

BILL ANALYSIS

Senate Research Center

C.S.S.B. 550
By: Moncrief
Criminal Justice
4-9-97
Committee Report (Substituted)

DIGEST

The present statute regarding magistrate's orders for emergency protection was passed last session as a result of the Senate Interim Committee on Domestic Violence and enabled victims of domestic violence and stalking to seek an emergency order from a magistrate when the perpetrator was arrested. While the new statute has received much praise, various groups have offered suggestions for fine-tuning and clean-up.

This legislation would grant magistrates protective authority to prohibit the arrested party from committing an assault on, communicating with, or going to or near, the person protected under the order. This bill would also lessen the penalties for violation of an emergency protective order to provide for not more than a \$4,000 fine, jail for as long as a year, or both; and would delete the provision regarding punishment for further violations. In addition, C.S.S.B. would ensure that victims need not be present in court when the order for emergency protection is issued, but would require a good faith effort to notify the victim that the order has been issued by calling the victim's residence and workplace within 24 hours, in an effort to better avail victims of the protection the order offers. Finally, this bill amends the notice to adult victims of family violence so that victims are made aware of the availability of the emergency protective order, and that they need not be present when it is issued.

PURPOSE

As proposed, C.S.S.B. 550 establishes the content of an emergency protective order, and provides the penalties for violations of the order.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 17.292, Code of Criminal Procedure, to authorize a magistrate, in an order for emergency protection, to prohibit the arrested party from committing an assault on, communicating directly with, communicating a threat to, or going to or near the person protected under the order. Provides that the victim of the offense need not be present in court when the order for emergency protection is issued. Requires an order for emergency protection issued under this article to contain the following statements printed in bold-face type or in capital letters: "A violation of this order by commission of an act prohibited by the order may be punishable by a fine of as much as \$4,000, rather than \$10,000, or by confinement in jail, rather than imprisonment in prison, for as long as one year, rather than 10 years, or by both." Deletes the provision in the order authorizing further violations of the order to be punishable by as many as 99 years in prison. Requires the magistrate issuing the order, if the victim of the offense is not present when the order is issued, to order an appropriate peace officer to make a good faith effort to notify, within 24 hours, the victim that the order has been issued by calling the victim's residence and place of employment. Requires the clerk of the court to send a copy of the order to the victim. Makes conforming changes.

SECTION 2. Amends Article 5.04(c), Code of Criminal Procedure, to provide that a written notice required by Subsection (b) of this article is sufficient if it is in a certain form with the following required information inserted in the notice, "If a family or household member assaults you and is

arrested, you may request that a magistrate's order for emergency protection be issued. Please inform the investigating officer if you want an order for emergency protection. You need not be present when the order is issued."

SECTION 3. Effective date: September 1, 1997.

SECTION 4. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Article 17.292, Code of Criminal Procedure, to change all references to Section 42.071 of the Penal Code to Section 42.072, in line with recent passage of S.B. 97, the new stalking law. Provides that the victim of the offense need not be present in court when the order for emergency protection is issued. Sets forth the terms by which the magistrate issuing the order is required to order a peace officer to notify the victim if the victim is not present when the order is issued.

SECTION 2.

Amends Article 5.04(c), Code of Criminal Procedure, to change the contents of the "NOTICE TO ADULT VICTIMS OF FAMILY VIOLENCE," by adding information regarding an order for emergency protection.

Redesignates former SECTIONS 2 and 3 as SECTIONS 3 and 4.