

CODE OF CRIMINAL PROCEDURE

TITLE 1. CODE OF CRIMINAL PROCEDURE

CHAPTER 5. FAMILY VIOLENCE PREVENTION

Art. 5.01. LEGISLATIVE STATEMENT. (a) Family violence is a serious danger and threat to society and its members. Victims of family violence are entitled to the maximum protection from harm or abuse or the threat of harm or abuse as is permitted by law.

(b) In any law enforcement, prosecutorial, or judicial response to allegations of family violence, the responding law enforcement or judicial officers shall protect the victim, without regard to the relationship between the alleged offender and victim.

Added by Acts 1985, 69th Leg., ch. 583, Sec. 1, eff. Sept. 1, 1985.

Art. 5.02. DEFINITIONS. In this chapter, "family violence," "family," "household," and "member of a household" have the meanings assigned by Chapter 71, Family Code.

Added by Acts 1985, 69th Leg., ch. 583, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 7.002(c), eff. Sept. 1, 2003.

Art. 5.03. FAMILY OR HOUSEHOLD RELATIONSHIP DOES NOT CREATE AN EXCEPTION TO OFFICIAL DUTIES. A general duty prescribed for an officer by Chapter 2 of this code is not waived or excepted in any family violence case or investigation because of a family or household relationship between an alleged violator and the victim of family violence. A peace officer's or a magistrate's duty to prevent the commission of criminal offenses, including acts of family violence, is not waived or excepted because of a family or household relationship between the potential violator and victim.

Added by Acts 1985, 69th Leg., ch. 583, Sec. 1, eff. Sept. 1, 1985.

Art. 5.04. DUTIES OF PEACE OFFICERS. (a) The primary duties of a peace officer who investigates a family violence allegation or who responds to a disturbance call that may involve family violence are to protect any potential victim of family violence, enforce the law of this state, enforce a protective order from another jurisdiction as provided by Chapter 88, Family Code, and make lawful arrests of violators.

(a-1) A peace officer who investigates a family violence allegation or who responds to a disturbance call that may involve family violence shall determine whether the address of the persons involved in the allegation or call matches the address of a current licensed foster home or verified agency foster home listed in the Texas Crime Information Center.

(b) A peace officer who investigates a family violence allegation or who responds to a disturbance call that may involve family violence shall advise any possible adult victim of all reasonable means to prevent further family violence, including giving written notice of a victim's legal rights and remedies and of the availability of shelter or other community services for family violence victims.

(c) A written notice required by Subsection (b) of this article is sufficient if it is in substantially the following form with the required information in English and in Spanish inserted in the notice:

"It is a crime for any person to cause you any physical injury or harm EVEN IF THAT PERSON IS A MEMBER OR FORMER MEMBER OF YOUR FAMILY OR HOUSEHOLD.

"NOTICE TO ADULT VICTIMS OF FAMILY VIOLENCE

"Please tell the investigating peace officer:

"IF you, your child, or any other household resident has been injured; or

"IF you feel you are going to be in danger when the officer leaves or later.

"You have the right to:

"ASK the local prosecutor to file a criminal complaint against the person committing family violence; and

"APPLY to a court for an order to protect you (you should consult a legal aid office, a prosecuting attorney, or a private attorney). If a family or household member assaults you and is arrested, you may request that a magistrate's order for emergency protection be issued. Please inform the investigating officer if you want an order for emergency protection. You need not be present when the order is issued. You cannot be charged a fee by a court in connection with filing, serving, or entering a protective order. For example, the court can enter an order that:

"(1) the abuser not commit further acts of violence;

"(2) the abuser not threaten, harass, or contact you at home;

"(3) directs the abuser to leave your household; and

"(4) establishes temporary custody of the children and directs the abuser not to interfere with the children or any property.

"A VIOLATION OF CERTAIN PROVISIONS OF COURT-ORDERED PROTECTION (such as (1) and (2) above) MAY BE A FELONY.

"CALL THE FOLLOWING VIOLENCE SHELTERS OR SOCIAL ORGANIZATIONS IF YOU NEED PROTECTION:

" \_\_\_\_\_  
 " \_\_\_\_\_."

Added by Acts 1985, 69th Leg., ch. 583, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 366, Sec. 4, eff. Sept. 1, 1991; Subsec. (c) amended by Acts 1995, 74th Leg., ch. 1024, Sec. 24, eff. Sept. 1, 1995; Subsec. (a) amended by Acts 1997, 75th Leg., ch. 1193, Sec. 23, eff. Sept. 1, 1997;

Subsec. (c) amended by Acts 1997, 75th Leg., ch. 610, Sec. 2, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 524, Sec. 2, eff. June 16, 2007.

Art. 5.045. STANDBY ASSISTANCE; LIABILITY. (a) In the discretion of a peace officer, the officer may stay with a victim of family violence to protect the victim and allow the victim to take the personal property of the victim or of a child in the care of the victim to a place of safety in an orderly manner.

(b) A peace officer who provides assistance under Subsection (a) of this article is not:

(1) civilly liable for an act or omission of the officer that arises in connection with providing the assistance or determining whether to provide the assistance; or

(2) civilly or criminally liable for the wrongful appropriation of any personal property by the victim.

Added by Acts 1995, 74th Leg., ch. 565, Sec. 1, eff. June 14, 1995.

Art. 5.05. REPORTS AND RECORDS. (a) A peace officer who investigates a family violence incident or who responds to a disturbance call that may involve family violence shall make a written report, including but not limited to:

(1) the names of the suspect and complainant;

(2) the date, time, and location of the incident;

(3) any visible or reported injuries; and

(4) a description of the incident and a statement of its disposition.

(a-1) In addition to the written report required under Subsection (a), a peace officer who

investigates a family violence incident or who responds to a disturbance call that may involve family violence shall make a report to the Department of Family and Protective Services if the location of the incident or call, or the known address of a person involved in the incident or call, matches the address of a current licensed foster home or a verified agency foster home as listed in the Texas Crime Information Center. The report under this subsection may be made orally or electronically and must:

(1) include the information required by Subsection (a); and

(2) be filed with the Department of Family and Protective Services within 24 hours of the beginning of the investigation or receipt of the disturbance call.

(b) Each local law enforcement agency shall establish a departmental code for identifying and retrieving family violence reports as outlined in Subsection (a) of this section. A district or county attorney or an assistant district or county attorney exercising authority in the county where the law enforcement agency maintains records under this section is entitled to access to the records. The Department of Family and Protective Services is entitled to access the records relating to any person who is 14 years of age or older and who resides in a licensed foster home or a verified agency foster home.

(c) In order to ensure that officers responding to calls are aware of the existence and terms of protective orders, each municipal police department and sheriff shall establish procedures within the department or office to provide adequate information or access to information for law enforcement officers of the names of persons protected by a protective order and of persons to whom protective orders are directed.

(d) Each law enforcement officer shall accept a certified copy of an original or modified protective order as proof of the validity of the order and it is presumed the order remains valid unless:

(1) the order contains a termination date that has passed;

(2) it is more than one year after the date the order was issued; or

(3) the law enforcement officer has been notified by the clerk of the court vacating the order that the order has been vacated.

(e) A peace officer who makes a report under Subsection (a) of this article shall provide information concerning the incident or disturbance to the bureau of identification and records of the Department of Public Safety for its recordkeeping function under Section 411.042, Government Code. The bureau shall prescribe the form and nature of the information required to be reported to the bureau by this article.

(f) On request of a victim of an incident of family violence, the local law enforcement agency responsible for investigating the incident shall provide the victim, at no cost to the victim, with any information that is:

- (1) contained in the written report prepared under Subsection (a);
- (2) described by Subsection (a)(1) or (2); and
- (3) not exempt from disclosure under Chapter 552, Government Code, or other law.

Added by Acts 1985, 69th Leg., ch. 583, Sec. 1, eff. Sept. 1, 1985. Subsec. (d) amended by Acts 1989, 71st Leg., ch. 614, Sec. 27, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 739, Sec. 8, eff. Sept. 1, 1989; Subsec. (a) amended by and Subsec. (e) added by Acts 1993, 73rd Leg., ch. 900, Sec. 8.01, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 524, Sec. 3, eff. June 16, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1057, Sec. 2, eff. September 1, 2007.

Art. 5.06. DUTIES OF PROSECUTING ATTORNEYS AND COURTS. (a) Neither a prosecuting attorney nor a court may:

(1) dismiss or delay any criminal proceeding that involves a prosecution for an offense that constitutes family violence because a civil proceeding is pending or not pending; or

(2) require proof that a complaining witness, victim, or defendant is a party to a suit for the dissolution of a marriage or a suit affecting the parent-child relationship before presenting a criminal allegation to a grand jury, filing an information, or otherwise proceeding with the prosecution of a criminal case.

(b) A prosecuting attorney's decision to file an application for a protective order under Chapter 71, Family Code, should be made without regard to whether a criminal complaint has been filed by the applicant. A prosecuting attorney may require the applicant to provide information for an offense report, relating to the facts alleged in the application, with a local law enforcement agency.

(c) The prosecuting attorney having responsibility under Section 71.04(c), Family Code, for filing applications for protective orders under Chapter 71, Family Code, shall provide notice of that responsibility to all law enforcement agencies within the jurisdiction of the prosecuting attorney for the prosecuting attorney.

Added by Acts 1985, 69th Leg., ch. 583, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 614, Sec. 28, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 739, Sec. 9, eff. Sept. 1, 1989. Subsec. (c) added by Acts 1995, 74th Leg., ch. 564, Sec. 2, eff. Sept. 1, 1995; added by Acts 1995, 74th Leg., ch. 1024, Sec. 25, eff. Sept. 1, 1995.

Art. 5.07. VENUE FOR PROTECTIVE ORDER OFFENSES. The venue for an offense under Section 25.07, Penal Code, is in the county in which the order was issued or, without regard to the identity or location of the court that issued the protective order, in the county in which the offense was committed.

Added by Acts 1989, 71st Leg., ch. 614, Sec. 29, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 739, Sec. 10, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.16, eff. Sept. 1, 1995.

Art. 5.08. MEDIATION IN FAMILY VIOLENCE CASES. Notwithstanding Article 26.13(g) or Section 11(a)(16), Article 42.12, of this code, in a criminal prosecution arising from family violence, as that term is defined by Section 71.004, Family Code, a court shall not refer or order the victim or the defendant involved to mediation, dispute resolution, arbitration, or other similar procedures.

Added by Acts 1999, 76th Leg., ch. 389, Sec. 1, eff. Aug. 30, 1999.



NO: \_\_\_\_\_

STATE OF TEXAS

§

MAGISTRATE FOR

VS.

§

\_\_\_\_\_

§

COUNTY, TEXAS

**MAGISTRATE'S ORDER OF EMERGENCY PROTECTION**

On this day, \_\_\_\_\_, hereinafter called the Defendant, appeared before the undersigned Magistrate of the State of Texas, after arrest for an offense involving family violence or a Penal Code offense under Section 42.072 (Stalking), Section 22.011 (Sexual Assault), or Section 22.021 (Aggravated Sexual Assault).

After a post-arrest appearance as provided by Article 17.292(a), Code of Criminal Procedure, the Court:

- (1) \_\_\_\_\_ Entered the following order for emergency protection as mandated by Article 17.292(b), Code of Criminal Procedure, a matter of law because the arrest was for an offense that also involved  serious bodily injury to the victim or  the use or exhibition of a deadly weapon during the commission of an assault;
- (2) \_\_\_\_\_ Entered an order for emergency protection as allowed by Article 17.292(a), Code of Criminal Procedure,  on its own motion;  at the request of the  victim  guardian of the victim  a peace officer  the attorney representing of the State;

intended to protect \_\_\_\_\_, hereinafter called the victim, and the following members of the victim's family or household, namely \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, including a child or children, namely: \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_.

**IT IS HEREBY ORDERED** that effective immediately and for the next \_\_\_\_\_ days (31-61 days, or up to 91 days for assault with a deadly weapon) from the issuance of this Order, the Defendant, is prohibited from:

- Committing family violence or an assault on the person(s) protected under this Order;
- Committing an act in furtherance of an offense under Section 42.072, Penal Code (Stalking);
- Communicating directly with a member of the family or household or with the person(s) protected under the Order in a threatening or harassing manner;
- Communicating a threat through any person to a member of the family or household or to the person(s) protected under the Order;
- Possessing a firearm; unless the person 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.
- Going to or within \_\_\_\_\_ (distance) of:
  1. the residence of the victim herein located at \_\_\_\_\_  
\_\_\_\_\_;
  2. the residence of a member of the family or household protected under this Order located at \_\_\_\_\_  
\_\_\_\_\_.
  3. the place of employment of the victim herein located at \_\_\_\_\_  
\_\_\_\_\_;
  4. the place of employment of a member of the family or household protected under this Order located at \_\_\_\_\_  
\_\_\_\_\_;

- 5. the business of the victim herein located at \_\_\_\_\_  
\_\_\_\_\_;
- 6. the business of a member of the family or household protected under this Order located at \_\_\_\_\_  
\_\_\_\_\_;
- 7. the residence of \_\_\_\_\_, a child protected by this Order at \_\_\_\_\_  
\_\_\_\_\_;
- 8. the child care facility of \_\_\_\_\_, a child protected by this Order located at \_\_\_\_\_  
\_\_\_\_\_;
- 9. the school of \_\_\_\_\_, a child protected by this Order located at \_\_\_\_\_  
\_\_\_\_\_.

**CONFIDENTIALITY OF ADDRESSES:**

Based on the facts presented, the Court further finds that for the safety of the person or persons protected under this Order, the addresses and specific locations of the person or persons protected by the Order remain confidential and shall be omitted from the Order.

- IT IS FURTHER ORDERED** that the conditions imposed in this Order shall prevail over any existing order granting possession of or access to a child named herein for the duration of this Order.
- IT IS FURTHER ORDERED** that the Defendant shall be served with 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:
  - 1. the chief of police in the municipality where the member of the family or household or individual protected by this Order resides;
  - 2. the sheriff of the county where the member of the family or household or individual protected by this Order resides, if any of these persons do not reside in a municipality;
  - 3. the principal, director, or other person in charge of the school or child care facility attended by a person covered by this Order and named herein; and
  - 4. the victim.
- IT IS FURTHER ORDERED** that a law enforcement officer shall make a good faith effort to notify the victim, within 24 hours, that this Order has been issued by calling the victim's residence and place of employment (if not present at hearing).
- (Check this box if the Defendant holds a Concealed Handgun License)* **IT IS FURTHER ORDERED** that the license to carry a concealed handgun issued under Section 411.177, Government Code, held by the Defendant is **SUSPENDED** for the duration of this Order. The Clerk is **ORDERED** to send a copy of this Order to the appropriate division of the Department of Public Safety at its Austin headquarters *(see below for address)*:

**Editor's Note:** Only if the Defendant is a handgun licensee should copies of Orders of Emergency Protection suspending concealed handgun license be faxed (512.424.7284) or mailed to the following:  
 Attention: Suspension/Revocation  
 Texas Department of Public Safety  
 Concealed Handgun Licensing Section #0235  
 Post Office Box 4143  
 Austin, TX 78765-4143

**IT IS FURTHER ORDERED** that this Order is effective upon issuance and shall remain in full force and effect until midnight on \_\_\_\_\_, 20\_\_ (this date should be no less than 31 and up to 91 days from the date of issuance).

**SIGNED, ENTERED, AND ISSUED** at \_\_\_\_\_ o'clock \_\_\_\_ m. on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Printed Name: \_\_\_\_\_  
Magistrate

Municipal Judge, City of \_\_\_\_\_  
\_\_\_\_\_ County, Texas

Telephone \_\_\_\_\_

A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THIS 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 OF 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.

**WARNINGS UNDER FEDERAL LAW**

THIS ORDER IS ENFORCEABLE IN ALL 50 STATES, THE DISTRICT OF COLUMBIA, TRIBAL LANDS, AND U.S. TERRITORIES. 18 U.S.C., SECTION 2265.

INTERSTATE VIOLATION OF THIS ORDER MAY SUBJECT THE RESPONDENT TO FEDERAL CRIMINAL PENALTIES. 18 U.S.C., SECTIONS 2261, 2262.

POSSESSION, TRANSPORTATION, OR RECEIPT OF A FIREARM WHILE THIS ORDER REMAINS IN EFFECT MAY BE A FELONY UNDER FEDERAL LAW PUNISHABLE BY UP TO 10 YEARS IN PRISON AND/OR A FINE.

IT IS UNLAWFUL FOR ANY PERSON WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A FIREARM OR AMMUNITION.

**DEFINITIONS**

The term "family violence" as defined by Section 71.004, Family Code, means:

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;

- (1) The term "family" as defined by Section 71.003, Family Code, includes individuals related by consanguinity or affinity, individuals who are former spouses of each other, individuals who are the parents of the same child, without regard to marriage, and a foster child and foster parent, whether or not those individuals reside together. Two individuals are related to each other by consanguinity if one is a descendent of the other, or they share a common ancestor. An adopted child is considered to be a child of the adoptive parent for this purpose. Two individuals are

related to each other by affinity if they are married to each other, or the spouse of one of the individuals is related by consanguinity to the other individual. The ending of a marriage by divorce or the death of a spouse ends relationships by affinity unless a child of that marriage is living.

- (2) "Abuse," as that term is defined by Sections 261.001(1)(C), (E), and (G), Family Code, by a family member of a household toward a child of the family or household;

(C) "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;"

(E) "Sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of a young child or children under Section 21.02, Penal Code, indecency with a child under Section 21.11, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code" or

(G) "Compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code;"

- (3) "Dating violence," as that term is defined by Section 71.0021, Family Code, 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, or that is a threat that reasonably places the individual in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself."

"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: (1) the length of the relationship; (2) the nature of the relationship; and (3) the frequency and type of interaction between the persons involved in the relationship. A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a "dating relationship."

The term "firearm" has the meaning assigned by Chapter 46, Penal Code.

The term "household" as defined by Section 71.005, Family Code, means a unit composed of persons living together in the same dwelling, whether or not they are related to each other.

The term "member of a household" as defined by Section 71.006, Family Code, includes a person who previously lived in a household.

The term "child" or "minor" as defined by Section 101.003, Family Code, means a person under 18 years of age who 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, he or she 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 family or household to fear bodily injury or death, or that an offense will be committed against the other person's property; or (3) would cause a reasonable person to fear the same. Section 42.072, Penal Code.

