. 5.05 requires a peace officer investigating a domestic violence incident to include in the officer's written report: names of the suspect and complainant; date, time, and location of the incident; visible or reported injuries; and a description of the incident.
- DIGEST:** CSHB 2624 would require military officers to be notified if a member within their unit was named in a protective order. If a person named in the protective order was in the state military or active-duty armed forces, the court clerk would have to send a copy of the protective order to the staff judge advocate at Joint Force Headquarters or the provost marshal at the person's military installation. If the order was modified or withdrawn, the court would have to notify all parties who received a copy of the original order.

The bill also would require a peace officer investigating a domestic violence incident to include in his or her report whether the suspect or

complainant was a member of the state military or active-duty armed forces. If so, the peace officer would have to provide written notice of the incident to the staff judge advocate or provost marshal at the suspect's or complainant's military installation.

If a member of the state military or active-duty armed forces was convicted or put on probation in a homicide, kidnapping, assault, sexual assault, human trafficking, or domestic violence case, the court clerk would have to provide written notice of this to the staff judge advocate or the defendant's provost marshal.

CSHB 2624 also would require a presentence investigation to include information on whether the defendant was currently or formerly in the state military or active-duty armed forces. If so, the investigation would have to identify if the defendant was deployed to a combat zone and if he or she suffered from post-traumatic stress disorder (PTSD) or traumatic brain injury. The investigation report would have to include a copy of the defendant's military records and discharge papers.

The bill would take effect on September 1, 2011.

**SUPPORTERS
SAY:**

Military officials often are unaware when members within their units are the subjects of a domestic violence investigation or protective order, or if they are defendants standing trial. It is vital to national security that the military be notified of these incidents, and CSHB would require that notice.

Unit cohesion is one of the most critical aspects to the success of the military, particularly in combat situations. Outside behavior, especially violence toward another person, significantly affects unit cohesion. Military officials need to be made aware of these circumstances so that they may take appropriate actions. This could include counseling or additional oversight, but would not necessarily be equivalent to double punishment or military discharge.

While presentencing investigations often are broad in scope and include a number of mitigating factors within a defendant's background, they do not always include military history. A person's service in the military, particularly if he or she served in a combat zone or suffered from PTSD or traumatic brain injury, affects a person's physical and mental condition enormously. While determining the defendant's sentence, judges need to

be aware of these important factors to be able to determine independently their severity and effect on the case.

OPPONENTS
SAY:

The military does not have a right to information on incidents occurring outside their jurisdiction. Just as a defendant's right to privacy prevents domestic violence investigation information from being shared with supervisors at a workplace, military officials should not have access to their personnel's private lives.

Furthermore, while information regarding domestic violence may not result in military discharge, this information, which is not relevant to their service, could prevent them from certain promotions or assignments.

If a defendant is deemed fit to stand trial, meaning any mental or physical injuries do not prevent a court from ruling the defendant competent and sane, his or her military record should not be required in a presentencing investigation.

Currently, during a presentencing investigation, the court can be informed of any mitigating factors, including military history and physical or mental injuries. These factors already are applied by the court during sentencing decisions.

Additionally, there are many challenges in diagnosing and determining the severity of injuries like PTSD. Often these injuries have a severe impact on a person's mental state, but there are many cases where a misdiagnosis or a mild case should not have to be included in a presentencing investigation if it is irrelevant.

OTHER
OPPONENTS
SAY:

An alleged domestic violence victim could be deterred from reporting an incident to law enforcement if a peace officer had to notify the staff judge advocate or the complainant's provost marshal.

NOTES:

A planned floor amendment, acceptable to the author, would remove language requiring a peace officer to report a domestic violence incident involving a complainant who is in the state military or active-duty armed forces to the staff judge advocate or provost marshal at the suspect's or complainant's military installation.

The committee substitute revised language related to requiring a peace officer to provide written notice of a domestic violence incident to the staff judge advocate or provost marshal.