

1-1 By: Rodríguez S.B. No. 737
 1-2 (In the Senate - Filed February 24, 2015; March 2, 2015,
 1-3 read first time and referred to Committee on Criminal Justice;
 1-4 April 20, 2015, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 6, Nays 0; April 20, 2015,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15			X	

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 737 By: Whitmire

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to certain protective orders and magistrate's orders for
 1-20 emergency protection.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Article 17.292, Code of Criminal Procedure, is
 1-23 amended by amending Subsections (a), (c), (g), (h), and (k) and
 1-24 adding Subsections (h-1), (i-1), and (k-1) to read as follows:

1-25 (a) At a defendant's appearance before a magistrate after
 1-26 arrest for an offense involving family violence or an offense under
 1-27 Section 20A.02, 20A.03, 22.011, 22.021, or 42.072, Penal Code, the
 1-28 magistrate may issue an order for emergency protection on the
 1-29 magistrate's own motion or on the request of:

- 1-30 (1) the victim of the offense;
- 1-31 (2) the guardian of the victim;
- 1-32 (3) a peace officer; or
- 1-33 (4) the attorney representing the state.

1-34 (c) The magistrate in the order for emergency protection may
 1-35 prohibit the arrested party from:

- 1-36 (1) committing:
 - 1-37 (A) family violence or an assault on the person
 - 1-38 protected under the order; or

1-39 (B) an act in furtherance of an offense under
 1-40 Section 20A.02 or 42.072, Penal Code;

- 1-41 (2) communicating:
 - 1-42 (A) directly with a member of the family or
 - 1-43 household or with the person protected under the order in a
 - 1-44 threatening or harassing manner; or

1-45 (B) a threat through any person to a member of the
 1-46 family or household or to the person protected under the order;

- 1-47 (3) going to or near:
 - 1-48 (A) the residence, place of employment, or
 - 1-49 business of a member of the family or household or of the person
 - 1-50 protected under the order; or

1-51 (B) the residence, child care facility, or school
 1-52 where a child protected under the order resides or attends; or

- 1-53 (4) possessing a firearm, unless the person is a peace
 1-54 officer, as defined by Section 1.07, Penal Code, actively engaged
 1-55 in employment as a sworn, full-time paid employee of a state agency
 1-56 or political subdivision.

1-57 (g) An order for emergency protection issued under this
 1-58 article must contain the following statements printed in bold-face
 1-59 type or in capital letters:

1-60 "A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED

2-1 BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY
 2-2 CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR OR BY BOTH. AN ACT THAT
 2-3 RESULTS IN FAMILY VIOLENCE OR A STALKING OR TRAFFICKING OFFENSE MAY
 2-4 BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE, AS
 2-5 APPLICABLE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE,
 2-6 IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS.
 2-7 THE POSSESSION OF A FIREARM BY A PERSON, OTHER THAN A PEACE OFFICER,
 2-8 AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN
 2-9 EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR
 2-10 POLITICAL SUBDIVISION, WHO IS SUBJECT TO THIS ORDER MAY BE
 2-11 PROSECUTED AS A SEPARATE OFFENSE PUNISHABLE BY CONFINEMENT OR
 2-12 IMPRISONMENT.

2-13 "NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS
 2-14 ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY
 2-15 PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS
 2-16 VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT
 2-17 UNLESS A COURT CHANGES THE ORDER."

2-18 (h) As soon as possible but not later than the next business
 2-19 day after the date the [The] magistrate issues [issuing] an order
 2-20 for emergency protection under this article, the magistrate shall
 2-21 send a copy of the order to the chief of police in the municipality
 2-22 where the member of the family or household or individual protected
 2-23 by the order resides, if the person resides in a municipality, or to
 2-24 the sheriff of the county where the person resides, if the person
 2-25 does not reside in a municipality. If the victim of the offense is
 2-26 not present when the order is issued, the magistrate issuing the
 2-27 order shall order an appropriate peace officer to make a good faith
 2-28 effort to notify, within 24 hours, the victim that the order has
 2-29 been issued by calling the victim's residence and place of
 2-30 employment. The clerk of the court shall send a copy of the order to
 2-31 the victim at the victim's last known address as soon as possible
 2-32 but not later than the next business day after the date the order is
 2-33 issued.

2-34 (h-1) A magistrate or clerk of the court may delay sending a
 2-35 copy of the order under Subsection (h) only if the magistrate or
 2-36 clerk lacks information necessary to ensure service and
 2-37 enforcement.

2-38 (i-1) The copy of the order and any related information may
 2-39 be sent under Subsection (h) or (i) electronically or in another
 2-40 manner that can be accessed by the recipient.

2-41 (k) To ensure that an officer responding to a call is aware
 2-42 of the existence and terms of an order for emergency protection
 2-43 issued under this article, not later than the third business day
 2-44 after the date of receipt of the copy of the order by the applicable
 2-45 law enforcement agency with jurisdiction over the municipality or
 2-46 county in which the victim resides, the law enforcement agency
 2-47 shall enter the information required under Section 411.042(b)(6),
 2-48 Government Code, into the statewide law enforcement information
 2-49 system maintained by the Department of Public Safety [each
 2-50 municipal police department and sheriff shall establish a procedure
 2-51 within the department or office to provide adequate information or
 2-52 access to information for peace officers of the names of persons
 2-53 protected by an order for emergency protection issued under this
 2-54 article and of persons to whom the order is directed. The police
 2-55 department or sheriff may enter an order for emergency protection
 2-56 issued under this article in the department's or office's record of
 2-57 outstanding warrants as notice that the order has been issued and is
 2-58 in effect].

2-59 (k-1) A law enforcement agency may delay entering the
 2-60 information required under Subsection (k) only if the agency lacks
 2-61 information necessary to ensure service and enforcement.

2-62 SECTION 2. Article 17.292(m), Code of Criminal Procedure,
 2-63 is amended by adding Subdivision (3) to read as follows:

2-64 (3) "Business day" means a day other than a Saturday,
 2-65 Sunday, or state or national holiday.

2-66 SECTION 3. Section 85.042, Family Code, is amended by
 2-67 amending Subsections (a) and (d) and adding Subsections (f), (g),
 2-68 and (h) to read as follows:

2-69 (a) Not later than the next business day after the date [The

3-1 ~~clerk of]~~ the court issues [~~issuing~~] an original or modified
3-2 protective order under this subtitle, the clerk of the court shall
3-3 send a copy of the order, along with the information provided by the
3-4 applicant or the applicant's attorney that is required under
3-5 Section 411.042(b)(6), Government Code, to:

3-6 (1) the chief of police of the municipality in which
3-7 the person protected by the order resides, if the person resides in
3-8 a municipality;

3-9 (2) the appropriate constable and the sheriff of the
3-10 county in which the person resides, if the person does not reside in
3-11 a municipality; and

3-12 (3) the Title IV-D agency, if the application for the
3-13 protective order indicates that the applicant is receiving services
3-14 from the Title IV-D agency.

3-15 (d) The applicant or the applicant's attorney shall provide
3-16 to the clerk of the court:

3-17 (1) the name and address of each law enforcement
3-18 agency, child-care facility, school, and other individual or entity
3-19 to which the clerk is required to send [~~mail~~] a copy of the order
3-20 under this section; and

3-21 (2) any other information required under Section
3-22 411.042(b)(6), Government Code.

3-23 (f) A clerk of the court may transmit the order and any
3-24 related information electronically or in another manner that can be
3-25 accessed by the recipient.

3-26 (g) A clerk of the court may delay sending a copy of the
3-27 order under Subsection (a) only if the clerk lacks information
3-28 necessary to ensure service and enforcement.

3-29 (h) In this section, "business day" means a day other than a
3-30 Saturday, Sunday, or state or national holiday.

3-31 SECTION 4. Section 86.0011, Family Code, is amended to read
3-32 as follows:

3-33 Sec. 86.0011. DUTY TO ENTER INFORMATION INTO STATEWIDE LAW
3-34 ENFORCEMENT INFORMATION SYSTEM. (a) On receipt of an original or
3-35 modified protective order from the clerk of the issuing court, a law
3-36 enforcement agency shall immediately, but not later than the third
3-37 business [~~10th~~] day after the date the order is received, enter the
3-38 information required by Section 411.042(b)(6), Government Code,
3-39 into the statewide law enforcement information system maintained by
3-40 the Department of Public Safety.

3-41 (b) In this section, "business day" means a day other than a
3-42 Saturday, Sunday, or state or national holiday.

3-43 SECTION 5. Section 411.042(b), Government Code, is amended
3-44 to read as follows:

3-45 (b) The bureau of identification and records shall:

3-46 (1) procure and file for record photographs, pictures,
3-47 descriptions, fingerprints, measurements, and other pertinent
3-48 information of all persons arrested for or charged with a criminal
3-49 offense or convicted of a criminal offense, regardless of whether
3-50 the conviction is probated;

3-51 (2) collect information concerning the number and
3-52 nature of offenses reported or known to have been committed in the
3-53 state and the legal steps taken in connection with the offenses, and
3-54 other information useful in the study of crime and the
3-55 administration of justice, including information that enables the
3-56 bureau to create a statistical breakdown of:

3-57 (A) offenses in which family violence was
3-58 involved;

3-59 (B) offenses under Sections 22.011 and 22.021,
3-60 Penal Code; and

3-61 (C) offenses under Sections 20A.02 and 43.05,
3-62 Penal Code;

3-63 (3) make ballistic tests of bullets and firearms and
3-64 chemical analyses of bloodstains, cloth, materials, and other
3-65 substances for law enforcement officers of the state;

3-66 (4) cooperate with identification and crime records
3-67 bureaus in other states and the United States Department of
3-68 Justice;

3-69 (5) maintain a list of all previous background checks

4-1 for applicants for any position regulated under Chapter 1702,
4-2 Occupations Code, who have undergone a criminal history background
4-3 check under Section 411.119, if the check indicates a Class B
4-4 misdemeanor or equivalent offense or a greater offense;

4-5 (6) collect information concerning the number and
4-6 nature of protective orders and magistrate's orders of emergency
4-7 protection and all other pertinent information about all persons
4-8 subject to ~~[on]~~ active ~~[protective]~~ orders, including pertinent
4-9 information about persons subject to conditions of bond imposed for
4-10 the protection of the victim in any family violence, sexual assault
4-11 or abuse, or stalking case. Information in the law enforcement
4-12 information system relating to an active ~~[protective]~~ order shall
4-13 include:

4-14 (A) the name, sex, race, date of birth, personal
4-15 descriptors, address, and county of residence of the person to whom
4-16 the order is directed;

4-17 (B) any known identifying number of the person to
4-18 whom the order is directed, including the person's social security
4-19 number or driver's license number;

4-20 (C) the name and county of residence of the
4-21 person protected by the order;

4-22 (D) the residence address and place of employment
4-23 or business of the person protected by the order, unless that
4-24 information is excluded from the order under Section 85.007, Family
4-25 Code, or Article 17.292(e), Code of Criminal Procedure;

4-26 (E) the child-care facility or school where a
4-27 child protected by the order normally resides or which the child
4-28 normally attends, unless that information is excluded from the
4-29 order under Section 85.007, Family Code, or Article 17.292(e), Code
4-30 of Criminal Procedure;

4-31 (F) the relationship or former relationship
4-32 between the person who is protected by the order and the person to
4-33 whom the order is directed;

4-34 (G) the conditions of bond imposed on the person
4-35 to whom the order is directed, if any, for the protection of a
4-36 victim in any family violence, sexual assault or abuse, or stalking
4-37 case; ~~[and]~~

4-38 (H) any minimum distance the person subject to
4-39 the order is required to maintain from the protected places or
4-40 persons; and

4-41 (I) the date the order expires;

4-42 (7) grant access to criminal history record
4-43 information in the manner authorized under Subchapter F;

4-44 (8) collect and disseminate information regarding
4-45 offenders with mental impairments in compliance with Chapter 614,
4-46 Health and Safety Code; and

4-47 (9) record data and maintain a state database for a
4-48 computerized criminal history record system and computerized
4-49 juvenile justice information system that serves:

4-50 (A) as the record creation point for criminal
4-51 history record information and juvenile justice information
4-52 maintained by the state; and

4-53 (B) as the control terminal for the entry of
4-54 records, in accordance with federal law and regulations, federal
4-55 executive orders, and federal policy, into the federal database
4-56 maintained by the Federal Bureau of Investigation.

4-57 SECTION 6. The changes in law made by this Act apply to a
4-58 protective order or magistrate's order of emergency protection
4-59 issued on or after the effective date of this Act, regardless of
4-60 whether the conduct on which the order is based occurred before, on,
4-61 or after that date.

4-62 SECTION 7. This Act takes effect September 1, 2015.

4-63 * * * * *