

SUBJECT: Authorizing warrantless arrest for the commission of family violence

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Keel, Ellis, Denny, Hodge, Talton
0 nays
4 absent — Riddle, Dunnam, P. Moreno, Pena

SENATE VOTE: On final passage, April 10 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — Tom Gaylor, Texas Municipal Police Association; Barbra McLendon, Texas Council on Family Violence
Against — None

BACKGROUND: Under Code of Criminal Procedure (CCP), art. 14.03, a peace officer may arrest, without a warrant, the following people, among others:

- a person who the peace officer has probable cause to believe has committed an assault resulting in bodily injury to another person, if the peace officer has probable cause to believe that there is danger of further bodily injury to that person; or
- a person who the peace officer has probable cause to believe has committed an assault resulting in bodily injury to a member of the person's family or household.

If reasonably necessary to verify an allegation of a violation of a protective order or of the commission of an assault against a member of the family or household, a peace officer must remain at the scene to verify the allegation and to prevent the further commission of family violence.

The Family Code defines family violence as:

- an act by a member of a family or household against another member of the family or household that is intended to result in, or is a threat

- that reasonably places the member in fear of, physical harm, bodily injury, assault, or sexual assault;
- abuse by a member of a family or household toward a child of the family or household; or
 - dating violence, an act by a person against another person with whom that person has or has had a dating relationship and that is intended to result in, or is a threat that reasonably places the member in fear of, physical harm, bodily injury, assault, or sexual assault.

DIGEST: CSSB 685 would amend CCP, art. 14.03 to authorize a peace officer to arrest, without a warrant, a person who the peace officer had probable cause to believe had committed an offense involving family violence. If reasonably necessary to verify an allegation of a violation of a protective order or of the commission of an offense involving family violence, a peace officer would have to remain at the scene to verify the allegation and to prevent the further commission of family violence. Family violence would have the meaning assigned by the Family Code.

The bill would take effect on September 1, 2003.

SUPPORTERS SAY: CSSB 685 would provide additional protection for victims of dating violence. Like members of a defendant's family or household, a dating partner shares a special proximity to the defendant that makes the partner especially vulnerable to harm. The 77th Legislature in 2001 amended the definition of family violence in the Family Code to include dating violence, which made victims eligible for protective orders or for a magistrate's order for emergency protection. However, the additional protection does not extend to law enforcement's ability to intervene in these dangerous situations with any special arrest authority.

Under current law, a peace officer may arrest a suspect without a warrant only if the officer has probable cause to believe that the person has committed an assault resulting in bodily injury to a member of the person's family or household, which excludes a dating relationship. Also, the current definition does not allow a peace officer to make a warrantless arrest when a suspect has threatened a family or household member or a person with whom the suspect has a dating relationship, placing him or her in fear of physical harm. SB 685 would give peace officers additional discretion to make arrests as necessary to

protect victims' safety and to prevent further harm from occurring.

Current law is insufficient to protect victims of dating violence, because a police officer who arrives at the scene of an assault rarely has probable cause to believe that further bodily injury to the victim will occur. Often, the suspect already has been separated from the victim and has had time to "cool off." However, that does not mean that once the peace officer departs, the victim is no longer in danger of harm.

**OPPONENTS
SAY:**

CSSB 685 is not necessary. A peace officer already may arrest, without a warrant, any suspect who the officer has probable cause to believe has committed an assault against any person if there is danger of further bodily injury to the victim. Under these provisions, an officer can arrest a person for dating violence if an arrest is necessary to protect the victim from further harm. If an officer does not believe that further harm will result, a warrantless arrest is inappropriate.

The Legislature should not expand the exceptions to making an arrest without a warrant. Requiring a neutral and detached magistrate to determine whether probable cause exists is an important safeguard that ensures due process for suspects. Warrantless arrests should be limited strictly to emergency situations in which an arrest must be made without delay. It would be inappropriate for a peace officer to arrest, without a warrant, a suspect who simply had threatened a victim but who had done nothing to carry out that threat.

NOTES:

The committee substitute would expand the scope of the Senate engrossed version of SB 685 by authorizing a warrantless arrest if a peace officer had probable cause to believe that the suspect had committed an offense involving family violence, rather than simply family violence.

A related bill, SB 686 by Hinojosa, was placed on the House General State Calendar for May 25. It would enhance the punishment for an assault committed against a defendant's family member, household member, or a person whom the defendant had dated, if the defendant had been convicted previously of an offense under Penal Code, ch. 22.