

SUBJECT: Warrantless arrest for interference with an emergency telephone call

COMMITTEE: Law Enforcement — favorable, without amendment

VOTE: 7 ayes — Driver, Garza, Burnam, Y. Davis, Hegar, Hupp, Keel

0 nays

WITNESSES: For — James Beck, Austin Police Department; Mitch Landry, Texas Municipal Police Association; Kimberly Piechowiak, San Antonio City Attorney's Office - Prosecution Office; Jason LeMond and James Quinn, Cedar Park Police Department

Against — None

BACKGROUND: The 77th Legislature enacted SB 18 by Nelson, et al. that added Penal Code, sec. 42.062, creating an offense for interfering with an emergency telephone call if a person:

- knowingly prevented or interfered with another's ability to place an emergency telephone call or request assistance in an emergency from a law enforcement agency, medical facility, or other agency whose primary purpose was to provide for people's safety; or
- recklessly rendered unusable a telephone that otherwise would have been used by another to place an emergency telephone call or to request assistance in an emergency from a law enforcement agency, medical facility, or other agency whose primary purpose was to provide for people's safety.

This offense is a class A misdemeanor, punishable by up to one year in jail and/or a maximum fine of \$4,000. If the person previously had been convicted of this offense, a repeat offense would be a state-jail felony, punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000.

Sec. 42.062 (d) defines an "emergency" as a situation in which any person is, or reasonably can be believed by the caller to be, in imminent danger of

serious bodily injury; or a situation in which property is, or reasonably can be believed by the caller to be, in immediate danger of damage or destruction.

Code of Criminal Procedure, Art. 14.03 (a) spells out the conditions under which a peace officer may arrest and take a person into custody without a warrant or other legal authorization from a court.

**DIGEST:** HB 778 would amend Penal Code, sec. 42.062 (d) to define an emergency as a condition or circumstance in which any person was, or reasonably could be believed by the caller to be, in fear of imminent assault.

The bill also would amend Code of Criminal Procedure, sec. 14.03 (a) to allow a peace officer to make a warrantless arrest for an offense under Penal Code, sec. 42.062 (d) if the officer had probable cause to believe that the person had interfered with someone else's ability to place an emergency call. Peace officers would be allowed to make the arrest even if the interference was not committed in the officer's presence.

The bill would take effect September 1, 2003.

**SUPPORTERS SAY:** By defining an emergency as "fear of imminent assault" and allowing law enforcement officers to arrest the offender without a warrant, this bill would give law enforcement a better tool in dealing with family violence. Texas Department of Public Safety statistics show that 180,385 domestic-violence related calls were made in Texas during 2001. Recent frightening incidents include the stabbing death of an Austin high school student by her 16-year-old former boyfriend and a San Antonio woman whose husband chained her like a dog so that she would not escape. In the daily course of responding to domestic violence calls, law enforcement officers routinely see telephone cords ripped out of walls and broken cell phones lying outside of apartments, yet current law does not allow the officer to take effective action. HB 778 would allow the officer to arrest the offender and defuse the situation, rather than have to return to the scene after one spouse had been physically abused.

The incidence of batterers cutting telephone lines, ripping phones out of walls, or hiding and destroying cell phones to prevent their victims from calling for help remains surprisingly high. Police in Cedar Park, a community northwest of Austin, estimate that more than half of the "hang-up" 9-1-1

emergency calls — where the telephone is disconnected before the caller can speak to a dispatcher — involve domestic abuse incidents. Because batterers control their victims in part by silencing them, whether by threatening them not to use the telephone or by taking the telephone away, peace officers should be permitted to act immediately when they recognize these telltale signs of abuse.

Experienced law enforcement officers can be trusted to use their discretion wisely in deciding whether to make an arrest under these circumstances. In many cases, one of the spouses should be removed so that tempers can cool. Allowing the option to arrest the offender could prevent further violence from occurring later that day or evening.

**OPPONENTS  
SAY:**

HB 778 only would make it easier for people to be punished unfairly because of vague standards such as “fear of imminent assault.” It can be difficult to ascertain the circumstances under which someone might have unplugged a telephone or hidden a cell phone. For example, if police found an unplugged telephone at a residence where a married couple was arguing loudly, officers could use this scant evidence to assume erroneously that the husband had prevented his wife from making an emergency call. If the purpose of the existing statute is to ensure that people are prosecuted for battery, the language should be drawn more narrowly to remove the possibility that innocent people might face criminal charges, rather than lowering the standard for arrest as HB 778 would.

**NOTES:**

SB 176 by Nelson and Hinojosa, the identical companion, was approved by the Senate on the Local and Uncontested Calendar on April 16 and was referred to the House Law Enforcement Committee on April 22.