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Introduction

Approximately one in three American women has been physically or sexually abused by an intimate partner. There is nothing simple about domestic violence. Trying to understand the dynamics of an abusive relationship and breaking the existing social paradigms that encourage interpersonal violence are challenges actors in the legal system face everyday. The material included in this manual aims to provide ideas and guidelines for law enforcement, advocates and attorneys who are trying to aid families dealing with this epidemic.

The statute authorizing the Magistrate's Order of Emergency Protection, more commonly known as an Emergency Protective Order (EPO), can be found under the Texas Code of Criminal Procedure Article 17.292. The order is issued during magistration (arraignment) of a defendant arrested for a family violence offense. The law allows for several ways that the emergency protective order can be requested: the victim of the alleged assault or the victim's guardian may request the order; and an attorney representing the state or a peace officer may request the order on the victim's behalf. Generally speaking, a victim does not make an in-person or written request to a judge, but rather articulates the request to a peace officer or advocate who is familiar with the system and is able to provide the information to the judge in a timely manner. The order may also be issued by the magistrate on the court's own motion. In certain circumstances – when the assault has resulted in serious bodily injury or when a deadly weapon was brandished or displayed during the commission of the assault – the order is mandated by law.

There are various ways that the order may be requested and each route involves different actors. In each instance there are several steps that must be taken to ensure the request is successfully articulated to the magistrate. This manual will detail the processes involved leading up to the issuance of an EPO highlighting the steps required of each person involved with requesting the order. The manual strives to encourage best practices possible in handling EPOs. Please note that throughout this manual, the personal pronoun "she" will be used to describe the victim, since the majority of domestic violence survivors are female.

The Women's Advocacy Project, Inc. is a statewide, nonprofit legal organization with a mission to provide free legal advice, expand legal education, and promote access to justice for Texas women in need. One of the major initiatives created by the agency is the Emergency Protection Order Program. Under this program attorneys are stationed at the Austin Police Department's Arrest Review facility where they review all family violence related arrests on a daily basis. The attorneys contact each victim to inform her of the legal resources available and advocate to the magistrate for the granting of an Emergency Protection Order if requested. Other forms of advocacy offered through this program include safety planning with the victim and her family,

referring the victim to appropriate agencies, and assessing the need for emergency shelter or complete relocation.

Acknowledgements

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Frequently Asked Questions

Below is a list of commonly received questions regarding the Magistrate's Order of Emergency Protection, more commonly known as an Emergency Protective Order (EPO). Hopefully this list will answer any questions raised by this manual, if not, please feel free to email the Emergency Protective Order Program at epo@women-law.org.

What can an EPO do?

An EPO can prohibit the offender from:

1. Committing family violence or an act in furtherance of an offense under §42.07(a)(7) of the Texas Penal Code (stalking).
2. Communicating directly with the victim or with a member of the victim's family or household **in a threatening or harassing manner**; and/or communicating a threat through any other person to the victim or member of the victim's family/household.
3. Going with a minimum distance (usually 200 yards) of the victim's or member of the victim's family's:
 - a. Residence
 - b. Place of Employment
 - c. Child care facility and/or School and Residence if different than above.

Who can request an EPO?

The EPO can be requested in the following ways:

1. By the victim of the alleged family violence offense;
2. By a guardian of the victim;
3. By an attorney representing the state and
4. By a peace officer.

The court may also issue the order on its own motion and, in certain circumstances, the order will be mandated by law.

When is an EPO mandatory?

An EPO is mandatory if the offender is arrested for an offense that involved either:

1. serious bodily injury as defined by the Texas Penal Code, or
2. the use or exhibition of a deadly weapon during the commission of an assault.

Does the victim have to be present when an EPO is issued or requested?

No, the victim is not required to be present in court when the order is issued and may request the order over the telephone or through one of the above mentioned agents. There is no separate application process required of the victim.

What must be proved to have an EPO granted?

An arrest for a family violence offense alone should be enough to support the issuance of an EPO. Since an EPO is to be used to help prevent future violence, an indication from the victim or officer that the victim fears further violence may further support the request. In some cases, the magistrate may be able to determine from the facts alone that future violence is likely. The EPO statute does not require a certain burden of proof. However, probable cause that the offense was committed is required for an officer to make an arrest.

How long is an EPO effective?

Depending on the circumstances of the case, the magistrate may issue the order for a minimum of 31 days and a maximum of 91 days. When a deadly weapon has been displayed, the order must be issued for a minimum of 61 days and may last up to 91 days. How long the order is issued within this time frame is within the judge's discretion. A peace officer, victim advocate, or prosecuting attorney may provide additional information that would compel a magistrate to issue an order lasting for the maximum time allowed.

For example: If the victim does not have transportation to get herself to the appropriate agency to apply for a long term protective order, a longer order would be helpful, allowing the victim the additional time to make other arrangements to increase her safety.

What constitutes a violation of an EPO?

Since the EPO forbids the offender from going within a stated distance of particularly identified addresses, any time the offender comes within the restricted zones he is in violation of the EPO. The order also forbids harassing or threatening communication; therefore, if the offender harasses the victim with telephone calls, emails, or letters, a violation has taken place. If the offender threatens the victim in any manner (written or oral) he is in violation of the order. The order also prohibits any further acts of family violence. The conduct prohibited by the order – threatening or harassing communication and further acts of family violence – are criminal offenses on their own, regardless of whether there is an EPO in place. However, the charge for violating the EPO may be a higher charge than the underlying offense standing alone.

For example: If the offender commits a class A assault while there is an active protective order, the charge for violating the protective order by assault will be a 3rd degree felony. The offender can be charged with both offenses – the class A Assault and the 3rd degree felony Violation of Protective Order.

What is the penalty for an EPO violation?

A violation of an EPO is generally a class A misdemeanor with the possibility of jail time up to one year and/or a fine up to \$4,000. If the offender has previously been convicted for a violation two or more times, or has violated the protective order by committing an assault or the offense of stalking, the violation is then a third degree felony punishable by two to ten years confinement and up to \$10,000 in fines (Texas Penal Code § 25.07).

How can someone obtain a copy of an EPO?

Under Article 17.292(h) of the Texas Code of Criminal Procedure, copies of the order are to be sent to the chief of police in the municipality where the protected person(s) resides or the sheriff of the county where the person resides. The clerk of the court is ordered to send a copy of the order to the victim. If the victim needs to obtain additional copies she should contact the clerk of the court where the order was issued. If unable to get a copy through the court, the protected person should check with the police department or sheriff's office. The victim liaisons with those offices should be able to supply a copy of the order. In some counties the original order is placed in the offender's criminal file.

Can an EPO be renewed or extended?

An EPO cannot be extended or renewed. It is recommended that a protected person seek a two-year protective order while an EPO is in place so that there will be an overlap in the orders.

How does an EPO differ from a protective order and an ex parte order?

An EPO is a short-term, criminally enforceable protective order. A “regular” protective order is generally in effect for two years and not all parts of the order are criminally enforceable. An ex parte order is a temporary order that a victim receives when she goes to apply for a two-year order. The ex parte order is not criminally enforceable.

What can a victim do if a peace officer refuses to file an EPO request?

If a police officer refuses to request an order on behalf of a victim, the victim should contact the victim services division of the police department and make the request through the victim assistance coordinator. If there is no victim division or legal advocate readily available in the local family violence shelter or outreach center, the victim may call the court where the defendant will be magistrates and make the request directly to the magistrate. There is a limited period of time, however, to make this request. This is why it is essential for the legal community to ensure that in such situations there is a system in place to ensure that the victim’s request will be communicated to the magistrate in time to issue the order.

What happens if a child custody possession/access schedule conflicts with an EPO?

The EPO supersedes any conflicting custody orders for the one to three months the EPO is in effect. The EPO only supersedes the parts of the order that directly pertain to the child.

For example: The EPO tells the offender (Dad) that he is not to go within 200 yards of Mom’s residence and Mom is the primary conservator. The offender is to have weekly visitation with child according to the child custody order. The EPO does not forbid Dad from exercising his right to possession, but does forbid the offender from going to Mom’s residence to pick-up the child (Texas Code of Criminal Procedure Article 17.292(e)).

The Role of the Law Enforcement/Peace Officer

In order for law enforcement to be most effective when issuing a Magistrate's Order for Emergency Protection, otherwise known as an Emergency Protective Order (EPO), it is essential that the officer responding to the scene of a family violence disturbance understand how an **EPO may increase the victim's safety**. Although the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) requires a certain number of hours of domestic violence training, it is imperative that law enforcement also receive direct training on the legal resources available to victims of domestic violence. This section covers the officer's role in requesting an EPO on behalf of a victim following an arrest for a family violence offense.

Direct File or Officer-on-Scene Cases

It is recommended that patrol officers have several items readily accessible to them to aid when on the scene of a family violence arrest. These will be useful when recording the information necessary to complete the paperwork for an EPO and providing the victim information on available legal resources. Generally, a combination of these items will be used at the scene.

What can an officer bring to the scene of a domestic disturbance to help ensure that the victim is made aware of the EPO option?

- **A Victim Services Pamphlet or Palm Card.** This can be left with the victim and family members after an arrest is made for an offense involving domestic violence. It will usually contain a list of Texas Crime Victim's Rights, information on obtaining an EPO as well as a two-year protective order, and local resource telephone numbers, including domestic violence shelters, counseling centers and drug/alcohol treatment programs. It can also include information on obtaining Crime Victims Compensation. It is recommended that the officer record the offense/report number on the card so that the victim may follow up with the police department.
- **Assault Victim Statement.** At the scene, the victim will be asked by the officer to answer questions pertaining to the assault. Including a question in this statement inquiring whether the victim would like to request an EPO will both remind the officer to ask the victim about the order and will inform the judge during arraignment or magistration whether or not the order has been requested. The EPO question can be presented on a separate document or can be part of a "Risk/Lethality Assessment."

- **Risk/Lethality Assessment.** A “risk” or “lethality” assessment is a group of questions used by victim advocates, law enforcement, and attorneys to help determine the level of risk of physical harm within an abusive relationship. It is by no means the sole or best indicator of whether a victim is in greater or lesser danger of being killed by her abuser, but it does highlight potential warning signs indicating whether an abuser is more likely to kill. (*See the sample documents/appendix section, pg. 64, for the risk/lethality assessment document used by the Austin Police Department.*) The assessment contains numerous questions about an abuser’s past behavior and tendency towards violence. It can also include questions about any protective order the victim has had against her abuser as well as any other type of current or past court order affecting the interpersonal relationship, including divorce or child custody orders. Knowledge of previous court orders can help the officer determine whether he or she should complete the paperwork necessary to make a motion for an EPO. However, this does not mean that the absence of prior abusive history or court orders indicates the victim is not in danger. As with the other factors that should be considered, the existence of prior court orders must be considered with regard to the totality of circumstances.

What does an officer need to receive from a victim to ensure that a proper motion for an EPO can be completed?

Once the victim is aware of the option to request an EPO, the officer must gather all the information needed to ensure the documents requesting the EPO (or “the motion”) will be complete. (*See the sample documents/appendix section for sample motion used by APD.*) A motion generally looks very similar to the final EPO and therefore contains the same information that will be found in the order. Because the motion may be the only documentation that the magistrate has to rely on, it is imperative that the officer gather all necessary information to complete the motion.

There are three main parts to an EPO motion:

- **Victim Information.** All protected people listed on the order must have DOB (date of birth), race and gender information. This allows an officer confronted with the order to make sure that the person claiming to be protected is actually that person.
- **Suspect Information.** This also includes name, DOB, race and gender. In addition other identifiers such as height, weight, hair length and color, and eye color should also be listed.

- **Protected Addresses.** For each location that the victim needs protected (home, work, school, and daycare) the officer must provide the complete address including zip code.

On the EPO motion, there is usually a place to mark whether or not the victim would like the protected address to remain **confidential**. If the victim is planning on relocating to an address of which the suspect is not already familiar, the officer can choose to mark the address "confidential". It must be stressed that although the law allows for an address to be kept confidential, some judges will not accept an order without a known address. This is because due process concerns are raised when a person is told to stay away from a certain place without disclosing the protected location. If the victim is relocating, the officer should discuss with her the option of not listing ANY address on the order. If the victim feels safe and comfortable doing so, this may be a better option. It is important that the officer explain to the victim that marking an address confidential on an EPO motion does not guarantee that the address will not be disclosed to the suspect. This allows the victim to make a fully informed choice as to the addresses she would like protected.

For example: If the victim chooses to go to the local shelter or to another undisclosed address she must decide whether this address should be listed on the EPO. If the address is listed, her new location will be revealed to the suspect. However, by listing the address, it can be protected by the order and the abuser can be arrested for coming within a certain distance of the shelter. In this circumstance, it is extremely important to determine whether listing the address would increase the victim's safety or whether it may actually increase her risk of danger. When making this determination it is important to consider the severity of the offense, the abuser's past history of violence, the abuser's criminal history, the risk/lethality assessment, if one is available, and any other relevant circumstances. If the victim is attempting to re-locate and has legitimate concerns that the abuser will attempt to find her and disregard the order, the victim's address should be left confidential. Listing the victim's address will alert the abuser to her new location, which may increase her risk of danger, particularly if the abuser is not likely to follow the order.

In addition to the information necessary to complete the motion, the officer also needs to record contact information for the victim. This should include all of the victim's telephone numbers as well as any alternative or emergency numbers. It is especially important to note alternative means to contact the victim when she does not have a home or cell phone. To help protect the victim's privacy and safety, each telephone number should be accompanied by a note indicating whether it is safe to leave a message at the number and/or if there are certain times that the victim can or cannot be reached.

What information should the officer provide to the magistrate to ensure that the magistrate is aware that an EPO has been requested?

After an arrest is made for a family violence offense, the officer will be required to complete and turn in certain paperwork. Each item that is turned in (this generally includes the **probable cause affidavit, criminal history** and **assault victim statement**) may be used to either indicate or support the request for an EPO. It is advised that the officer either make mention of the EPO request on the assault victim statement or as a separate line in the probable cause affidavit. Most importantly the officer needs to completely fill out the motion for an EPO and ensure the motion accompanies the probable cause affidavit when sent to the magistrate. The motion is the primary indication to the magistrate that the EPO has been requested.

Warrant cases

When a suspect leaves the scene of a family violence disturbance and is not arrested at the time of the incident, a warrant will be issued for the suspect. If this occurs, there are additional ways to ensure that the request for an EPO will be made to the magistrate once the suspect is arrested. First, the officer should interview the victim at the scene in order to gather the required information as mentioned above. Next, the officer or detective assigned to the case must be sure to follow up with the victim to update the information that was provided at the scene. If the victim has already requested an EPO be issued upon arrest, she may have updated address or contact information to be used on the order.

How will the warrant inform the magistrate about an EPO request?

When a suspect is arrested on a warrant, it is often more difficult to inform the magistrate that the order has been requested by the officer on behalf of the victim. This is because the warrant often contains only the information needed to establish probable cause. The paperwork rarely includes an assault victim statement or any other contact information for the victim.

If the magistrate typically only receives the warrant/probable cause affidavit on a family violence arrest then a system **MUST** be developed to alert the magistrate if a request for an EPO has been made. For example, in Travis County the detective working the case attaches a completed EPO (not a motion) to the warrant. When the suspect is apprehended, the warrant office is notified and the completed EPO is faxed to the jail so that it can be presented to the magistrate along with the warrant. This notifies the magistrate of the request and provides the information needed to complete the order.

It is imperative in warrant cases that the magistrate has some victim information. Attaching the completed EPO to the warrant greatly increases the

odds that an order will be issued. Below are other suggestions on how to notify the magistrate that an EPO is requested on a warrant case. These generally require that law enforcement must coordinate with at least two other entities - the agency that runs the jail and the magistrate.

- Include the EPO motion with warrant
- Notify the jail that an EPO is requested so they can inform the magistrate
- Notify warrant office and have them fax the motion to court
- Notify the arresting officer (maybe by computer) that the EPO is requested so that the arresting officer can file a motion for the order
- Speak directly with the magistrate following the suspect's arrest.

Crime Scene Evaluation - A general approach for law enforcement officers when they arrive at the scene of a domestic disturbance.

Identifying the Victim

Look for...

- Injuries that do not match the stated cause.
- A partner who speaks for the alleged victim, won't leave her side, or interrupts the victim constantly.
- Self-blame by the victim – "I was late getting dinner ready."
- Denial or minimization of abuse.
- Acceptance of the offender's rationalization for the violence – "He told me I was out of control and needed to be calmed down."
- Low self-esteem – this can be illustrated by expressions of embarrassment because of the abuse, shame that she is having to reach out to strangers for help, or shame that she was unable to keep the relationship together. These are all reflective of blaming herself for the violence.
- Forced emotional or economical dependency.
- Belief that her partner is omnipotent – they can do anything they want and always have the right to do so.
- Isolation from family and friends.
- Hypersensitivity to partner's wants, needs and emotions.
- Rigid gender roles.

*****Victims may be any race, class, sex, profession or sexual orientation. ANYONE CAN BE A VICTIM. *****

Identifying the Offender

Look For...

- A crime scene that does not match the offender's statement.
- Injuries that do not match the stated cause.
- Minimization of the violence OR denial that any violence occurred.
- Projection of blame – “She made me do it.” OR blames others for his feelings and behavior.
- Apologetic to victim, promises to change behavior.
- Controlling and/or manipulative behavior.
- Unrealistic expectations of the other partner or children. He expects her to be the perfect wife, mother and lover.
- Cruelty to children.
- Cruelty to animals.
- Jealousy or continued accusations of cheating – Extreme jealousy is a sign of insecurity and possessiveness. A certain amount of jealousy may be present in a healthy, non-abusive relationship. In an abusive relationship an excessive level may exist; this may be illustrated by a complete lack of trust, including always checking to see if the partner has been with who she says she is with, checking call logs on her cell phone, or checking emails.
- Hypersensitivity.
- Rigid gender roles. Also termed “male privilege” – where he sees his female partner as inferior to men and/or unable to function without a relationship with a man.

***** Abusers may be congenial, charming, articulate, social people of any race, sex, class or sexual orientation. ****

Responding to the Scene

- Separate the parties and interview each party alone.
- Examine the scene – what has been broken, torn, destroyed...
- Talk with all witnesses and children. Children exposed to family violence may exhibit some of the following behaviors:
 - May be withdrawn or clingy, depressed or irritable.
 - Increased startle response – jumps at “everything” or seems constantly on edge.

Be aware that a child that witnesses abuse can also seem very friendly and secure. The child may have found that this is the best way to deal with the emotions.

- Regressive behavior. For example, the child may revert to wearing diapers after a successful period of toilet training.
 - Nightmares.
 - Difficulty eating and sleeping.
 - Narrow range of emotions.
- Make an Assault Victim Statement (AVS) available to the victim. This may be given to the victim at the scene by an officer or victim advocate. The information contained in the form is essential for helping the victim increase her level of safety. The AVS will often ask about past violence (both reported and unreported incidents), names and contact information for witnesses and children, as well as information relating to how the assault took place.
 - Review available family violence resources with the victim including the county’s family violence shelter and crisis center and any other resources the victim may need to escape the abuse such as Legal Aid or the local agency handling two-year protective orders.
 - Advise the victim of her right to request a Magistrates Order for Emergency Protection (also referred to as an EPO). The arresting officer can file a motion on the victim’s behalf with the probable cause affidavit. Advocates can encourage the victim to contact the appropriate agency or person to make the request.
 - Safety Plan with the victim. Safety planning can be done by anyone at the scene: Police/Sheriff’s officer, crises counselor, or advocate. A safety plan should inform the victim of ways to increase her personal safety such as:
 - varying her daily routine,
 - changing locks at the home and/or work place,

- carrying a disposable camera,
- contacting friends, family and neighbors to inform them of her situation so that they can watch out for the offender, and
- keeping children's and her personal records in a place where they can be easily located if the victim has to escape with little notice.

A safety plan can also encourage the victim to apply for a protective order.

- If there is no crisis team available, there are several state and national organizations that the victim can call to receive help. This manual includes information on these organizations in the appendix.

Effective Intervention with Battered Women

Providing Effective Support:

1. **Allow her to tell her story.** Let her know you believe her and want to listen.
2. **Allow her to express her feelings.** She has a right to be angry, scared, etc....This may be the first time she is feeling safe enough to express anger over her victimization.
3. **Express your concern for her safety and the safety of her children.** She may often deny that abuse has occurred or deny the level of danger to herself and/or her children. She may be in extreme danger from her abuser. Help her explore how she might increase her level of safety.
4. **Let her know that help is available.** Keep information at hand to share with her about help lines, shelters, counseling and other resources.
5. **Reinforce the idea that nobody deserves to be beaten.** Remind her that she is not the cause of the beatings. She is his excuse. Changing her behavior in the relationship will not stop his violence.
6. **Realize that she may be embarrassed and humiliated about the abuse.** She may have left the relationship before and may be afraid that people will not believe her this time. Since she may feel that the responsibility for the relationship is hers, she may think the abuse is her fault. She may have denied the abuse at one time, but now wants help. Support her desire for help now.

5 Things to Say to a Victim

- You do not deserve to be abused.
- I am afraid for your safety.
- I am afraid for the safety of your children.
- It will only get worse.
- I/We are here for you when you are ready to leave.

Why Doesn't She Just Leave?

Many people ask why the victim does not just walk away from the abusive relationship. To a healthy person in a healthy relationship it may seem unbelievable that an individual would "willingly" go back to their abuser, but there are many reasons the victim may feel that she cannot leave:

- The first 24/48 hours after leaving an abusive partner are the most dangerous; the victim may fear further physical harm that is worse than what she is currently enduring.
- Fear of losing the children.
- Fear of being without a mate or partner.
- Love for the partner and hope he will change. He says he will go to counseling/get help.
- Afraid of Failure – The victim may fear that family, friends and/or the community, will believe it was "her fault."
- Feelings of embarrassment or shame.
- Lack of Financial Resources.
- Possible negative responses from the community, police, courts, social workers and/or the religious community.
- Language or disability barriers.
- Fear of the unknown.
- Self-blame for the violence; the victim may think she deserves the abuse.
- Religious beliefs.
- Cultural beliefs – "This is accepted/not illegal where I come from."
- Fear that the abuser may make a false report to the police or CPS.

** You can never underestimate the power and control that an abuser has over the victim. You can never underestimate the fear. Even if you think any sane person would leave the relationship, understand that the victim does not necessarily feel like she has anything to gain by being away from her abuser. People do not stay in abusive relationships because they are ignorant, uneducated or stupid.

Magisterial Duties

After an arrest involving family violence or stalking under Article 42.072 of the Texas Penal Code, a magistrate may execute an emergency protective order (EPO) **effective for at least 31 days**, and under certain circumstances up to 91 days, in accordance with Article 17.292 of the Texas Code of Criminal Procedure. The order may have been requested by the victim or on behalf of the victim, may be entered upon the magistrate's own motion or may be required by law. If an order is issued, it must be issued at the time the defendant appears before the magistrate. The magistrate may also suspend the defendant's license to carry a concealed handgun issued under §411.177 of the Government Code.

Whether or not an EPO is issued will depend upon many factors. First and foremost is whether the magistrate has been provided with complete and accurate information in the documents completed by law enforcement or victim assistance personnel to finalize an order. If the arresting officer or victim has requested the EPO, the magistrate may only need to transfer the information provided to a formal court order. If no EPO has been requested, the magistrate may find that one should have been due to the circumstances of the case. In this situation, the magistrate will have to collect the required information in order to issue the order.

EPO Magistration Checklist

Below are factors the magistrate should consider when deciding whether or not to issue an EPO:

- Determine if any of the following persons are available:
 - A peace officer involved in the arrest;
 - An attorney representing the State of Texas;
 - The victim; or
 - The guardian of the victim.

If any of the above is available, the magistrate should consider requesting the presence of one or more of the above or make contact with them to obtain more information regarding the circumstances surrounding the arrest.

- Determine if the case involves "family violence" as defined by sections 71.004 and 71.0021 of the Texas Family Code:
 - An act or threat of violence by one member of a family or household against another member of a family or household.
 - Abuse of a child of the family or household by a member of the family or household.

- An act of dating violence, as victim and defendant have a **dating relationship** (more than a casual acquaintanceship or ordinary fraternization).

In addition, any information supporting the arrest of the defendant that is provided to the magistrate must also be considered when making the determination of whether or not an EPO should be issued. Supporting documents may include assault victim statements, risk/lethality assessments and EPO motions.

Mandatory EPOs

Article 17.292 of the Texas Code of Criminal Procedure outlines the times when a magistrate *shall* issue an order for emergency protection. They are offenses involving:

- *serious bodily injury* to the victim; or
- the *use or exhibition of a deadly weapon* during the commission of an assault.

When the offense involves the use or exhibition of a weapon, the magistrate is required to issue the order for a minimum of 61 days and **may issue the order for up to 91 days**.

What Needs to Be in the Order

- Identify the:
 - victim
 - members of the victim's family or household
 - children
- Identify the:
 - residence
 - place of employment or business; and
 - school or child care facility where a child to be protected by the order is in attendance or is enrolled.

- Determine the minimum distances the defendant must maintain from each location. Common distances are 500 feet and 200 yards.
- Determine whether any children should be protected by the order. All members of the victim's family and household fall under the protection of the order, but if a school or daycare is specifically identified then the child(ren) should also be listed.
- **Determine if possession of firearms should be prohibited.** Magistrates should note if the defendant is a peace officer.
 - ** **While the magistrate appears to have discretion to prohibit the possession of firearms in the CCP, the Penal Code 46.04 appears to make possession of a firearm by a person subject to a magistrate's protective order illegal regardless of the content of the order.**
- Identify the defendant on the order by DOB (date of birth), and other physical descriptors such as race, ethnicity, height, weight, and hair and eye color. If the defendant has a driver's license or ID number, this should also be included.

What Must Be Done at Magistration

- Explain the contents and meaning of the order to the defendant.
 - The order must contain the following statements printed in bold 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 \$4000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR OR BY BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE OR A STALKING OFFENSE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS. THE POSSESSION OF A FIREARM BY A PERSON, OTHER THAN A PEACE OFFICER AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN FULL-TIME, PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO THIS ORDER MAY BE PROSECUTED AS A SEPARATE OFFENSE PUNISHABLE BY CONFINEMENT TO IMPRISONMENT.

NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO

IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER.
DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY
PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT
UNLESS A COURT CHANGES THE ORDER.

- Ensure that a copy of the order is served on the defendant, and that he or she signs the acknowledgment.
- File the original order and acknowledgment with the court clerk.
- Ensure that a copy of the order is sent to the following:
 - The victim
 - The Department of Public Safety
 - The chief of police in the municipality or the sheriff in the county where the protected person resides.

What should the court consider when determining whether to issue an EPO on the “court’s own motion”?

If the magistrate is presented with paperwork from the arresting officer on a family violence offense that does not include a motion for an EPO and does not mention whether or not the victim would like to request one, the court can enter an EPO on the *court’s own motion*. The magistrate can utilize the paperwork presented at arraignment or magistration and consider any other relevant information available in order to make an informed decision. Alternatively, if the victim has clearly indicated that she is not requesting an order, the magistrate may choose to issue the order against the victim’s wishes if the determination is made that the circumstances warrant the issuance of an EPO.

A key document for the magistrate to consider is the **assault victim statement**. The magistrate may not always be provided this document at the time when the probable cause affidavit is submitted, but can request a copy either through the arresting agency or the prosecuting office (the county or district attorney’s office). The assault victim statement will hopefully provide the magistrate with insight into the relationship. It may include questions regarding past violence or the victim’s state of mind/physical state after the assault. If the victim is classified as “fearful” or “scared” on the statement, this may indicate the need for protection.

Another factor the magistrate should take into consideration is whether the **victim is pregnant**. This information may be mentioned in the probable cause affidavit or the assault victim statement. Studies have shown that a pregnant victim is more likely to be abused or face heightened incidences of abuse. If the magistrate chooses to call the victim, this information should be confirmed and taken into consideration.

The magistrate must also consider whether or not the **victim has recently sought to separate from the defendant or end the relationship**. The end of or the threat to end the relationship is another factor that may lead to a heightened incidence of violence.

Another source of information is the **risk/lethality assessment**. This assessment serves multiple functions and is a way for the magistrate to assess the most appropriate intervention or service necessary for the victim. A simple assessment considers nine characteristics of abusers. There is reason to believe that there is an increased risk to the victim if many of these characteristics are identified in the offender. It is not predictive, but it does provide a baseline measure from which to work when determining whether or not to issue an EPO.

1. Does he have a history of threats of attempted homicide or suicide? Has he discussed murder/suicide pacts with the victim?
2. Is he depressed? Are there particularly stressful life events going on – unemployment, poverty, death of a loved one, or a job change? Does he have a history of mental illness?
3. Does he have weapons or access to weapons?
4. Is he obsessed with the victim? Does he feel that he cannot live without her? Is he socially isolated, and does he feel hopeless about a future without her?
5. Does he express rage about her leaving?
6. Is he involved with or addicted to drugs and/or alcohol?
7. Is he stalking her? Does he continually harass her? Will he refuse to leave her alone?
8. Is there an escalation in his threats and/or actual physical violence?
9. **Does he have access to her? Does he know her location? Can he get to her?**

These factors must be considered within a totality of the circumstances. Although there is no exact formula to predict lethal behavior, when exhibited, these indicators warrant concern and may illustrate the need for an emergency protective order.

Bail, Personal Bond and Holds

Although it may seem that the legal system is at odds with victims of family violence because of its complex nature, the legislation defining domestic violence laws is broad and gives great power to the judiciary in protecting the victim. Within the legal system there are several instances where the magistrate is given the opportunity to address victim safety, including setting conditions of release for the offender and/or providing legal protection for the victim. The setting of **bail** or the granting of a **personal bond** is one of the first times during a family violence arrest that the magistrate can act to protect the victim and the community.

There are four ways in which a defendant can get himself out of jail after an arrest: personal bond without an attorney, personal bond with an attorney, using a surety to post bond (like a bondsman), or paying the bond amount to the court in full. If the defendant is released on a personal bond then the court can maintain more control over the defendant. If the defendant uses a bondsman or bails himself out, then he has no duty to the court other than to appear when required. Bondsmen do have the authority to place restriction(s) on a client; however, the duty to abide by any conditions owed is to the bondsman and not the court.

Personal Bond

Personal bond is governed by the Texas Code of Criminal Procedure Article 17.03 and allows for a defendant to be released on a personal bond without having to pay the 10-20% that would be charged by a bails bondsman. Essentially, the defendant is released without putting up any money and is then under the supervision of the office posting the personal bond.

Release on personal bond has both advantages and disadvantages. The most advantageous aspect of the personal bond is that the court is able to place conditions on release that can positively affect a victim of family violence. These conditions may include: a "no contact with victim" mandate, family violence evaluation through a licensed facilitator, completion of a batterer intervention and prevention program (also called "diversion programs"), and drug and/or alcohol counseling. The defendant may also be placed on pre-trial supervision, which generally includes reporting to a pre-trial officer on a regular basis.

In order for an offender to receive a personal bond, he must be able to satisfy the criteria set forth in Texas Code of Criminal Procedure Article 17.04. In addition, the office overseeing the personal bond may have other qualifying criteria. With regard to the victim's safety, the most common condition for release on personal bond after a family violence arrest is requiring that the victim recommend or agree to the granting of a personal bond. **Personal bond should**

generally NOT be granted if the victim is fearful for her safety upon the defendant's release. This is primarily because a defendant released on personal bond will usually get out of jail more quickly than someone who needs a bail bondsman or who must come up with the total bail amount. This leaves the victim with less time to get to a safe location, apply for a protective order or access other victim service resources.

The issuance of the Magistrate's Order for Emergency Protection, otherwise known as an Emergency Protective Order (EPO), may affect the granting of personal bond. If/when the victim is consulted regarding a personal bond and she tells the office handling the bond (such as pre-trial services) that an EPO will be issued, personal bond for the defendant may not be recommended for two reasons. The first is because the EPO usually forbids the defendant from returning to the victim's residence, which is often also the defendant's residence. If the defendant is unable to provide an address where he will be staying, personal bond will be denied. Second, victims are usually asked whether or not they are fearful of the defendant or concerned that he may pose a threat upon release. The presence of an EPO is an indication that the victim is fearful for her safety. If the victim indicates that she is afraid of the defendant or is concerned about her safety, a personal bond generally will not be recommended. However, even when the victim has concerns about her safety, she still may agree to a personal bond if she has requested an EPO. The issuance of the EPO may increase her sense of safety so that she is less fearful because of the protection offered by the order. A victim may also support a personal bond for financial reasons.

It should be noted however that even if the office that handles personal bond declines to recommend the bond to the magistrate, the magistrate may choose to grant the bond over the recommendation. This typically happens when the defendant has hired an attorney and the attorney approaches the magistrate requesting personal bond. Even if an attorney has helped the defendant to receive a personal bond, any conditions placed on the bond must still be followed.

Bail

If the defendant does not qualify for, or is not granted a personal bond, he must either use a surety to bond out or pay the full amount to the court. The amount that bail is set at is ruled by Texas Code of Criminal Procedure Article 17.15, which details what must be considered by the magistrate when setting bail. In family violence cases the most important part of the statute is the broad language concerning victim safety: "The future safety of the victim of the alleged offense and the community shall be considered."

If there is doubt that the magistrate setting bail is aware of the existence of an EPO, it is essential that an advocate or law enforcement officer find the

opportunity to inform the magistrate prior to the hearing. The request provides notice to the magistrate that the victim has concerns/fears for her safety, which may affect the amount of bail. Although bail is not meant to be punishment, and should not be set so high as to be oppressive, setting a low bail when the victim has expressed fear for her safety is contrary to the legislative intent of the statutes governing bail.

When a request is made for bail reduction and the suspect has been charged with Murder, Capital Murder, Indecency with a Child, Aggravated Kidnapping, Aggravated Sexual Assault, or Aggravated Robbery, notice of this request **shall** be given to the prosecutor. In this instance the prosecutor **may** request a hearing on the bail reduction. This gives the prosecutor the opportunity to advocate against the bail reduction and to inform the victim of this request.

As with personal bond, the magistrate may put conditions on any bond set. According to Article 17.40 of the Texas Code of Criminal Procedure titled "conditions related to victim or community safety", the magistrate may "impose any reasonable condition of bond related to the safety of the victim of the alleged offense or to the safety of the community." Although the authority to assess conditions on bond is granted to the magistrate, ensuring that the defendant follows the conditions can be complicated. If the defendant violates a bond condition, he **cannot** be immediately arrested. Any allegation that the defendant has violated a bond condition is subject to a hearing.

Holds

Generally when a person is arrested, bail is set and, in accordance with Article 17.29 of the Texas Code of Criminal Procedure, the accused is "at once set at liberty" (immediately released) once bond is posted. For victims of domestic violence this can create a very unsafe predicament. If the suspect has been arrested but the victim does not have sufficient time to make arrangements for her safety, the victim may end up in a more dangerous situation than before the defendant was arrested.

Article 17.29 does not apply if there is probable cause to believe the violence will continue if the person is immediately released. In such instances, 24-48 hour holds are another way that the court system can help increase victim safety. Article 17.291 of the Texas Code of Criminal Procedure allows the arresting agency to hold an arrested person for a period of 4-48 hours. The hold begins *after* bond has been posted. The arresting agency must receive written authority for the hold from the magistrate. The magistrate is guided by sections (b)(1) & (2) of Article 17.291, which details the criteria for ordering a hold to be placed.

If the additional hold period exceeds 24 hours, the magistrate must also have probable cause that the person committed the instant offense and that, during the 10-year period preceding the date of the instant offense, the person has been arrested: (A) on more than one occasion for an offense involving family violence **or** (B) for any other offense, if a deadly weapon, as defined by §1.07 of the Texas Penal Code, was “used or exhibited during the commission of the offense or during immediate flight after commission of the offense.”

The following generally details the circumstances under which a hold can be placed on individual after he has posted bond:

1. The **arresting or holding agency** has reason to believe violence will continue if the suspect is immediately released (**hold up to 4 hours after bond posted**).
2. The **magistrate** has reason to believe violence will continue if the suspect is released (**hold up to 24 hours after bond posted**).
3. The **magistrate** has reason to believe violence will continue if the suspect is released AND the suspect has a prior arrest for an offense involving family violence or the instant arrest is one involving a deadly weapon (**hold up to 48 hours after bond is posted**).

Uses for 24 – 48 Hour Hold

The agency or magistrate requesting a hold must have reason to believe the violence will continue if the suspect is immediately released. For instance, the magistrate may believe violence may continue when the respondent is released because the suspect may project his anger at being arrested towards the subject. Also, there are certain situations where, if the suspect is immediately released, it is probable that violence would continue and the victim would likely be in immediate danger:

1. **Victim is moving out of the private or shared residence.** If the victim is attempting to leave her residence and relocate, she needs time to safely get out and remove personal belongings. If the abuser returns to the house during this moving time, an extremely dangerous situation could be created for the victim. Studies have repeatedly shown that the most dangerous time for a victim is when she is trying to separate from or leave her abuser. Placing a hold on the suspect allows the victim more time to get out of the residence and to relocate to a safer location.
2. **Victim is leaving town/community.** This is similar to the above scenario except that the victim is attempting to go further than just leaving the

residence. In this instance, a longer period of time may be needed for the victim to get to a safer location.

Although a hold may allow the victim extra time to get to a safer location, even when a hold has been issued, the victim still needs to be advised of the hold's limitations. In addition, the victim should be encouraged to seek assistance from the advocacy community so that she may continue to access resources after she has left her abuser.

Victim Notification

Once the arrested person has posted the bond amount or has qualified for personal bond, the individual is to be released without delay unless a hold is issued as indicated above. When a person is arrested for an offense involving family violence, the law enforcement agency holding the person shall make a reasonable attempt to give the victim notice of the suspect's immediate release. (Texas Code of Criminal Procedure Article 17.29 (b)).

Victim Advocacy

Since the Magistrate's Order for Emergency Protection, otherwise known as an Emergency Protective Order (EPO), is time sensitive in nature, the role of the victim's advocate can be crucial. The arresting officer, crisis counselor, attorney, court clerk, or magistrate may serve as an advocate. Each of these people will have an opportunity to assist the victim in pursuing her safety goals through the various steps of the process, including the request, issuance, notification, and recording of the emergency protective order. The "victim advocate" may be an individual employed by a law enforcement agency or prosecutor's office as well as one employed by a local domestic violence shelter or outreach agency.

Initial Victim Contact

It is recommended that each victim of a domestic violence offense be contacted by a victim advocate following the arrest of the abuser. This is especially true in counties or cities where there is routinely no indication in the responding officer's documentation that the option of an EPO was discussed with the victim. In collaboration with the local domestic violence agency, a system should be established so that no victim that would have requested an EPO is overlooked. Ideally, a victim advocate will have contact with the domestic violence victim some time after the arrest, but before the defendant is arraigned or magisterated. This initial client contact with the advocate can be extremely enlightening, empowering and reassuring for the victim.

The primary purpose of phone contact from the victim advocate is to assess the necessity of an EPO by first explaining what the order can and cannot accomplish. Often, the victim does not understand the details involved in requesting the order, or the provisions of the order, at the time of the arrest because she may have been still be shaken by the trauma of the assault. She may have requested or declined the EPO only hours before, but upon further consideration has changed her mind. After a brief introduction, including an acknowledgement that the call may be at an inconvenient time or place for the victim, most people are eager to discuss their case. The advocate should have some basic training in family violence, an ability to soothe someone in crisis and a sensitive interpersonal communication style. Some people are more disclosing than others, and it is essential that the advocate remain non-judgmental, empathetic, professional and attentive.

During this first contact, the EPO can be described quickly and efficiently in order to assess the victim's interest in and need for the order.

For example: "This is a temporary order, lasting between one and three months. It tells (use the defendant's name or a familial title like 'your husband') three

things. First, he can't commit any more violence against you. Second, he can't threaten or harass you or anyone else in your family. Third, and this is the most important part, he can't come within 200 yards (or whatever distance the magistrate may use) of your home, work or the kids' schools. This order is an important step to help protect people involved in family violence, dating violence or stalking situations. The order is criminally enforceable, meaning that if he violates it, he will be arrested if the police are informed about the violation."

If the victim is interested in pursuing an EPO, but no mechanism has been put in place for this request to be presented to the magistrate before the arraignment, the victim advocate must be able to find a way to communicate the request to the magistrate in time to have the order issued. This means that the request must be made to the magistrate before the defendant is arraigned. In this situation, the victim advocate may be the one required to collect the necessary information to issue the EPO and must ensure this information reaches the magistrate. A victim assistance coordinator employed by a law enforcement agency or prosecutor's office may also be asked to collect information to complete the motion for the EPO if the peace officer or state's attorney will be requesting the order on the victim's behalf.

Required EPO Information

During contact with a victim requesting an EPO, the victim advocate can ensure that necessary paperwork be completed or updated so that the subsequent database entry documenting the EPO will aid enforcement of the order.

Identifying Information

The first step in drafting a complete EPO is to have the names, dates of birth and descriptors of the parties involved. Generally, race, ethnicity and gender are listed with each name. Second, additional information is required on the defendant, including height, weight, hair length and color, eye color, and driver's license number, if any. While this information is usually contained in the police report, it may also be located on the criminal history or booking sheet of the defendant. If all those sources fail to provide the information, the advocate should then ask the victim.

Each victim advocate must be aware of the importance of entering this information into the Texas Crime Information Center (TCIC) for every protective order, as well as each EPO, that is issued in the State of Texas. This registry is maintained by the Department of Public Safety and is linked to the FBI's National Crime Information Center (NCIC). According to the Texas Family Code §86.011, each order must be entered into the TCIC protective order database by law enforcement within 10 days of receipt from the district or county clerk. Each law enforcement agency with jurisdiction over the protected person is charged with

the duty of registering each order. The district or county clerk is responsible for sending the order to the appropriate law enforcement agencies (Texas Family Code §85.042).

While this identifying information is arguably not required to have a legally valid order, it is essential for an enforceable order since law enforcement must rely on the databases for probable cause and a good faith basis for an arrest on a violation of a court order. If information is omitted, or unknown, it will delay the process of entering the EPO into TCIC/NCIC. **A delay may prove fatal;** therefore, the advocate should concentrate on compiling all of the necessary information. If, however, no advocate has handled the case, the clerks inputting the data should use every resource available to identify the missing information and get the EPO into the database as quickly as possible.

Protected Addresses

The next step is to go over the protected addresses with the victim. Each must be a complete physical address, including zip code. Even if this information has already been provided, there is no harm in confirming the locations again. The victim may have forgotten to list a babysitter's house or a daycare. She may not have realized that her work address can also be listed. In some cases, the victim may have already found another place to live temporarily, such as a friend or family member's house or in a shelter.

In certain instances, the victim will have re-located and would like to request an order but does not want to reveal the location where she will be staying to the suspect. Unfortunately, some judges will be reluctant to keep the protected address confidential. There are legitimate due process concerns that may be at stake if the defendant is not aware of the places he cannot go. Some of these concerns can be alleviated, however, by inserting the phrase "any known address of the victim". Then, if a violation charge is ever brought against the defendant, the prosecution can prove that the defendant knew the victim lived at the location where he was found, in violation of the order. However, a few magistrates will refuse to issue an EPO without a specific address and will not issue one with confidential provisions. If that is the case, it is generally better to err on the side of omitting an address than to list an otherwise unknown location.

When deciding whether or not to include an address, the advocate must also consider and discuss with the victim the likelihood not only of a violation, but an attempt on her life or the lives of people around her. A risk/lethality assessment will assist in this determination as will a review of the history of abuse and the most recent violence. The advocate should explain the dilemma to the victim and allow her to contribute to the solution. If she feels that the defendant is likely to obey the order and the previous violence has been minimal, listing an unknown address may be okay, as long as the victim is aware that it will no longer be a secret. However, if the victim feels that the violence has escalated to the point that she fears for her life and she must escape into hiding, it is best to

not list any address at all. Having a valid and enforceable order is worth nothing if it creates a greater risk of danger for the victim.

Length of EPO

It is important for the victim to know the limited duration of the order. Many magistrates will default to issuing 31-day orders. While this is generally a sufficient time frame, some circumstances may warrant a longer order. Alternatively, the 31 day order may be too long for a particular case.

For example: If a victim is moving out within a few days or weeks and wants the defendant to return to the shared address once the move is completed, the judge may be reluctant to list the soon to be vacated residence on the order. In this event, it is recommended that only the new address be protected by the order and the advocate should discuss the option of a 24/48 hour hold with the victim. This will allow the victim time more to move out of the residence before the suspect is released and help to ensure that she remains safe while still at the unprotected address.

In the alternative, a 31-day order may be too short. If special obstacles exist for the victim, the advocate should try to seek a 61-day order or even a 91 day order if a deadly weapon has been displayed.

For example: A victim may have unreliable transportation and/or no alternative child care. It will be difficult for her to pursue other legal remedies, like a civil protection order or divorce, within one month. In such a case, a longer order (either 61 or 91 days, depending on the circumstances) is appropriate and should be issued.

It is important to explain that the EPO is a temporary order and it cannot be extended or renewed. The victim should understand that she must pursue other long-term legal remedies.

Frequently Asked Questions

While it is impossible to enumerate the multitude of questions that may arise, the advocate should at least be able to answer the following questions during the initial contact with the victim. If not, the advocate should have a list of possible referrals for each question. The most common questions will have been covered by an explanation of how the EPO works and through the information gathering process.

“When will he get out of jail?”

Never give a definitive answer to this question. Some people get out of jail remarkably fast. Refer her to the jail and discuss victim notification systems in place in the county. Also refer her to a pre-trial services/personal bond office, if one exists. Finally, encourage her to be prepared for his release sooner, rather than later.

“What about all of his stuff?”

Advise her to make his belongings available to him to minimize any negative contact over personal belongings. She can deliver them to a safe, neutral location prior to his release from jail. She can pack his things up and have someone she trusts pick up the belongings. In an extreme situation, she can pack and move his belongings to a storage unit, pay some rent in advance, and mail/deliver the key to the defendant, his family or trusted friend.

“What if I’m not on the lease?” or “This is his house and he pays the rent/mortgage.”

Explain that the EPO supersedes any other contractual agreement. Help her to understand that if she is not on the lease and she does not get an EPO, he may threaten to have her evicted. An EPO will not release a defendant from his legal obligations under the lease or mortgage. However, issues relating to pending evictions, foreclosures, public housing or other specific legal obstacles to her residential status should be referred to a legal service provider or hotline.

“Can I visit him in jail?”

Technically, the answer is yes. However, many jails have a policy that prohibits victims with protection orders from visiting an inmate in jail. (See *discussion under the section on Modifications of EPOs, pg. 54*). It is generally advisable for the victim to avoid seeing the defendant in jail. If she is struggling with issues of guilt or closure, she should be referred to a family violence counselor.

“Can we see each other or talk on the phone?” or “Can he still see the kids?”

Yes. Explain that the order does not prohibit contact with the suspect but reiterate the provision regarding **threatening and harassing communication** again. Also, explain that any visitation that may be scheduled may continue so

long as the order is followed. This means that if the suspect will have visitation with the children, he may do so as long as the visitation or exchange does not occur at the protected residence. It is also important to discuss the special concerns regarding child visitation in abusive relationships. Safety plan and refer her and the children to family violence counseling.

Safety Planning

Each case is different and requires a different level of safety planning. If the victim is in a hurry, the advocate should encourage her to contact the advocate again when she has more time or refer her to a domestic violence hotline. If she has declined the EPO and plans on reconciling with the defendant, go over the safety plan in more detail. Some of the most important elements to highlight are:

- Get a cell-phone and carry it with you. Have a working phone in every room.
- During an argument, avoid the bathroom and kitchen.
- Develop code words or signals with children, friends, family and neighbors.
- Save/Hide some cash in the event of an emergency.
- Keep copies of important documents someplace safe.
- Vary routes to and from work, school and home.
- Avoid favorite places and stores where he might look.
- Change locks, phone numbers, apartment, if possible.
- Notify security officers, landlords, employers, neighbors about the EPO.
- Circulate a photo of the defendant to people who can look out for him.
- If confronted by defendant, remain calm, quiet and appeasing. Get to safety quickly.

Referrals

Every victim advocate should have an arsenal of resources available. Referrals should be offered as needed in an effort to avoid overloading a potentially traumatized and sensitive person. It is important to remember to keep the door open to a repeat call, especially if a victim is not ready to take a particular referral at the time. It is best for the advocate to try not to give the victim one number too many, because when faced with a list of even 2 or 3 numbers, a victim may shut down and fail to make any calls at all. If she is only able to take one number, make sure it is for the victim advocate that can best assist her. She is more likely to call someone she has already talked to than call someone new or even a whole new office. If she can take two numbers, make sure the other is for a 24-hour hotline.

The victim advocate's voicemail should include the following information:

- "If you are in immediate danger, call 911."
- "Leave a number where it is safe to call you back."
- "The number for the 24 hour hotline and shelter is ---- (or 1800-799-SAFE, if no local hotline.)"
- "I will return your call as soon as possible."

Common referrals include:

Local jail, prosecutors and protection order divisions

Family violence detectives

Crime victim counselors

Crime victim compensation through the attorney general's office

Local women's shelters

Legal hotlines or legal service providers

Crime Victim's Rights

The Texas Code of Criminal Procedure dedicates an entire chapter to the rights of crime victims. The code defines victim as "a person who is the victim of sexual assault, kidnapping, aggravated robbery or who has suffered bodily injury or death as a result of the criminal conduct of another" (Article 56.01). Each assault family violence charge therefore has a high probability of falling within the definition since most assault family violence cases involve bodily injury. Sexual assault and kidnapping charges may also fall within the realm of family violence cases (if the victim and defendant are legally considered "family"). There are two subchapters in Chapter 56: crime victim's rights and crime victim's compensation. Within subchapter-A, there are three main areas of focus:

- the rights afforded to victim's of crime,
- the responsibility to inform victim's of their rights, and
- victim notification upon defendant's release, parole, transfer or other changes in the status of the offender.

What are "crime victim's rights"?

The rights of crime victims are outlined in Article 56.02 of The Texas Code of Criminal Procedure, a copy of which is found in the appendix of this manual. This statute focuses on the victim's right to be aware of and participate in the legal system's disposition of the criminal case as well as rights pertaining to the return of property and setting of bail.

How does a victim find out about their rights?

The prosecuting attorney, whether in district or county court, has an obligation to designate a person to serve as victim assistance coordinator in their jurisdiction (Article 56.04). The coordinator is responsible for helping the victim throughout the criminal process and making sure the victim is afforded the rights granted in Article 56.02. The prosecuting attorney's office is also responsible for making sure that, no later than the tenth day after the date that an indictment *or* information is returned against the defendant, the victim is informed of rights and procedures under article 56.02 as well as provided with notice of the procedural stages of prosecution.

In addition to the prosecuting agency, law enforcement also has an obligation to provide the victim with written information and notice on the criminal case. Article 56.07 outlines these responsibilities, which include supplying the victim with information on emergency services, referrals to available social services agencies, and rights regarding crime victim's compensation (subchapter B). Law enforcement is charged with providing this information to the victim at the initial contact with victim or at the earliest possible time after initial contact.

What about victim notification when the offender is released?

According to Articles 56.11 and 56.12, the Texas Department of Criminal Justice or the sheriff, depending on who has custody of the offender, must notify the victim whenever a convicted offender is released, escapes or is transferred to another facility.

What is the Crime Victim's Compensation Fund?

The state's Crime Victim's Compensation Fund is covered in subchapter B of Chapter 56. It is a financial assistance program that helps eligible victims of crime with certain expenses that are related to the crime. In family violence situations, this may include relocation of the victim. The Crime Victim's Compensation Fund can play a critical part in providing options for victims of family violence. The Fund is administered by the Office of the Texas Attorney General, which receives money from offender-assessed court costs which are generated by criminal convictions, court-ordered restitution, and federal grants. Complete information on the Fund can be found on-line at <http://www.oag.state.tx.us/victims/cvc.shtml#benefits>

Who qualifies for Crime Victim's Compensation?

Not every person who is the victim of a crime is eligible for financial compensation by the state. There are seven categories of people that qualify:

1. An innocent victim of crime who suffers physical and/or emotional harm or death.
2. An authorized individual acting on behalf of a victim (agent).
3. A person who legally assumes the obligations or voluntarily pays certain expenses related to the crime on behalf of the victim.
4. A dependent of a victim.
5. An immediate family member or household member related by blood or marriage that requires psychiatric care or counseling as a result of the crime.
6. An intervener who goes to the aid of the victim or a peace officer.
7. A peace officer, fire fighter, or individual whose employment includes the duty of protecting the public.

What crimes are covered by Crime Victim's Compensation?

Crimes involving "criminally injurious conduct," which is defined as "conduct that occurs or is attempted, poses a substantial threat of personal injury or death and is, or would be, punishable by fine, imprisonment or death." These include:

- sex offenses,
- kidnapping,
- aggravated robbery,
- assaultive offenses,
- arson,
- homicide and
- other violent crimes in which the victim suffers physical or emotional harm or death.

The following motor vehicle related crimes are also covered:

- failure to stop and render aid,
- driving while intoxicated (DWI),
- manslaughter,
- criminally negligent homicide,
- aggravated assault,
- intoxication manslaughter and
- intoxication assault.

Any of these crimes may be a family violence offense depending on the circumstances.

For example: DWI/DUI is not typically thought of as family violence offense. However, in certain circumstances such an offense will be considered family violence. If an intoxicated abuser is driving a vehicle and is following the victim in her car, and he causes the victim to swerve off the road, injuring her or others, or if he were to hit her car with his causing injury, then the victim is both a victim of DWI and a victim of family violence. If the intent to drive her off the road can be proven, then other charges may also be added.

You can find a complete listing of crime victim's rights in Article 56.02 of the Texas Code of Criminal Procedure.

Criminal Charges in Family Violence

The Magistrate's Order for Emergency Protection, otherwise known as an Emergency Protective Order (EPO), is a short term protective order which may be issued after an offender is arrested for an offense involving family violence. There are several possible charges that can be filed against the offender that are considered family violence offenses. The most common charges are:

A. Assault – Texas Penal Code 22.01

Assault is the most common complaint in violent intimate partner relationships. Assaults without bodily injury or a complaint of pain are class C misdemeanors, carrying a fine of up to \$500, but no jail time. Assaults with bodily injury and/or a complaint of pain are class A misdemeanors with possible jail time of up to one year and a fine of up to \$4000. If the offender has a previous family violence assault conviction then a family violence offense will be enhanced to a third degree felony carrying a punishment range of two to ten years and a fine of up to \$10,000. The elements of assault are:

A person...

1. intentionally, knowingly, or recklessly causes bodily injury to another; or
2. intentionally or knowingly threatens another with serious bodily injury; or
3. intentionally or knowingly causes physical contact, when the person knows or should have known that the other will regard the contact as offensive or provocative.

** Effective September 1, 2005 the list of offenses that will enhance a family violence charge is expanded to also include Homicide, Kidnapping, Aggravated Kidnapping, and Indecency with a Child, when such offense is committed against a family member.

B. Aggravated Assault – Texas Penal Code 22.02

Most aggravated assaults are second degree felonies with possible jail time from two to twenty years and a fine of up to \$10,000. The elements of aggravated assault are:

A person...

1. intentionally, knowingly, or recklessly causes bodily injury to another; or

2. intentionally or knowingly threatens another with imminent bodily injury; or
3. intentionally or knowingly causes physical contact, when the person knows or should have known that the other will regard the contact as offensive or provocative; **and**
4. causes serious bodily injury; or
5. uses or exhibits a deadly weapon during the commission of the assault.

C. Terroristic Threat – Texas Penal Code 22.07

A person commits the offense of terroristic threat if the person threatens to commit an offense involving violence to a person or property with the intent to place any person in fear of imminent serious bodily injury. This offense is a class B misdemeanor and carries jail time of up to 180 days and a fine of up to \$2,000.

**Effective September 1, 2003 the offense of Terroristic Threat becomes a class A misdemeanor if the threat constitutes family violence.

D. Harassment – Texas Penal Code 42.07

Harassment is a class B misdemeanor with a possible punishment of up to 180 days in jail and a fine up to \$2,000. The elements are:

A person...

1. initiated communication by phone or in writing and made a comment, request or proposal that was obscene; or
2. threatened to inflict bodily injury to a person or to commit a felony against a person or her property; or
3. conveyed a false report that another person had suffered death or serious bodily injury when they knew the report to be false; or
4. repeatedly called a telephone number and let it ring or made repeated phone calls to a telephone number anonymously or in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another; or
5. made a phone call and intentionally failed to hang up or disengage the connection.
6. knew that someone else was using his phone to commit one of the above, **and**
7. has the intent of harassing, annoying, alarming, abusing, tormenting, or embarrassing another person.

E. Stalking – Texas Penal Code 42.072

Stalking is a class A misdemeanor with possible jail time of up to one year in jail and a fine of up to \$4000. Stalking can be enhanced to a third degree felony if the defendant has a previous stalking conviction. The elements of stalking are:

1. a person engages in conduct more than once that is directed at another person;
2. the actor knows or believes that the other person will find the conduct to be threatening bodily injury or death of the person or a member of their family or household, or damage the person's property;
3. causes the other person or a member of the other person's family or household to be placed in fear; and
4. would cause a reasonable person fear.

F. Violation of a Protective Order – Texas Penal Code §25.07

Violation of a protective order (including an EPO) is a class A misdemeanor unless the defendant has:

- a) previously been convicted two or more times of violating a protective order;
- b) has violated the protective order by committing an assault; or
- c) has violated the protective order by stalking – in which case the violation is a third degree felony.

The elements of a violation of a protective order are:

1. a person intentionally or knowingly violates a protective order by
2. committing family violence; or
3. committing an act of stalking; or
4. communicating directly or indirectly in a threatening or harassing manner with someone protected by the order; or
5. communicating in any manner with a protected person except through the person's lawyer or someone appointed by the court, if the order prohibits such communication; or
6. going within the distance specified in the protective order of the residence, place of employment, business, child care facility, residence or school where an adult or child protected by the order resides, works or attends.

Statutes Concerning Family Violence

Depending on the circumstances, there may be other charges that can be considered family violence offenses. Below are the statutes for the above offenses as well as other statutes found in the Texas Penal Code that may apply in family violence cases.

§ 46.04. Unlawful Possession of Firearm

(a) A person who has been convicted of a felony commits an offense if he possesses a firearm:

(1) after conviction and before the fifth anniversary of the person's release from confinement following conviction of the felony or the person's release from supervision under community supervision, parole, or mandatory supervision, whichever date is later; or

(2) after the period described by Subdivision (1), at any location other than the premises at which the person lives.

(b) A person who has been convicted of an offense under Section 22.01, punishable as a Class A misdemeanor and involving a member of the person's family or household, commits an offense if the person possesses a firearm before the fifth anniversary of the later of:

(1) the date of the person's release from confinement following conviction of the misdemeanor; or

(2) the date of the person's release from community supervision following conviction of the misdemeanor.

(c) A person, other than a peace officer, as defined by section 1.07, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision, who is subject to an order issued under Section 6.504 or Chapter 85, Family Code, under Article 17.292 or Chapter 7A, Code of Criminal Procedure, or by another jurisdiction as provided by Chapter 88, Family Code, commits an offense if the person possesses a firearm after receiving notice of the order and before expiration of the order.

(d) In this section, "family," "household," and "member of a household" have the meanings assigned by Chapter 71, Family Code.

(e) An offense under Subsection (a) is a felony of the third degree. An offense under Subsection (b) or (c) is a Class A misdemeanor.

§ 22.07. Terroristic Threat

(a) A person commits an offense if he threatens to commit any offense involving violence to any person or property with intent to:

(1) cause a reaction of any type to his threat by an official or volunteer agency organized to deal with emergencies;

(2) place any person in fear of imminent serious bodily injury; or

(3) prevent or interrupt the occupation or use of a building; room; place of assembly; place to which the public has access; place of employment or occupation; aircraft, automobile, or other form of conveyance; or other public place;

(4) cause impairment or interruption of public communications, public transportation, public water, gas, or power supply or other public service;

(5) place the public or a substantial group of the public in fear of serious bodily injury; or

(6) influence the conduct or activities of a branch or agency of the federal government, the state, or a political subdivision of the state.

(b) An offense under Subsection (a)(1) is a Class B misdemeanor.

(c) An offense under Subsection (a)(2) is a Class B misdemeanor, except that the offense is a Class A misdemeanor if the offense:

(1) is committed against a member of the person's family or household or otherwise constitutes family violence; or

(2) is committed against a public servant.

(d) An offense under Subsection (a)(3) is a Class A misdemeanor, unless the actor causes pecuniary loss of \$1,500 or more to the owner of the building, room, place, or conveyance, in which event the offense is a state jail felony.

(e) An offense under Subsection (a)(4), (a)(5), or (a)(6) is a felony of the third degree.

(f) In this section:

(1) "Family" has the meaning assigned by Section 71.003, Family Code.

(2) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(3) "Household" has the meaning assigned by Section 71.005, Family Code.

(g) For purposes of Subsection (d), the amount of pecuniary loss is the amount of economic loss suffered by the owner of the building, room, place, or conveyance as a result of the prevention or interruption of the occupation or use of the building, room, place, or conveyance.

§ 42.07. Harassment

(a) A person commits an offense if, with intent to harass, annoy, alarm, abuse, torment, or embarrass another, he:

(1) initiates communication by telephone, in writing, or by electronic communication and in the course of the communication makes a comment, request, suggestion, or proposal that is obscene;

(2) threatens, by telephone, in writing, or by electronic communication, in a manner reasonably likely to alarm the person receiving the threat, to inflict bodily injury on the person or to commit a felony against the person, a member of his family or household, or his property;

(3) conveys, in a manner reasonably likely to alarm the person receiving the report, a false report, which is known by the conveyor to be false, that another person has suffered death or serious bodily injury;

(4) causes the telephone of another to ring repeatedly or makes repeated telephone communications anonymously or in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another;

(5) makes a telephone call and intentionally fails to hang up or disengage the connection;

(6) knowingly permits a telephone under the person's control to be used by another to commit an offense under this section; or

(7) sends repeated electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another.

(b) In this section:

(1) "Electronic communication" means a transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or

in part by a wire, radio, electromagnetic, photoelectric, or photo-optical system. The term includes:

(A) a communication initiated by electronic mail, instant message, network call, or facsimile machine; and

(B) a communication made to a pager.

(2) "Family" and "household" have the meaning assigned by Chapter 71, Family Code.

(3) "Obscene" means containing a patently offensive description of or a solicitation to commit an ultimate sex act, including sexual intercourse, masturbation, cunnilingus, fellatio, or anilingus, or a description of an excretory function.

(c) An offense under this section is a Class B misdemeanor, except that the offense is a Class A misdemeanor if the actor has previously been convicted under this section.

§ 42.072. Stalking

(a) A person commits an offense if the person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct, including following the other person, that:

(1) the actor knows or reasonably believes the other person will regard as threatening:

(A) bodily injury or death for the other person;

(B) bodily injury or death for a member of the other person's family or household; or

(C) that an offense will be committed against the other person's property;

(2) causes the other person or a member of the other person's family or household to be placed in fear of bodily injury or death or fear that an offense will be committed against the other person's property; and

(3) would cause a reasonable person to fear:

(A) bodily injury or death for himself or herself;

(B) bodily injury or death for a member of the person's family or household; or

(C) that an offense will be committed against the person's property.

(b) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor has previously been convicted under this section.

(c) In this section, "family," "household," and "member of a household" have the meanings assigned by Chapter 71, Family Code.

§ 22.01. Assault

(a) A person commits an offense if the person:

(1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;

(2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or

(3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor, except that the offense is a felony of the third degree if the offense is committed against:

(1) a person the actor knows is a public servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant; or

(2) A person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003 or 71.005, Family Code, if it is shown on the trail of the offense that the defendant has been previously convicted of an offense under this chapter, Chapter 19, or Section 20.03, 20.04, or 21.11 against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, 71.005, Family Code;

(3) a person who contracts with government to perform a service in a facility as defined by Section 1.07(a)(14), Penal Code, or Section 51.02(13) or (14), Family Code, or an employee of that person:

(A) while the person or employee is engaged in performing a service within the scope of the contract, if the actor knows the person or employee is authorized by government to provide the service; or

(B) in retaliation for or on account of the person's or employee's performance of a service within the scope of the contract; or

(4) a person the actor knows is a security officer while the officer is performing a duty as a security officer.

(c) An offense under Subsection (a)(2) or (3) is a class C misdemeanor, except that the offense is:

(1) a Class A misdemeanor if the offense is committed under Subsection (a)(3) against an elderly individual or disabled individual, as those terms are defined by Section 22.04; or

(2) a Class B misdemeanor if the offense is committed by a person who is not a sports participant against a person the actor knows is a sports participant either:

(A) while the participant is performing duties or responsibilities in the participant's capacity as a sports participant; or

(B) in retaliation for or on account of the participant's performance of a duty or responsibility within the participant's capacity as a sports participant.

(d) For purposes of Subsection (b), the actor is presumed to have known the person assaulted was a public servant or security officer if the person was wearing a distinctive uniform or badge indicating the person's employment as a public servant or status as a security officer.

(e) In this section:

(1) Repealed

(2) Repealed

(3) "Security Officer" means a commissioned security officer as defined by Section 1702.002, Occupations Code, or a noncommissioned security officer registered under Section 1702.221, occupations code.

(4) "Sports participant" means a person who participates in any official capacity with respect to an interscholastic, intercollegiate, or other organized amateur or professional athletic competition and includes and athlete, referee, umpire, linesman, coach, instructor, administrator or staff member.

f) For the purposes of Subsection (b)(2):

(1) a defendant has been previously convicted of an offense listed in Subsection (b)(2) committed against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code, if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision; and

(2) a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed in Subsection (b)(2) is a conviction of an offense listed in Subsection (b)(2).

§ 25.07. Violation of Protective Order or EPO

(a) A person commits an offense if, in violation of an order issued under Section 6.504 or Chapter 85, Family Code, under Article 17.292, Code of Criminal Procedure, or by another jurisdiction as provided by Chapter 88, Family Code, the person knowingly or intentionally:

(1) commits family violence or an act in furtherance of an offense under Section 42.072;

(2) communicates:

(A) directly with a protected individual or a member of the family or household in a threatening or harassing manner;

(B) a threat through any person to a protected individual or a member of the family or household; and

(C) in any manner with the protected individual or a member of the family or household except through the person's attorney or a person appointed by the court, if the order prohibits any communication with a protected individual or a member of the family or household;

(3) goes to or near any of the following places as specifically described in the order:

(A) the residence or place of employment or business of a protected individual or a member of the family or household; or

(B) any child care facility, residence, or school where a child protected by the order normally resides or attends; or

(4) possesses a firearm.

(b) For the purposes of this section:

(1) "Family violence," "family," "household," and "member of a household" have the meanings assigned by Chapter 71, Family Code.

(2) "Firearm" has the meaning assigned by Chapter 46.

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

(d) Reconciliatory actions or agreements made by persons affected by an order do not affect the validity of the order or the duty of a peace officer to enforce this section.

(e) A peace officer investigating conduct that may constitute an offense under this section for a violation of an order may not arrest a person protected by that order for a violation of that order.

(f) It is not a defense to prosecution under this section that certain information has been excluded, as provided by Section 85.007, Family Code, or Article 17.292, Code of Criminal Procedure, from an order to which this section applies.

(g) An offense under this section is a Class A misdemeanor unless it is shown on the trial of the offense that the defendant has previously been convicted under this section two or more times or has violated the protective order by committing an assault or the offense of stalking, in which event the offense is a third degree felony.

Case Law

There are certain situations where case law may be needed to support a victim's claim of injury. In order for law enforcement to make an arrest for assault, the victim must have either a complaint of pain or a visible physical injury. Texas Penal Code Ann. 22.01(a)(1) states that a person commits an assault if he "intentionally, knowingly or recklessly causes bodily injury to another..." Bodily injury, as defined by Texas Penal Code Ann. 1.07(a)(1), means, "physical pain, illness, or any impairment of physical condition." Numerous assaults result with what might be described as relatively "minor" physical injuries. Some magistrates are unwilling to find probable cause for an assault if the victim suffers from only "minor" injuries without a complaint of pain. This is based on the reasoning that a minor injury, such as a scratch on the skin's surface, is not an impairment of a physical condition. This means, therefore, a scratch would not be considered "an injury" as defined by the statutes. Providing case law that encompasses a broader definition may help to persuade the magistrate to accept the assault charge.

In *Ramirez v. State*, 518 S.W.2d 546, 547, the court stated that the terms of "physical pain," "illness," and "impairment of physical condition" are terms of common usage, and when construed to the fair import of their terms, "...are not so vague that men of common intelligence must necessarily guess at its meaning and differ as to their application." This case established that the definition of "bodily injury" is not so vague as to violate the Texas Constitution or the United States Constitution. This holding has been used to define what constitutes "bodily injury," and defines it broadly.

In *York v. State*, 833 S.W.2d 734, the court, while determining that choking resulted in bodily injury, stated that the definition of bodily injury is "purposefully broad and seems to encompass even relatively minor physical contacts so long as they constitute more than mere offensive touching." *York* is a significant case to rely on when faced with an injury that may appear minor, such as slight red marks, scratches, and pulled hair.

Several courts have found that a victim suffered "bodily injury" even when a victim did not explicitly state that she felt pain. For example, on the basis that a jury could draw "reasonable inferences," a court rejected an appeal from a defendant who claimed that because the plaintiff never stated he suffered pain, the trial court could not have found that the plaintiff suffered bodily injury.

Goodin v. State, 750 S.W.2d 857. Citing *Ramirez*, the court stated that: "It is a reasonable inference men of common intelligence could certainly make that (plaintiff's) bruises and muscle strain caused him "physical pain" according to the fair import of the terms..." *Id.* Similarly, a court ruled based on circumstantial evidence that a peace officer suffered "pain" and therefore "bodily injury" even though he did not explicitly state he felt pain. *Wawrykow v. State*, 866 S.W.2d 87. Another court ruled that even though a woman could not remember the events surrounding the physical fight with her husband, the fact that she remembered a

fight, called the police, and was crying while she spoke with police officers was enough circumstantial evidence to establish that she felt pain. *Salley v. Texas*, S.W. 3d 878.

These cases help identify what falls within the definition of “bodily injury,” and, most important, establish a definition that it is construed very broadly. This case law may aid law enforcement, magistrates, and attorneys who come across assaults where the injury appears minor. In these instances the victim should not have to wait until they are “seriously” injured for the criminal justice system to offer them help and protection.

Texas EPO Case Law

Ex Parte Flores is the most recent case law to address magistrate’s orders of emergency protection. In *Flores* the court held EPOs to be constitutional against the challenge that they lacked due process. In this case, the suspect was issued a standard EPO including a stay-away provision that prevented him from returning to the residence. He was also prohibited from going to the protected person’s place of employment and to the schools that his two children attended. The suspect argued that his due process rights were violated because Article 17.292, which allows for the issuance of EPOs, does not provide the right to a hearing before the order is issued. The court held that issuing an EPO without the opportunity for a hearing does not violate due process rights. Relying on similar holdings in other jurisdictions the court stated that because the EPO is temporary and emergency in nature, due process rights are not violated by denying a hearing before the order is issued.

How to Modify an Emergency Protective Order

A “Modification Hearing” is the process used to make changes in a Magistrate’s Order for Emergency Protection, otherwise known as an Emergency Protective Order (EPO). An EPO never needs to be entirely cancelled because the first two provisions of the order only prohibit conduct that is already illegal. Most often, when a person requests that an EPO be “cancelled” or “revoked”, she wants the order changed to allow the respondent to return to a restricted address (a residence or a child care facility). There are a multitude of other reasons for requesting that an EPO be removed, but a modification may not solve the problem or address a specific concern.

Unwarranted Modifications

Many initial requests to modify an EPO are actually unnecessary and the modification process can be avoided entirely. Very often, the protected person does not have an accurate understanding of the EPO restrictions. If a person requests a modification in order to attend family counseling or to work on the relationship, a modification is not necessary. The parties are not prohibited under the EPO from communicating or even seeing one another. They are free to pursue those goals as long as they do not violate the EPO.

Another common concern is jail visitation. A victim may want to visit the abuser in jail but is not allowed to do so by the staff at the facility. This issue arises when an abuser has been convicted and sentenced to incarceration within the duration of the EPO (31-91 days) or is unable to secure his pre-trial release. While the EPO does not prohibit contact between the parties, many facilities have a visitation policy predicated upon the standard civil protection order. In some circumstances, simply providing the jail with a copy of the EPO and bringing attention to the provision regarding communication is sufficient to allow visitation. However, these facilities have the discretion to allow or disallow visitors to their inmates and a modification will not make any difference in this aspect. Only in this circumstance is a judge likely to revoke or terminate the entire EPO; however, it is still unlikely for reasons discussed below.

Given that the most common reasons for requesting modifications are based on a misunderstanding of the order, the first step to reduce the number of modification hearings is to establish an efficient and consistent process for explaining the EPO to protected persons. This can occur at any stage in the process.

- Officers should explain the EPO accurately when initially assessing whether the victim wants or needs the order.

- Victim services counselors should also have an understanding of the standard EPO in order to address misunderstandings and answer questions.
- Judges may also choose to contact victims in an effort to confirm the EPO's necessity and information.

Finally, if a magistrate is unable to confirm the request or if the EPO is issued on the court's own motion, limiting the duration to the 31-day minimum will also minimize unnecessary modifications.

Modification Hearings

As of September 1, 2003, a hearing must be held to determine the appropriateness of modifying an EPO. (Texas Code of Criminal Procedure Article 17.292(j)). In order to have a hearing, everyone affected by the EPO must be notified of the scheduled hearing in order to give them a chance to participate. "Affected parties" are generally considered to be the respondent, the protected person and the prosecuting agency for the underlying criminal offense giving rise to the EPO. This does not include minor children of the parties, children listed in the EPO, or anyone not listed by name in the EPO. When a hearing is scheduled, the court clerk should notify the respondent, his attorney, if known, the County or District Attorney, the protected person and her attorney, if any.

Depending upon the court and the judge, this hearing may be formal or informal. It may be recorded by a court reporter and witnesses may be sworn. It may also be conducted relatively informally, especially if no attorneys are involved in the proceeding. The judge may ask questions directly to the parties to assess the appropriateness of modifying the EPO. Once the decision is made, the judge or clerk will prepare an order modifying the EPO (discussed below).

Jurisdiction

There are two courts that may modify an EPO (Texas Code of Criminal Procedure Article 17.292(n)). The first is the issuing court. The second is the court assuming jurisdiction over the criminal act giving rise to the issuance of the EPO. In order to transfer jurisdiction of the EPO, the party seeking a modification must provide a motion, notice, and schedule a hearing on the question of jurisdiction. However, the parties may agree to have jurisdiction transferred to the criminal court. This can be problematic if the prosecuting agency refuses to agree to a transfer or if the criminal defense attorney argues the prosecuting agency is not an "affected party". While legislative intent indicating that the prosecution is an "affected party" is persuasive, this issue is still unresolved. Additionally, transferring the modification jurisdiction also increases the risks for a criminal defendant because the modification will be handled more like a pre-trial

hearing than a separate, independent aspect of the criminal case. Issues of constitutional significance, such as self-incrimination or the confrontation of witnesses, can arise during the course of a modification before the criminal court, especially if the hearing is recorded (see discussion below).

Typically, a hearing before the issuing court is simpler and faster. Magistrates may have a lighter docket and more opportunity to conduct this type of hearing. Additionally, magistrates are more educated in the EPO process and will be more fluent in the relevant concerns of the parties. Also, the issuing court may have a recollection of the facts of the case which led him/her to initially issue the EPO, especially since these are short term orders and any modifications will take place within days or weeks of when the order was issued. This is especially true in the context of felony cases in District Courts, which have very little exposure to EPO procedure or the flexibility necessary to schedule a hearing within the 31-91 days before the modification becomes moot.

Motion to Modify

Procedurally, the court must be presented with a document raising the issue of a modification. A motion to modify an EPO is an appropriate method to introduce the issue to the court and begin the process. The party requesting the modification is generally referred to as the “movant”. The protected person frequently initiates the modification process, but it may also be initiated by the respondent, usually through a criminal defense attorney. The movant in any legal proceeding bears the burden of proof at the hearing. While the standard of proof is not explicitly announced in the statute, it is generally considered to be by the “preponderance of the evidence” and not “beyond a reasonable doubt”. This standard is appropriate if the modification hearing is considered analogous to a hearing on a civil protection order or a pre-trial proceeding in a criminal case. The motion to modify should clearly articulate certain elements.

Elements Required

The statute clearly requires that the movant demonstrate three elements regarding safety before a modification of an EPO may be issued (Texas Code of Criminal Procedure Article 17.292(j)(1-3)).

1. The EPO must be “unworkable”. Financial burdens, childcare responsibilities or inadequate transportation are common reasons that a victim may request to modify an EPO.
2. The movant must show that the original victim will not be placed in any greater danger under the modification. If the movant is requesting the stay away provision be removed and the parties do not intend to live together any longer, this may substantiate the argument that the victim

will not be placed in any greater danger under the modification. This may occur when the victim has chosen to relocate and the defendant would like to return to the protected address. However, if the parties request the modification because they wish to reconcile and resume cohabitation, the movant must convince the judge that there will be no family violence and that the victim will not be in greater danger of violence because of the modification. Persuasive facts include whether or not the respondent has enrolled in a counseling or education program for domestic violence, and whether the initial facts were truly isolated, situational, or untrue.

3. The movant must also show that the modification will not place any other person protected under the order in any greater danger. This applies to anyone in the victim's family or household, whether listed or not, since the language of the EPO protects those individuals from family violence and threatening or harassing communications.

Role of the Prosecutor

As previously mentioned, the role of the prosecutor in a modification will depend on the facts of the case and the position of the defense. A hearing to modify an EPO is likely to be of the lowest priority to a prosecuting agency, especially if the hearing is being held before the issuing magistrate and not the court of criminal jurisdiction. While the prosecution's initial reaction may be to oppose any and all modifications, this may not actually represent the best interests of the state or the community.

For example: A common reason for seeking a modification is if the protected person relocates and the parties want the respondent to return to a now vacated restricted address. The prosecution should not categorically oppose a modification in this scenario, especially if an alternate residence can be listed for the protected person.

The prosecution can facilitate efficiency in many cases by sending the court a "waiver of notice" for the hearing or by coming to an agreement with the parties prior to the hearing. In the alternative, the prosecution could also be a strong advocate for victim and community safety in otherwise "agreed" modifications.

For example: The protected person refused the EPO initially, protests that it has been issued in the first place and requests a modification to have the order dismissed. This victim may not perceive the safety concerns that would be evident to an experienced and trained domestic violence prosecutor. The prosecutor is also best situated to argue on behalf of any children protected under the order, community safety, and law enforcement safety during domestic violence calls.

Role of the Defense Attorney

When a respondent receives notice of a modification hearing, he should notify the defense attorney, if one has been retained or appointed. Since the EPO resembles a civil protection order, many defense attorneys choose not to participate, concluding the EPO is outside the scope of the representation. This decision is risky from a criminal defense perspective for many reasons:

- The modification may give rise to constitutional concerns for a criminal defendant that might affect the proceeding for which the attorney has been retained or appointed.
- The protected person may offer testimony or evidence in support of the modification that is relevant to the charges pending against the defendant.
- The hearing itself is an opportunity for discovery for both parties. If the defense attorney receives notice of the hearing and something detrimental to his/her client's interest unfolds, there may be no remedy because the attorney chose not to appear at the hearing.
- In certain instances, a defense attorney's failure to appear at a modification hearing may also raise ethical concerns.

Role of the Judge

Whether the judge hearing the modification is the issuing magistrate or the court assuming criminal jurisdiction, the role of the judge in the process should be guided by the same principles. Above all, **the primary focus of the hearing should be the safety of the protected person.** Unfortunately, the victim of family violence may not be the most reliable person to assess the likelihood of future violence. Therefore, judges hearing modifications should be trained and educated on the signs of abusive relationships, risk/lethality assessment, and the common reasons why a victim stays in an abusive relationship.

Judges may establish their own protocol for hearing these modification requests. It may be efficient to set all modification hearings for a single docket each week. A judge may refuse to consider a modification without seeing the allegations made against the respondent and may require that a motion be accompanied by the probable cause affidavit or charging instrument, if available. The modifying judge should have as much information about the underlying facts of the case as possible.

Modification of a Mandatory EPO

If the defendant is charged with a family violence offense that involves serious bodily injury or the use/exhibition of a deadly weapon during the commission of an assault, the EPO is statutorily required (Texas Code of Criminal Procedure Article 17.292(b)). While a modification of a mandatory EPO is still possible, it is less likely than in other cases. The legislature intended that EPOs be issued in these cases despite any other wishes of the victims. While there is no judicial discretion on the issuance of a mandated EPO, the magistrate still maintains discretion on the provisions of the order. Specifically, the issuing magistrate does not have to list any restricted addresses in the order at all. However, because of the gravity of the circumstances, modifications in these cases should be thoroughly considered by the parties, advocates, and judge.

Order Modifying an EPO

An order granting the requested modification should incorporate all other provisions of the original EPO. The order should be limited in scope to address the concerns of the movant without placing anyone in future danger. The order may “release” an address restriction or tell the respondent he “is no longer prohibited” from an address. The modification may also add an additional address or protected person. It may also remove any provision of the order, including the prohibition on possessing a firearm. In some circumstances, however, certain prohibitions, such as the prohibition on firearms, should be carefully considered before being removed. The modification can also extend the duration of the original EPO to the maximum limit of 61 or 91 days, if the original was issued for some period less than that amount. Finally, an order modifying an EPO should be processed in the exact same manner as the original document. The original should be included in the clerk’s case file and copies should be sent to the necessary entities, in accordance with the Texas Code of Criminal Procedure Articles 17.292 and 17.293.

When a modification occurs it is important that all parties have a clear understanding of two things. First, if the order still contains the provisions regarding family violence and threatening or harassing communication, any domestic disturbance calls involving the parties will be investigated as potential violations of the EPO. Law enforcement officers are trained to prevent future violence and will not hesitate to arrest the respondent if they believe the protected person has been assaulted, threatened or harassed. Second, a modification of the EPO will not affect any conditions on the respondent’s bond. If he has been ordered to have no contact with the victim in the case, a modification will not override that condition.

CAUSE NO. _____

THE STATE OF TEXAS
V.

IN THE COUNTY COURT
AT LAW, NO. 4
TRAVIS COUNTY,

TEXAS

Motion to Modify Emergency Protection Order

I, _____, the Respondent or Protected Person, undersigned, hereby move to modify the Magistrate's Order of Emergency Protection (MOEP) issued on _____, 200__ by Judge _____. In support of this motion, I submit the following facts:

1. The following changes have occurred since the issuance of the MOEP:

2. The MOEP, as originally issued, is unworkable because:

3. The requested modification will not place the victim of the offense at greater risk than did the MOEP because:

4. The requested modification will not, in any way, endanger a person protected under the MOEP because:

5. The following additional information is provided in support of this motion:

Respectfully submitted,

Best Practices in Handling EPO Paperwork

Copies of EPOs

After an EPO is issued there are several reasons that each agency involved should maintain a copy of the order or be able to easily access the order through the state and national criminal and protective order databases known as the Texas Crime Information Center (TCIC) and the National Crime Information Center (NCIC).

First, the order should be kept for later evidentiary purposes. The order may be used in court to establish the victim's emotional state after the assault and illustrate the level of fear that would compel a request for emergency protection. It also helps to establish the offender was arrested for an offense involving family violence since that is the only instance when a victim can obtain an EPO.

Second, a victim often needs an additional copy of her order. Depending on the type of agency, the ease with which a copy can be made available to the victim may vary. For instance, local law enforcement officers may not have the time to get a victim an additional copy of her order while an advocate at the local shelter who has been working with the victim directly may be able to do so without difficulty. Generally the Criminal Clerk's Office maintains the original order in the file relating to the underlying criminal offense and the Department of Protective Services and law enforcement agencies will both receive a copy of the order. The information contained within the order is then entered into TCIC/NCIC allowing law enforcement officers to access the information by computer.

There are other agencies that may be interested in maintaining a copy of the order too, such as victim services and attorneys. Since the order is public it can be disseminated to anyone who requests a copy. In Travis County, a copy of each EPO is also maintained by the Women's Advocacy Project's EPO Program so that staff attorneys may provide copies to victims or any other parties that may need access to the order.

Collaboration and Partnerships

Although one person or agency can impact and make efforts to increase a victim's safety, agencies working together can significantly increase the chances that a victim will receive services at all levels.

Any collaboration, even at an informal level, can serve to increase the victim's safety. For example, the legal advocate from the local shelter may work very closely with law enforcement and call on them for help with questions about a specific client, and in return the officer may call the advocate when he needs help finding resources for a victim. If the collaboration is systemic, then more victims can be served.

Some form of collaboration probably already exists in most counties. Upon reading this manual, take the time to fine tune all partnerships and to get commitments from each agency to work together to better serve the needs of victims of family violence. The partnership can be on a formal level with Memorandums of Understanding (MOU) signed by each agency, or less formally, by agreement of the parties.

Collaboration in Austin: The Travis County Family Violence Protection Team

The Family Violence Protection Team was created as a direct result of efforts of the Austin/Travis County Domestic Violence Task Force in 1996. This collaborative effort strives to streamline services to ensure victims have access to the legal and social service resources necessary to ensure their safety. Team members work very closely together both on and off site. The team includes:

- Austin Police Department
- Texas Rio Grande Legal Aid
- SafePlace (Shelter and victim advocacy organization)
- Travis County Attorney's Office
- Travis County District Attorney's Office
- Travis County Sheriff's Office
- **Women's Advocacy Project **EPO Program****

The victim/witness advocates from the Austin Police Department and the Travis County Sheriff's Office provide crisis intervention and a counselor from SafePlace provides long-term counseling. An attorney from Legal Aid represents clients seeking protective orders who are not eligible to apply for one through the County Attorney's Office. **Attorneys from the Women's Advocacy Project advise victims of their right to request a Magistrates Order of Emergency Protection (EPO) after a family violence arrest and advises the magistrate judges on each victim's desire for an EPO.** Investigators from the Travis County Sheriff's Office and the domestic violence unit of the Austin Police Department investigate domestic violence crimes, including violations of protective orders

and stalking. An Assistant District Attorney is dedicated to preparing domestic violence cases for indictment and presenting them to the grand jury, and an Assistant County Attorney prosecutes civil violations of protective orders. The Family Violence Protection Team coordinator, a SafePlace employee, facilitates meetings and the creation of policies and procedures and also coordinates trainings for all members. Most of these team members work on-site at the courthouse. **The Women's Advocacy Project EPO Program attorneys are located within the jail at the Austin Police Department Arrest Review Unit so that they can be present during magistration and available to contact all recent victims of family violence.**

Benefits to the victims from this collaboration and increased cooperation have included:

- Simplified process in applying for protective orders.
- Increased enforcement of protective order violations.
- Increased domestic violence arrests.
- Increased referrals among agencies.
- Increased cross-training among agencies.
- Increased communication on specific cases and system wide changes.
- **50% increase in issuance of EPOs (over number issued before program instituted)**

Domestic Violence Risk/Lethality Assessment

- _____ Gun present in home or accessible to suspect
- _____ Suspect has used or threatened to use a weapon
- _____ Parties had a recent separation or threatened separation
- _____ Increase in frequency or severity of violence
- _____ Suspect has destroyed cherished personal items
- _____ Suspect has said “If I can’t have you no one can.”
- _____ Suspect has contemplated, threatened, or attempted suicide
- _____ Victim has contemplated, threatened, or attempted suicide
- _____ Suspect has directed violence toward a pregnant partner
- _____ Suspect is jealous or attempts to control partner’s daily activities
- _____ Suspect is violent outside of relationship
- _____ Suspect has accused victim of cheating
- _____ Suspect threatens to kill victim
- _____ Suspect is violent towards children
- _____ Suspect has injured or killed pets
- _____ Victim is currently pregnant
- _____ Suspect has forced victim to have sex
- _____ Suspect Abuses Alcohol
- _____ Suspect uses illegal drugs or abuses legal drugs

Additional Information:

ASSAULT VICTIM STATEMENT

Family & Dating Violence/ Stalking/ Violation of Protective Order

I can read, write and understand the English language. This statement is true and correct to the best of my knowledge. I make this statement freely and voluntarily. Should I provide false information on this form, I understand that I could be prosecuted for the crime of "false report to a police officer" under section 37.08 of the Texas Penal Code. (Initial _____)

Date of this assault:	General Offense Number:	<input type="checkbox"/> Arrested	<input type="checkbox"/> On-Scene	<input type="checkbox"/> At Large
Time of Offense:	Where did the assault occur? (Address):			

Your Information	Full Name:	Race:	Sex:	Date of Birth:
	Address:		City/State/Zip:	
Home Phone:	Work Phone:	Cell Phone:	Pager:	

Suspect Information	Full Name:	Race:	Sex:	Date of Birth:
	Address:	City/State/Zip:	Probation <input type="checkbox"/> Parole <input type="checkbox"/>	
Place of Work/Address:				
Home Phone:	Work Phone:	Cell Phone:	Pager:	
Vehicle Info (Year/Color/Make/Model):				

Witness Information	Full Name:	Race:	Sex:	Date of Birth:
	Address:	Phone:		

Victim/Suspect Relationship	<input type="checkbox"/> Marriage (Legal)	Actions of the Suspect	<input type="checkbox"/> Striking	<input type="checkbox"/> Pulling	<input type="checkbox"/> Biting
	<input type="checkbox"/> Dating/Engaged ___ Yrs ___ Mnths		<input type="checkbox"/> Grabbing	<input type="checkbox"/> Strangling	<input type="checkbox"/> Suffocating
<input type="checkbox"/> Members of the Same Household	<input type="checkbox"/> Former Members of the Household	<input type="checkbox"/> Pushing	<input type="checkbox"/> Throwing	<input type="checkbox"/> Drugs/Alcohol	
<input type="checkbox"/> Biological Parents of Same Child	<input type="checkbox"/> Blood Relation	<input type="checkbox"/> Threaten	<input type="checkbox"/> Other (Explain)		
<input type="checkbox"/> Other _____		_____ (Link action to injury – ie. Pushed on arm)			

Victim's Physical Condition	<input type="checkbox"/> Abrasion(s)	<input type="checkbox"/> Laceration(s)	What Suspect used to Injure or Threaten Victim:	<input type="checkbox"/> Hand	<input type="checkbox"/> Head	<input type="checkbox"/> Knife
	<input type="checkbox"/> Bruise(s) – New	<input type="checkbox"/> Loose Hair		<input type="checkbox"/> Foot	<input type="checkbox"/> Gun	<input type="checkbox"/> Other
<input type="checkbox"/> Bruise(s) – Healing	<input type="checkbox"/> Bleeding	<input type="checkbox"/> Swelling	<input type="checkbox"/> Complaint of Physical Pain	_____ (Open Hand, fist, stick, rock etc.)		

Were you prohibited from making an emergency telephone call for assistance? Yes No
 Do you want an Emergency Protective Order issued to the suspect? Yes No
 Has the suspect ever hurt you before? ___ / If yes, Date(s) _____ Report Made? ___ Charges filed? ___

Describe the events leading up to the assault: _____

Victim's Signature _____

Date _____

Refused (Officer to Sign) _____

Witness _____

DECLARACIÓN DE LA VÍCTIMA

Violencia Familiar y Noviazgo/ Acoso/ Violación de Orden de Protección

Puedo leer, escribir y entender el idioma Español. Esta declaración es correcta y verdadera según mi mejor conocimiento. Hago esta declaración de manera libre y voluntaria. Entiendo que si doy información falsa en esta forma, puedo ser enjuiciado(a) por el crimen de "reporte falso a un oficial de policía" bajo la sección 37.08 del Código Penal del Estado de Texas. (Iniciales _____)

Fecha de la agresión :	Número de incidente:	<input type="checkbox"/> Arrestado <input type="checkbox"/> En el Lugar <input type="checkbox"/> Prófugo
Hora del incidente:	¿Dónde Ocurrió el ataque? (La Dirección)	

Su Información	Nombre Completo:	Raza:	Sexo:	Fecha de Nacimiento:
Dirección:		Ciudad/ Estado/ Código Postal:		
Teléfono de la casa:	Teléfono del trabajo:	Teléfono Celular:	pager:	e-mail:

Información de Testigos	Nombre Completo:	Fecha de Nacimiento:
Dirección:		Teléfono:

Información del Sospechoso(a)	Nombre Completo:	Raza:	Sexo:	Fecha de Nacimiento:
Dirección:		Ciudad/ Estado/ Código Postal:		
Lugar de trabajo/Dirección				
Condena Probatoria <input type="checkbox"/> Libertad Condicional				
Teléfono de la casa: Teléfono del trabajo: Teléfono celular Pager:				
Información del vehículo (Año/ Color/ Marca/ Modelo):				

Relacion entre Víctima y Sospechoso(a)	<input type="checkbox"/> Matrimonio (Legal) <input type="checkbox"/> Noviazgo/Compromiso __ años __ meses <input type="checkbox"/> Miembros del mismo hogar <input type="checkbox"/> Miembros del mismo hogar anteriormente <input type="checkbox"/> Padres biológicos del mismo hijo(a) <input type="checkbox"/> Relación sanguínea <input type="checkbox"/> Otro _____	Acciones del Sospechoso(a)	<input type="checkbox"/> Golpeó <input type="checkbox"/> Jaló <input type="checkbox"/> Mordió <input type="checkbox"/> Agarró <input type="checkbox"/> Estranguló <input type="checkbox"/> Asfixió <input type="checkbox"/> Empujó <input type="checkbox"/> Tiró <input type="checkbox"/> Drogas/Alcohol <input type="checkbox"/> Amenazó <input type="checkbox"/> Otro (Explique) _____ Relacione acción con herida ej: Jaló el brazo
*Marque todas las que apliquen			

Condición Física de la Víctima	<input type="checkbox"/> Abrasión(es) (raspón) <input type="checkbox"/> Cortada <input type="checkbox"/> Moretón(es)- Reciente(s) <input type="checkbox"/> Cabello arrancado <input type="checkbox"/> Moretón(es)- Sanando <input type="checkbox"/> Sangrado <input type="checkbox"/> Hinchazón <input type="checkbox"/> Queja de dolor físico	Qué usó el Sospechoso(a) para herir o amenazar a la Víctima	<input type="checkbox"/> Mano <input type="checkbox"/> Cabeza <input type="checkbox"/> Cuchillo <input type="checkbox"/> Pie <input type="checkbox"/> Pistola <input type="checkbox"/> Otro _____ (Mano abierta, puño, palo, piedra, etc.)
---------------------------------------	---	--	---

Se le impidió a usted hacer una llamada telefónica de emergencia para pedir ayuda? Si No
¿Quiere usted una Orden de Protección de Emergencia expedida al Sospechoso? Si No
¿Le había lastimado antes el Sospechoso(a) ? _____ / si sí, Fecha(s) _____ ¿Se hizo un reporte?
_____ ¿Se presentaron cargos? _____

En su opinion, ¿ "Anote lo que ocurrió justo antes del ataque"? _____

Firma de la Víctima

Fecha

Rehusada (Refusal – Officer to sign)

Testigo (Witness)

Classification of Offense

(Check All Applicable)

- 3400 Family Disturbance
- 2400 Dating Disturbance

- (A) Assault with Injury
- (C) Assault by Contact/ Threat
- (B) Terroristic Threat
- (3) Assault with Injury Enhanced
- (3) Stalking
- (A) Viol of EPO/ Protective Order
- (3) Viol of EPO/ Prot. Order by Assault
- (2) Agg. Assault
- Injury to a Child/ Elderly/ Disabled
- Interfere w/ Emergency Telephone Call

MEDICAL TREATMENT

- None
- Will seek own doctor
- First Aid
- Paramedics
- Hospital
- Refused Medical Aid

If Transported:

Hospital: _____

Attending Physicians:

Paramedics at scene

- Yes
- No
- Unit Number: _____
- Name(s) & Employee #: _____

Victim Given:

- Domestic Violence Information Pamphlet
- General Offense Number
- Family Violence Prot. Team Phone Number

Did Crisis or Victim Services Respond? _____

ORIGIN/ CRIME DESCRIPTION**VICTIM**

- Angry
- Apologetic
- Crying
- Fearful
- Hysterical
- Calm
- Afraid
- Irrational
- Threatening
- Complaint of pain
- Bruises
- Abrasion(s)
- Minor cut(s)
- Laceration(s)
- Fracture(s)
- Concussion(s)
- Nervous
- Other explain _____

SUSPECT

- Angry
- Apologetic
- Crying
- Fearful
- Hysterical
- Calm
- Afraid
- Irrational
- Threatening
- Complaint of pain
- Bruises
- Abrasion(s)
- Minor cut(s)
- Laceration(s)
- Fracture(s)
- Concussion(s)
- Nervous
- Other explain _____

EVIDENCE**Evidence Collected From:**

- Crime Scene
- Hospital
- Other _____

911 Tape Requested Yes NoPhotos: Yes No

No. of Photos: _____

 35mm Polaroid Digital

Taken by: _____

Photos:

- Victims Injuries
- Suspects Injuries
- Weapon(s)

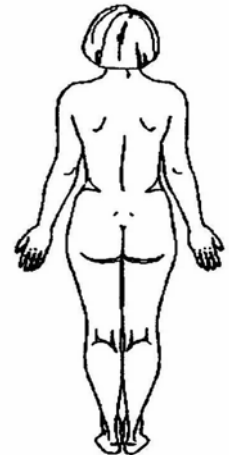
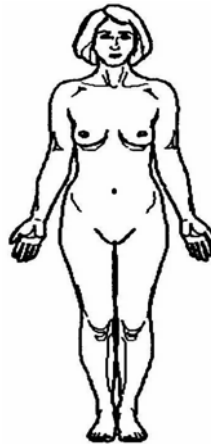
Type of Weapon(s) used:

Weapon(s) Seized: Yes No**Draw on Diagram(s) the location of any injuries****Circle one**

V S

HT _____

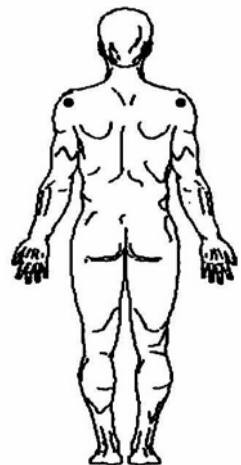
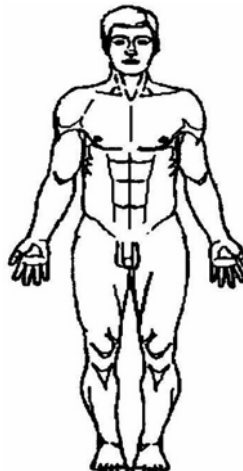
WT _____

**Circle one**

V S

HT _____

WT _____



PROTECTIVE ORDERS: Yes No
 Current Expired

Type: Emergency Protective (EPO)
 Protective Order
 Ex-parte Temporary Protective Order

Issuing Court: _____ Order # _____

WEAPONS OWNED: _____

CONCEALED HANDGUN LICENSE: Yes No

24/ 48 Hour Hold Requested? Yes No (If so, 24 Hour 48 Hour)

Criteria pursuant to Article 17.291 of the Code of Criminal Procedure:
 Items 1-3 Pertain to 24 Hour Hold / Items 1-5 Pertain to 48 Hour Hold

- 1) The Defendant has been arrested or is being held without a warrant in a case involving family violence.
- 2) There is probable cause to believe that the violence will continue if the Defendant is immediately released.
- 3) Probable cause exists to believe the Defendant committed this family violence offense charged in this cause.
- 4) During the past 10 years, Defendant has been arrested for an offense involving family violence; and/or
- 5) During the past 10 years, Defendant used or exhibited a deadly weapon as defined by 1.07 of the Penal Code during the commission of an offense or during immediate flight after commission of an offense.

WITNESSES/ PROTECTED CHILD INFO	Witness(es) present during violence? <input type="checkbox"/> Yes <input type="checkbox"/> No	Statements Taken? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Children present during violence? <input type="checkbox"/> Yes <input type="checkbox"/> No	
	Who is the primary caretaker of the children?: _____	

- 1) Name: _____ DOB: _____ SEX: M or F
 Name of School/Daycare & Address: _____
- 2) Name: _____ DOB: _____ SEX: M or F
 Name of School/Daycare & Address: _____
- 3) Name: _____ DOB: _____ SEX: M or F
 Name of School/Daycare & Address: _____
- 4) Name: _____ DOB: _____ SEX: M or F
 Name of School/Daycare & Address: _____

FAMILY/DATING VIOLENCE RISK ASSESSMENT

History of Family Violence
 Yes No **First Time Occurrence?**
 Yes No **Prior 911 Calls from Victim's Address regarding this family?**
 Yes No **Is Family Violence Likely to occur in the foreseeable future?**

(Ask **VICTIM** to answer every item – Mark each item or Leave Blank if Not Applicable or Refused to Answer)

<u>Y</u> <u>N</u>	<u>Y</u> <u>N</u>
-- Gun present in home or accessible to suspect	-- Suspect abuses alcohol
-- Suspect has used or threatened to use a weapon	-- Suspect uses illegal/abuses legal drugs
-- Parties recently separated/threatened separation	-- Suspect violent outside of relationship
-- Increase in frequency or severity of violence	-- Suspect has accused victim of cheating
-- Suspect has destroyed cherished personal items	-- Suspect threatens to kill
-- Suspect has said, "If I can't have you, no one can"	-- Suspect violent towards children
-- Suspect contemplated/threatened/attempted suicide	-- Suspect has injured or killed pets
-- Victim contemplated/threatened/attempted suicide	-- Victim is currently pregnant
-- Suspect directed violence toward pregnant partner	-- Suspect has forced victim to have sex
-- Suspect is jealous or attempts to control partners daily activities	

Known Serious Mental Problems: Yes No Describe: _____
 At time of offense, had defendant been using drugs or alcohol? Yes No Unknown
 Additional Information: _____

PROTECTIVE ORDERS

Data Entry Form for TEXAS CRIME INFORMATION CENTER (TCIC)

The intent of this form is to aid court clerks with the collecting and providing to local law enforcement agencies pertinent information regarding protective orders for the purpose of entry into TCIC.

To be filled out by Criminal Justice/Law Enforcement Official:

ORI: _____ (check one) PROTECTIVE ORDER: _____ EMERGENCY PROTECTIVE ORDER: _____

OCA: _____ PROTECTIVE ORDER NO: _____ COURT IDENTIFIER: _____

ISSUE DATE: _____ DATE OF EXPIRATION: _____ DATE OF DISMISSAL: _____

*** RESPONDENT INFORMATION ***

Items in ALL UPPERCASE LETTERS must be answered to allow entry into TCIC.

NAME OF RESPONDENT: _____ SEX: (circle one) M F

RACE: (circle one) Indian Asian Black White Unknown Ethnicity: (circle one) Hispanic Non-Hispanic Unknown

Place of Birth: (State) _____ DATE OF BIRTH: _____ HEIGHT: _____ WEIGHT: _____

Skin: (circle one) Albino Black Dark Dk Brown Fair Light Lt Brown Medium Med Brown Olive Ruddy Sallow Yellow Unknown

EYE COLOR: (circle one) Black Blue Brown Gray Green Hazel Maroon Pink Multi-Colored Unknown

HAIR COLOR: (circle one) Black Blond Brown Gray Red White Sandy Bald Unknown

Scars, Marks and/or Tattoos: (please describe in detail): _____

RELATIONSHIP TO PROTECTED PERSON: _____

(PLEASE INCLUDE THE FOLLOWING NUMERIC IDENTIFIERS, IF AVAILABLE):

Texas I.D. No: _____ Misc I.D. No: _____ Social Security No: _____

Driver's License No: _____ Driver's License State: _____ Date of Expiration: _____

Respondent's Address:

STREET: _____ CITY: _____ STATE: _____ ZIP: _____ COUNTY: _____

Respondent's Vehicle Information:

License Plate No: _____ L.P. State: _____ L.P. Year Of Expiration: _____ L.P. Type: _____

Vehicle I.D. #: _____ Year: _____ Make: _____ Model: _____ Style: _____ Color: _____

To be filled out by Criminal Justice/Law Enforcement Official:

SID #: _____ FBI #: _____ FPC: _____ MNU: _____

***** PROTECTED PERSON INFORMATION *****

NAME OF PROTECTED PERSON: _____ **SEX:** *(circle one)* M F
RACE: *(circle one)* Indian Asian Black White Unknown **Ethnicity:** *(circle one)* Hispanic Non-Hispanic Unknown
DATE OF BIRTH: _____ **Address:** _____ **City:** _____
State: _____ **Zip:** _____ **COUNTY:** _____

Protected Person Employment Information: *(use additional pages if necessary)*

Place of Employment Name: _____ **Address:** _____
_____ **City:** _____ **State:** _____ **Zip:** _____

Place of Employment Name: _____ **Address:** _____
_____ **City:** _____ **State:** _____ **Zip:** _____

***** PROTECTED CHILD INFORMATION *****

(Use additional pages if necessary)

Name of Protected Child: _____ **Sex:** *(circle one)* M F
Race: *(circle one)* Indian Asian Black White Unknown **Ethnicity:** *(circle one)* Hispanic Non-Hispanic Unknown
Date of Birth: _____ **Child Care or School Facility Name:** _____
Address: _____ **City:** _____ **State:** _____ **Zip:** _____

Name of Protected Child: _____ **Sex:** *(circle one)* M F
Race: *(circle one)* Indian Asian Black White Unknown **Ethnicity:** *(circle one)* Hispanic Non-Hispanic Unknown
Date of Birth: _____ **Child Care or School Facility Name:** _____
Address: _____ **City:** _____ **State:** _____ **Zip:** _____

Name of Protected Child: _____ **Sex:** *(circle one)* M F
Race: *(circle one)* Indian Asian Black White Unknown **Ethnicity:** *(circle one)* Hispanic Non-Hispanic Unknown
Date of Birth: _____ **Child Care or School Facility Name:** _____
Address: _____ **City:** _____ **State:** _____ **Zip:** _____

Name of Protected Child: _____ **Sex:** *(circle one)* M F
Race: *(circle one)* Indian Asian Black White Unknown **Ethnicity:** *(circle one)* Hispanic Non-Hispanic Unknown
Date of Birth: _____ **Child Care or School Facility Name:** _____
Address: _____ **City:** _____ **State:** _____ **Zip:** _____

NUMBER: _____

THE STATE OF TEXAS

§

IN THE _____ COURT

VS.

§

_____,

§

IN TRAVIS COUNTY, TEXAS

Defendant

MOTION FOR EMERGENCY PROTECTION ORDER

COMES NOW, _____, victim, victim's guardian, peace officer, or attorney representing the State, according to Art. 17.202, Texas Code of Criminal Procedure, and on behalf of the following persons:

and requests entry of an Emergency Protection Order.

I.

The defendant, _____, DOB: _____, Driver's License No. _____ described as _____ has been arrested for an offense involving family violence or an offense under Sec. 42.07(a)(7), of the Texas Penal Code (Stalking), to wit: Aggravated Assault or Assault with Bodily Injury

_____: A copy of the arrest warrant and complaint are attached and incorporated herein for all purposes.

Furthermore, applicant alleges that the Defendant is a further danger to the victim(s) upon his release from jail for the reasons set out in the affidavit and as more specifically set out as follows (explanation if necessary):

II.

Applicant requests the Court enter an Emergency Protection Order with the following provisions prohibiting the defendant from:

_____ : Committing family violence or an act in furtherance of an offense under Sec. 42.07(a)(7) of the Texas Penal Code (Stalking);

_____ : Communicating:

1. directly with the victim or with a member of the family or household in a threatening or harassing manner; and/or
2. a threat through any person to the victim or a member of the family or household; and/or
3. going to or near, within a minimum of 200 yards, the victim's or member's of the household:

(a) residence, located at:

_____;

or any other residence to which the protected party moves;

(b) place of employment, located at:

_____;

(c) business, located at

_____;

4. going to or near, within a minimum of 200 yards, the protected child(ren)'s:

(a) residence located at:

_____;

or any other residence to which the child(ren) move(s);

(b) child care facility, located at:

_____;

(c) school(s), located at:

_____;

III.

_____: Applicant further requests that the addresses and specific locations of the person or persons protected by the Order remain CONFIDENTIAL and be omitted from the Order for the protected person(s)'s safety.

Respectfully submitted,

Date: _____

Applicant

Applicant's Printed Name

Applicant's Phone #

Applicant's Address

NOTICE

1. **THIS ORDER SHALL TERMINATE IN 31 / 61 / 91 DAYS:**
2. **THAT THE ORDER SHALL SUPERSEDE ANY EXISTING COURT ORDER GRANTING POSSESSION OF OR ACCESS TO A CHILD TO THE DEGREE THAT A CONDITION OF THIS ORDER CONFLICTS WITH THE EXISTING ORDER;**
3. **PRIOR TO THE EXPIRATION OF THIS MAGISTRATES ORDER FOR EMERGENCY PROTECTION, IT MIGHT BE IN THE BEST INTEREST OF A VICTIM IN THIS CASE TO SEEK A PROTECTIVE ORDER THROUGH THE TRAVIS COUNTY ATTORNEY'S OFFICE, PROTECTIVE ORDER DIVISION, 473-9498.**

Number: _____

THE STATE OF TEXAS

§

IN THE MUNICIPAL COURT

V.

§

§

CITY OF AUSTIN, TEXAS

EMERGENCY PROTECTION ORDER

On this day the defendant appeared before the Court after arrest for an offense involving:

_____ family violence, and/or

_____ stalking under Section 42.072, Texas Penal Code.

At a post-arrest hearing as provided by law, the Court considered entering an Order for Emergency Protection.

Based on the information presented, this Court enters this Emergency Protection Order on behalf of the following persons:

IT IS HEREBY ORDERED that effective immediately and for the existence of this order, the

Defendant, _____ D.O.B. _____, D.L. No. _____

physically described as follows: _____

is prohibited from:

Committing family violence or an act in furtherance of an offense under 42.072 Texas Penal Code as these terms are defined in this order.

Communicating directly with a member of the family or household or with the person or persons protected under the order, in a threatening or harassing manner, or communicating a threat through any person to a member of the family or household of the person or persons protected under the order.

Going within _____ 200 _____ yards of;

1. The protected person's or member of the protected person's family residence:

_____ Zip Code _____

_____ Zip Code _____

2. The protected person's or member of the protected person's family's place of employment or business at:

_____ Zip Code _____

_____ Zip Code _____

3. The residence, child care facility, or school where a child or children protected under this order reside or attend:

_____ Zip Code _____

_____ Zip Code _____

It is FURTHER ORDERED that the Defendant is prohibited from possessing a firearm, unless the Defendant is a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

It is FURTHER ORDERED that any license to carry a concealed handgun issued under Section 411.177, Texas Government Code, that is held by the Defendant is hereby SUSPENDED.

Based on the facts presented, the Court further finds that for the safety of the person or persons protected under this order, the specific descriptions of the locations the defendant is ordered to not go near should remain CONFIDENTIAL.

IT IS FURTHER ORDERED that the Defendant shall be served a copy of this order in open court.

IT IS FURTHER ORDERED that the Clerk of the Court shall send a copy of this Order:

To the Chief of Police in the municipality where the member of the family or household or individual protected by the Order resides or to the Sheriff of the county where the member of the family or household or individual protected by the Order resides, if any of these persons do not reside in a municipality;

To the Principal or person in charge of the school or child care facility attended by a person protected by this Order and named herein; and

To the appropriate division of the Department of Public Safety at its Austin headquarters.

WARNING

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 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR OR BY BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE OR A STALKING OFFENSE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE, IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS. THE POSSESSION OF A FIREARM BY A PERSON, OTHER THAN A PEACE OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO THIS ORDER MAY BE PROSECUTED AS A SEPARATE OFFENSE PUNISHABLE BY CONFINEMENT OR IMPRISONMENT.

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

The term "abuse" includes the following acts or omissions by a person: (1) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm; (2) Sexual conduct harmful to a child's mental, emotional, or physical welfare; (3) , compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Texas Penal Code.

The term "sexual conduct" as defined in the Section 43.01 of the Texas Penal Code includes deviate sexual intercourse, sexual contact, and sexual intercourse.

The term "family" includes individuals related by consanguinity or affinity, individuals who are former spouses of each other, individuals who are biological parents of the same child, without regard to marriage, and a foster child and foster parent, without regard to whether those individuals reside together.

The term "Family violence" means: (1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself; (2) abuse, as that term is defined by Sections 261.001(1)(C), (E), and (G) by a member of a family or household toward a child of the family or household, or (3) dating violence, as that term is defined by Section 71.021 of the Family Code.

The term "dating violence" means an act by an individual that is against another individual with whom that person has or has had a dating relationship and that is intended to result in physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself.

The term "dating relationship" means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on consideration of: (a) the length of the relationship; (b) the nature of the relationship; and (c) the frequency and type of interaction between the persons involved in the relationship. This term does not include a casual acquaintanceship or ordinary fraternization in a business or social context.

The term "household" means a unit composed of persons living together in the same dwelling, whether or not they are related to each other.

The term 'firearm' has the same meaning assigned by Chapter 46 of the Penal Code.

The term 'member of a household' includes a former member of a household.

The term "child" or "minor" means a person under 18 years of age that has not been married or who has not had the disabilities of minority removed for general purposes.

A person commits the offense of stalking if, the person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct, including following the other person, that: 1) the actor knows or reasonably believes the other person, will regard as threatening: (a) injury or death for the other person; (b) bodily injury or death for a member of the other person's family or household; or (c) that an offense will be committed against the other person's property, 2) causes the other person or a member of the other person's household to be placed in fear of bodily injury or death or fear that an offense will be committed against the other person's property; and 3) would cause a reasonable person to fear; (a) bodily injury or death for himself or herself; (b) bodily injury or death for a member of the person's family or household ; or (c) that an offense will be committed against the person's property.

The conditions imposed by this Order shall prevail over any existing order granting possession of or access to a child named herein for the duration of this Order.

THIS ORDER SHALL REMAIN IN EFFECT UNTIL MIDNIGHT, _____, 200_____.

SIGNED this _____, 200_____.

Judge
Municipal Court,
City of Austin, Texas

DEFENDANT'S ACKNOWLEDGMENT

I, _____, Defendant in this case, was presented with a copy of the Magistrate's Order For Emergency Protection attached hereto at _____ a.m./p.m. _____ 200_____

Defendant

STATEMENT OF SERVICE

I, the undersigned hereby state that I gave a copy of the Magistrate's Order For Emergency Protection to the Defendant named above at _____ a.m./p.m. _____ 200_____.

CAUSA No. _____

EL ESTADO DE TEXAS

EN EL JUZGADO _____

V.

DEL CONDADO

DE _____, TEXAS

ORDEN DE PROTECCION DE EMERGENCIA

En esta fecha el acusado compareció ante esta Corte después de su arresto por delito en conexión con:

_____ violencia doméstica, y/o

_____ acecho, según el Código Penal del Estado de Texas, Sección 42.072

Durante la audiencia posterior al arresto, conforme a lo dispuesto por ley, esta Corte consideró expedir una Orden de Protección de Emergencia.

De conformidad con la información presentada esta Corte expide la presente Orden de Protección de Emergencia a nombre de las personas que a continuación mencionamos:

POR MEDIO DE LA PRESENTE SE ORDENA que a partir de inmediato, y durante la vigencia de esta orden, el acusado, _____, nacido el: _____,

Licencia de conducir No. _____

cuyas características físicas se describen a continuación:

tiene prohibido:

_____cometer violencia doméstica o actos que fomenten el delito bajo la Sección 42.072 del Código Penal del Estado de Texas según las definiciones en esta orden.

_____ comunicarse de una manera amenazadora o acosadora, directamente o por medio de una tercera persona con el individuo o individuos protegidos por esta orden, o con los miembros de la familia o del hogar del individuo o individuos protegidos por esta orden, o comunicar una amenaza por medio de un tercero a algún miembro de la familia o del hogar o al individuo o individuos protegidos por esta orden.

_____ acercarse a menos de _____ yardas (180 metros) de:

1. La residencia del individuo protegido o del miembro de la familia del individuo protegido:

Código postal _____

Código postal _____

2. El lugar de empleo del individuo protegido o del miembro de la familia del individuo protegido:

Código postal _____

Código postal _____

3. La residencia, guardería de niños o escuela a la que asiste o en la cual reside el niño o niños protegidos por esta orden:

Código postal _____

Código postal _____

Código postal _____

ESTA ORDEN ADEMÁS prohíbe que el acusado posea un arma de fuego, excepto cuando el acusado es un agente del orden público, según definición del Código Penal Sección 1.07, en el desempeño activo de sus labores según juramento como empleado asalariado de jornada completa de alguna agencia estatal o lindero regional.

ESTA ORDEN ADEMÁS dicta que cualquier licencia para portar arma de fuego oculta que se lo hubiese expedido al acusado bajo Sección 411-177 del Código de Gobierno de Texas, LE SEA SUSPENDIDA.

_____ Basándose en los hechos presentados la Corte además dicta que, para la seguridad de la persona o personas protegidas por esta orden, la descripción específica de los lugares a los que el acusado tiene prohibido acercarse debe permanecer carácter CONFIDENCIAL.

ESTA ORDEN ADEMÁS dicta que en audiencia pública se le entregue al acusado una copia de esta orden.

ESTA ORDEN ADEMÁS dicta que el secretario del juzgado envíe una copia:

_____ el jefe de la policía del municipio en donde reside el miembro de la familia o del hogar o el individuo protegido por la orden.

_____ al sheriff del condado en donde reside el miembro de la familia o del hogar o el individuo protegido por la orden, si alguno de estos individuos no viven en el municipio.

_____ al director o persona a cargo de la escuela o de la guardería a la cual asiste algún individuo protegido por la orden y mencionado en la misma; y

_____ a la oficina correspondiente de la oficina matriz del Departamento de Seguridad Pública en Austin, TX.

ADVERTENCIA

CUALQUIER VIOLACION A ESTA ORDEN AL COMETER UN ACTO PROHIBIDO POR LA MISMA SE PUEDE CASTIGAR CON UNA MULTA DE HASTA \$4,000 O RECLUSION EN LA CARCEL HASTA POR UN AÑO, O AMBAS COSAS. UN ACTO QUE RESULTE EN UN DELITO DE VIOLENCIA DOMESTICA O ACECHO PUEDE SER PROCESADO POR SEPARADO YA SEA COMO DELITO MENOR O COMO DELITO GRAVE. SI DICHO ACTO ES PROCESADO COMO DELITO GRAVE, LA PENA PODRIA SER RECLUSION EN PRISION POR LO MENOS DOS AÑOS. EL DELITO DE POSESION DE ARMA DE FUEGO, CUANDO EL INDIVIDUO ESTA BAJO ESTA ORDEN, EXCEPTO CUANDO EL INDIVIDUO BAJO LA ORDEN ES UN AGENTE DEL ORDEN PUBLICO DE ACUERDO A LA DEFINICION DE LA SECCION 1.07 DEL CODIGO PENAL ACTIVAMENTE EN EL DESEMPEÑO DE SUS LABORES SEGUN JURAMENTO COMO EMPLEADO ASALARIADO DE

JORNADA COMPLETA DE UNA AGENCIA ESTATAL O LINDERO REGIONAL PUEDE SER ENCAUSADO COMO UN DELITO SEPARADO QUE SE PUEDE CASTIGAR YA SEA CON CARCEL O PRISION.

NINGUN INDIVIDUO, NI SIQUIERA EL INDIVIDUO PROTEGIDO POR ESTA ORDEN PUEDE DAR PERMISO A OTRO PARA QUE IGNORE O VIOLE ALGUNA DE LAS CLAUSULAS DE ESTA ORDEN. DURANTE EL TIEMPO QUE ESTA ORDEN ESTE EN VIGOR CADA UNA DE LAS CLAUSULAS DE LA MISMA ESTARA EN PLENA FUERZA Y VIGOR A MENOS QUE UNA CORTE CAMBIE LA ORDEN.

Le definición del término “maltrato” incluye los siguientes actos u omisiones que cometa cualquier individuo: (1) Lesiones físicas que resulten en daño sustancial a un menor, o la amenaza genuina de daños sustanciales físicos a un menor, incluso cualquier lesión que no concuerde con la historia o explicación que se proporcione, excluyendo los accidentes o los actos de disciplina razonable suministrada por un padre, guardián o tutor que no expongan al niño al riesgo de un daño sustancial; (2) La conducta sexual dañina al bienestar mental, emocional o física del menor; (3) Obligar o incitar al menor a involucrarse en conducta sexual según definición en la Sección 43.01 del Código Penal del Estado de Texas.

El término “conducto sexual” según definición en la Sección 43.01 de Código Penal del Estado de Texas incluye el coito sexual desviado, contacto sexual y coito sexual.

El término “familia” incluye a los individuos que están conectados por consanguinidad o afinidad, a los ex esposos(as), a los individuos que son los padres biológicos del mismo niño, sin importar si están casados o no, a los hijos bajo custodia temporal y a los padres temporales, sin importar si esos individuos viven juntos.

El término “violencia doméstica” significa: (1) Una acción que un miembro de la familia u hogar toma en contra de otro miembro de la familia u hogar con la intención de causar daño físico, lesiones, agresión o agresión sexual, o una amenaza que dentro de lo razonable cause temor de daño físico inminente, lesión corporal, agresión, o agresión sexual, excluyendo las medidas defensivas que se tomen para protegerse a sí mismo; (2) abuso, según la definición en Secciones 261.001 (1) (C) (E) y (G) cometido en contra de un menor por un miembro de la familia u hogar, o (3) la violencia de cita, según definición que establece la Sección 71.021 del Código de la Familia.

El término “violencia de cita” significa un acto que con el intento de obtener como resultado daño físico, lesión corporal, agresión, o agresión sexual, comete un individuo en contra de otro con quien tiene o ha tenido una relación de citas, excluyendo las medidas defensivas que se tomen para protegerse a sí mismo.

El término “relación de citas” significa la relación entre individuos que tienen o han tenido una continua relación de naturaleza romántica o íntima. La existencia de dicha relación deberá ser determinada con base a: (a) el tiempo que tiene la relación; (b) la

naturaleza de la relación; y (c) la frecuencia y clase de interacción entre los involucrados. Este término no incluye las relaciones ocasionales o la camaradería común en el medio social o de negocios.

El término “hogar” significa una unidad compuesta de individuos que viven juntos en la misma morada, estén o no estén emparentados entre sí.

El término “arma de fuego” es el mismo según establecido en el Capítulo 46 del Código Penal.

El término “miembro del hogar” incluye a aquellos que previamente fueron miembros del hogar.

El término “niño” o “menor” significa una persona menor de 18 años que no se ha casado o a quien no se le ha desposeído de las incapacidades de la minoría de edad para propósitos en general.

El individuo comete el delito de acecho cuando, el individuo, en más de una ocasión y conforme al mismo método o curso de acción dirigido específicamente a otro, a sabiendas se involucra en conducta, incluso el seguir al otro, que: (1) el autor sabe o cree dentro de lo razonable que el otro va a considerar amenazadora de: (a) lesiones o muerte al otro; (b) lesiones o muerte para un miembro de la familia u hogar del otro; (c) que un delito se va a cometer en contra de la propiedad del otro; (2) causa que el otro o un miembro del hogar del otro sea puesto en situación de temor de sufrir lesiones o muerte o temor que un delito será cometido en contra de la propiedad del otro; y (3) causara que una persona razonable sintiera temor de: (a) lesiones o muerte para sí mismo; (b) lesiones o muerte para un miembro de su familia u hogar; o (c) que un delito será cometido en contra de su propiedad.

Durante el período de vigencia de esta orden todas sus cláusulas tendrán predominio sobre cualquier otra orden en la que anteriormente se había otorgado posesión de o acceso a un niño nombrado en esta Orden de Protección de Emergencia.

ESTA ORDEN REGIRA HASTA LA MEDIANOCHE DEL, _____, 200_.

FIRMADO el día _____ de _____ del 2000_.

Juez

ACUSE DE RECIBO DE LA ORDEN

Yo, _____, el acusado en este caso, recibí una copia de la Orden de Magistrado para Protección de Emergencia adjunta, a las _____ a.m./p.m. del _____.

Acusado

DECLARACION DE SERVICIO

Yo, quien firma al calce aquí declaro que entregué copia de la Orden de Magistrado para Protección de Emergencia adjunta al Acusado nombrado anteriormente, a las _____ a.m./p.m. del _____.

Posición: _____ Firma: _____



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

TEXAS CRIME VICTIMS' COMPENSATION APPLICATION FORM

- **Please read the directions on this page before completing the application.** Reading these instructions will help you complete each section correctly.
- **Include all the documentation you can.** If you have a copy of the police report, protective order with affidavit, hospital or doctor bills, be sure to *send them with the application*.
- **If you do not have this documentation, do not wait to mail the application.** Send the application as soon as you have completed it. Collect all additional information so that you will have it when we contact you.
- **Keep this front page** so that you will have our address and phone number.
- **Mail your completed application to:**
 - Office of the Attorney General
 - Crime Victims' Compensation (011)
 - P.O. Box 12198
 - Austin, Texas 78711-2198
- **If your address or phone number changes, it is important that you let us know.** The **toll-free number** for victims, family members and service providers is **1-800-983-9933**. **Austin** callers should use **936-1200**.
- **If you need help completing this application,** contact your local law enforcement agency's Crime Victim Liaison or your local District Attorney's Victim Assistance Coordinator. The Crime Victims' Compensation staff is also available to help or access our web site at **www.oag.state.tx.us**.
- **Nota: Si tiene alguna pregunta sobre esta solicitud o si la desea en español, favor de llamar al Programa de Compensación para las Víctimas de Crimen al 1-512-936-1200 o 1-800-983-9933.**

GENERAL INFORMATION

What is the Crime Victims' Compensation Program?

- The program may provide financial assistance to victims of violent crime for related expenses that cannot be reimbursed by insurance or other sources.
- The program is administered by the Office of the Attorney General, which is committed to assisting victims who qualify under the statutory guidelines of the Texas Crime Victims' Compensation Act (Texas Code of Criminal Procedure, Chapter 56) and the procedures set in 1 Texas Administrative Code, Part III, Chapter 61.
- Money in the Compensation Fund comes from fees paid by those convicted of a crime.

What are the basic eligibility requirements for Crime Victims' Compensation benefits?

- The victim must be a resident of Texas, a United States resident who is victimized while in Texas, or a Texas resident victimized in another state or country that does not have a compensation fund.
- The victim must report the crime to law enforcement within a reasonable amount of time so as not to hinder the investigation or prosecution of the offense, unless there is a valid reason for not reporting in a timely manner.
- The victim must cooperate with law enforcement officials in the investigation and prosecution of the case.
- Benefits may be denied or reduced if the victim's own behavior contributed to the crime.
- All other available funding sources or reimbursements, including Medicare and Medicaid, personal health insurance, civil suit recovery or settlement, and/or court-ordered restitution to the compensation program, must be used first.
- The Compensation Program must be notified when a civil lawsuit is filed in relation to the crime or if restitution is ordered.

Who may be eligible for Crime Victims' Compensation benefits?

- Victims of violent crime who sustain emotional or physical injury as a direct result of the crime
- Dependents of a victim and immediate family members
- People who have a legal responsibility or who assume financial responsibility for covered bills or expenses

Who is not eligible for Crime Victims' Compensation benefits?

- The offender, an accomplice or any other person to whom an award would unjustly enrich the offender or accomplice
- Anyone injured in a motor vehicle accident, unless the driver intentionally caused the injury, was driving while intoxicated, failed to stop and render aid, or caused the injury or death of the victim due to criminal negligence or manslaughter
- Anyone incarcerated in a penal institution when the crime occurred
- Any victim or claimant who provides false or forged information to the Crime Victims' Compensation Program

What expenses may be covered with Crime Victims' Compensation benefits?

- Reasonable medical, hospital, counseling and funeral expenses
- Travel to and from a funeral if over 20 miles one-way
- Lost wages for bereavement
- Loss of earnings or support
- Counseling for immediate family members of the victim
- Reasonable attorney fees for assistance in filing the application and obtaining benefits
- Eyeglasses, hearing aids, dentures or prosthetic devices if damaged or needed as a result of the crime
- Certain related travel expenses
- Crime scene clean-up
- Replacement of property seized as evidence
- Necessary expenses related to new child or adult dependent care needs
- One-time relocation expenses for victims of family violence or sexual assault that occurred in victim's residence

What expenses are not covered by Crime Victims' Compensation benefits?

- Property damage or loss
- Pain and suffering
- Expenses not directly resulting from the crime

Tex. Gov't Code Ann. §559.003(a) (Vernon Supp. 2003)

The Office of the Attorney General, Crime Victims' Compensation Program collects information about individuals who complete and file this document with the Office of the Attorney General. Upon request, you are entitled to the following: to be informed about the information collected; to receive and review the information; and to have the Office of the Attorney General correct information about you that is incorrect.

Keep this page for your records.

TEXAS CRIME VICTIMS' COMPENSATION APPLICATION FORM

CVC Office use only – VC# _____ Application rec'd _____

Please print clearly using black ink, or type in the information. **PLEASE COMPLETE ALL SECTIONS.**

In order to contact CVC and discuss a claim, a caller must be on the application as a victim or claimant.

Si desea hablar con alguien en español, marque esta cajita por favor. *Español*

1. VICTIM INFORMATION – The victim is the person who was injured or killed as a result of the crime. If the victim is a minor, you must also fill out the claimant information section below. If there is more than one victim, each victim must submit a separate application.

Victim's Last Name _____ First Name _____ Middle Name _____

Street Address _____ Apt. # _____ City _____ State/Zip _____

Mailing Address _____ City _____ State/Zip _____

Home Phone (_____) _____ Work Phone (_____) _____

Employer's Name _____ Employer's Address _____

Social Security Number _____ - _____ - _____ Date of Birth _____ / _____ / _____

Sex (check one) Male Female

What kind of assistance do you need? Check all that apply.

- Loss of Earnings Loss of Support Counseling Funeral/Burial Relocation Crime-related Travel
 Child or Dependent Care Crime Scene Clean-up Replacement of Property Seized as Evidence Medical Dental
 Other _____

2. CLAIMANT INFORMATION – The claimant is a person other than the victim who had expenses as a direct result of the crime, an immediate family member of the victim who requires counseling as a result of the crime, or who has legal authority to act on behalf of the victim.

Claimant's Last Name _____ First Name _____ Middle Name _____

Street Address _____ Apt. # _____ City _____ State/Zip _____

Mailing Address _____ City _____ State/Zip _____

Home Phone (_____) _____ Work Phone (_____) _____

Employer's Name _____ Employer's Address _____

Social Security Number _____ - _____ - _____ Date of Birth _____ / _____ / _____

Sex (check one) Male Female Relationship to Victim _____

What kind of assistance do you need? Check all that apply.

- Loss of Earnings Loss of Support Counseling Funeral/Burial Relocation Crime-related Travel
 Child or Dependent Care Crime Scene Clean-up Replacement of Property Seized as Evidence
 Other _____

See next page to enter more information. Note: If there are more than four (4) claimants, please list them on a separate sheet of paper.

Claimant's Last Name _____ First Name _____ Middle Name _____
Street Address _____ Apt. # _____ City _____ State/Zip _____
Mailing Address _____ City _____ State/Zip _____
Home Phone (_____) _____ Work Phone (_____) _____
Employer's Name _____ Employer's Address _____
Social Security Number _____ - _____ - _____ Date of Birth _____ / _____ / _____
Sex (check one) Male Female Relationship to Victim _____

What kind of assistance do you need? Check all that apply.

- Loss of Earnings Loss of Support Counseling Funeral/Burial Relocation Crime-related Travel
 Child or Dependent Care Crime Scene Clean-up Replacement of Property Seized as Evidence
 Other _____

Claimant's Last Name _____ First Name _____ Middle Name _____
Street Address _____ Apt. # _____ City _____ State/Zip _____
Mailing Address _____ City _____ State/Zip _____
Home Phone (_____) _____ Work Phone (_____) _____
Employer's Name _____ Employer's Address _____
Social Security Number _____ - _____ - _____ Date of Birth _____ / _____ / _____
Sex (check one) Male Female Relationship to Victim _____

What kind of assistance do you need? Check all that apply.

- Loss of Earnings Loss of Support Counseling Funeral/Burial Relocation Crime-related Travel
 Child or Dependent Care Crime Scene Clean-up Replacement of Property Seized as Evidence
 Other _____

3. CIVIL LAWSUIT & ATTORNEY INFORMATION

Have you filed a civil lawsuit (sued) in relation to this crime? Yes No (check one)

Do you plan on filing a civil lawsuit in relation to this crime? Yes No (check one)

Have you hired or do you plan to hire an attorney? Yes No (check one)

If yes, what is your attorney's name? _____

What is your attorney's phone number? (_____) _____

What is your attorney's address? _____ City _____ State/Zip _____

Have you ever filed for bankruptcy? Yes No (check one)

4. INFORMATION ABOUT THE CRIME

Complete this section with as many details as you have available. You must **complete** this section or your claim will not be processed.

On what date did the crime occur? _____

What is the Police Report Number (if known)? _____

What is the Child Protective Service Number (if known)? _____

What is the Prosecutor Case Number (if known)? _____

What was the location of the crime? Street Address _____

City _____ State/Zip _____ County _____

What is the name of the law enforcement agency that was notified? _____

Did the victim know the suspect? Yes No (check one)

If yes, how did the victim know the suspect? _____

What is the suspect's name? _____

What kind of crime occurred? Check all that best describe the type of crime.

- Adult Sexual Assault Child Sexual Assault Child Physical Abuse Assault (Non-Family)
 Aggravated Assault Family Violence DWI/Vehicular Crime Elder Abuse Homicide Stalking
 Kidnapping Other (please specify) _____

Describe the crime and injuries, if there were any. _____

Have you filed charges against the suspect in this case? Yes No (check one)

If this is a family violence crime, have you obtained a permanent protective order? Yes No (check one)

Court Number _____ Effective Date _____

5. VICTIM EMPLOYMENT & MEDICAL INFORMATION

Was the victim employed on the date of the crime? Yes No (check one)

What was the name of the victim's employer on the date of the crime? _____

Employer's Complete Address _____ City _____ State/Zip _____

Phone (____) _____ Fax (____) _____

Was the victim self-employed or contract (day) labor on the date of the crime? Yes No (check one)

Occupation _____ Job Title _____

If the victim has physical injuries, please provide the name of the hospital and/or the name of the treating doctor.

Name of Hospital _____

Address _____ City _____ State/Zip _____

Phone (____) _____ Fax (____) _____

Name of Doctor _____

Address _____ City _____ State/Zip _____

Phone (____) _____ Fax (____) _____

6. INSURANCE AND REIMBURSEMENT SOURCES

By law, **you must first use all existing sources of financial assistance or reimbursement** before receiving payments from the Crime Victims' Compensation Fund. Crime Victims' Compensation must first verify that you have applied to these sources and the amount you received, if any, before determining reimbursement.

Victim Insurance Information: The victim is the person listed in section number 1.

Does the victim have access to any of the following? Check all that apply. **If none, check here**

- Medicare Medicaid Health Insurance Burial Insurance Worker's Compensation Auto Insurance
 Home Insurance Renter's Insurance Disability Insurance Social Security Veteran's Benefits Dental Insurance
 Other _____

What is the Medicare Number? _____ What is the Medicaid Number? _____

What is the name of the Health Insurance Company? _____

Health Insurance Co. Street Address _____ City _____ State/Zip _____

Group Policy Number _____

If the crime was motor vehicle-related, include the name of the auto insurance company and the policy number for **both the victim and the suspect**, if available. Include a copy of the insurance card or information denoting the type of insurance coverage (Liability, PIP, UUMC, etc.)

Victim's Auto Insurance Company _____ Policy Number _____

Name of Adjuster _____ Phone (____) _____

Suspect's Auto Insurance Company _____ Policy Number _____

Name of Adjuster _____ Phone (____) _____

Claimant Insurance Information: The claimant is the person(s) listed in section number 2.

Does the claimant have access to any of the following? Check all that apply. **If none**, check here

Medicare Medicaid Health Insurance Auto Insurance

Home Insurance Renter's Insurance

Other _____

What is the Medicare Number? _____ What is the Medicaid Number? _____

What is the name of the Health Insurance Company? _____

Health Insurance Co. Street Address _____ City _____ State/Zip _____

Group Policy Number _____

7. DEPARTMENT OF JUSTICE INFORMATION

In order to comply with regulations from the United States Department of Justice, we must collect the following information about the victim of the crime. This information is for statistical purposes only. It will not be used in determining whether the victim is eligible for Crime Victims' Compensation benefits.

Was the victim disabled before the crime? Yes No (check one)

Is the disability Physical Mental

Did the victim become disabled due to the crime? Yes No (check one)

To which ethnic group does the victim belong? (check one) American Indian or Alaskan Native

Black Hispanic White Asian or Pacific Islander Other

What is their national origin (country of birth)? _____

Where did you find out about the Crime Victims' Compensation Program (CVC)? Check all that apply.

Public Service Announcement CVC Staff Advocacy Group Victim Assistance Program

Poster Brochure Hospital Law Enforcement Other _____

IMPORTANT AFFIDAVIT

This affidavit is part of your application and must be completed and signed before action can be taken on the application. **READ EVERYTHING BEFORE YOU SIGN AT THE BOTTOM.**

Subrogation Agreement. In accordance with Texas Code of Criminal Procedure, Article 56.52, I agree to notify the Crime Victims' Compensation (CVC) Program of the Office of the Attorney General in writing before I file a lawsuit against another party as a result of this crime. I further agree that I shall not settle or resolve any such action without prior written authorization from CVC. If I recover or anticipate recovery of any money by judgment, settlement, restitution or other collateral source as a result of the incident that gave rise to this claim, I agree to notify and/or repay CVC for any and all amounts that CVC has awarded to me. I agree that any cause of action that arises between me and the Office of the Attorney General as a result of this claim will be brought in Travis County.

Authorization for Release of Information. I hereby authorize any financial institution, social service agency, government agency, hospital, physician, mental health facility, counselor, psychologist, psychiatrist, employer, insurer or other person with information relating to financial, health or employment status to release information concerning this application for benefits to the employees of the Crime Victims' Compensation program of the Office of the Attorney General of Texas as needed to process this claim. This information is to include, but is not limited to, financial, employment, diagnosis and treatment information. A copy of this signed release will be considered the same as the original.

Affirmation and Authorization. I swear and affirm under penalty of perjury under the laws of the State of Texas (Penal Code §37.02) that the information provided in the application for Texas Crime Victims' Compensation and any additional information that I provide is true and correct. I understand that the Attorney General of the State of Texas or any agent or representative of the office has the right to verify the information provided. I understand that if false, misleading or intentionally incomplete information is provided, my claim for all benefits will be denied and I may be subject to criminal punishment under the Texas Penal Code and administrative penalties under the Texas Code of Criminal Procedure, Chapter 56.

VICTIM OR CLAIMANT MUST SIGN BELOW IN ORDER TO PROCESS THIS APPLICATION

Victim's Signature **X** _____

Printed Name _____ Date _____

Date of Birth _____ Victim's SS# _____ - _____ - _____

If the victim cannot sign the application (minor or incapacitated adult), the claimant must sign here in order to process this application.

Claimant's Signature **X** _____ Relationship to victim _____

Printed Name _____ Date _____

Date of Birth _____ Claimant's SS # _____ - _____ - _____

If someone helped you fill out this application, give his or her name and phone number here.

Name _____ Agency/Organization _____

Phone (____) _____ E-mail address _____

CONFIDENTIALITY ELECTION BY VICTIM

Section 552.132 of the Texas Public Information Act allows a crime victim to elect to keep certain identifying information submitted in a compensation application confidential. The information that the victim may elect to keep confidential includes the victim's name, address, telephone number, social security number, and any other information that tends to identify the victim. However, regardless of an election to keep information confidential, if a compensation award is made, Section 552.132(e) requires public access to the amount of the award and the name of the victim, but not other identifying information.

If you are the crime victim, please make your election here:

CHECK ONLY ONE BOX ON THIS PAGE

- I direct the OAG to WITHHOLD my identifying information from the public.
- I authorize the OAG to RELEASE my identifying information to the public.

X

(Signature)

(Printed Name)

CONFIDENTIALITY ELECTION BY PARENT, LEGAL GUARDIAN, OR LEGAL REPRESENTATIVE

If you are either (1) the Parent, Legal Guardian or Legal Representative of a crime victim who is a minor child, or (2) the Legal Representative of an adult crime victim who is incapacitated, please make your election here:

CHECK ONLY ONE BOX ON THIS PAGE

- I direct the OAG to WITHHOLD identifying information of my child or legal ward from the public.
- I authorize the OAG to RELEASE identifying information of my child or legal ward to the public.

X

(Signature)

(Printed Name)

(Relationship to Victim)