

# Magistrate's Orders of Emergency Protection: When It Hurts to Laugh

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# REVIEW:

## Magistrate's Order of Emergency Protection

*TEX. CODE CRIM. PRO. (CCP) ART. 17.292*

### **Protective order available to victims of :**

- **Sexual assault/aggravated sexual assault**  
*PC 22.011/22.021*
- **Stalking** *PC § 42.072*
- **Family violence offense** *Title 5, Penal Code*

**Granted after arrest and before release on bond**

## REVIEW (cont'd):

### Magistrate's Order of Emergency Protection

TEX. CODE CRIM. PRO. (CCP) ART. 17.292

**Mandatory if during a family violence assault, the accused**

- **used or exhibited a *deadly weapon***

**OR**

- **inflicted serious bodily injury on victim**

# Learning Objectives:

**As a result of this training, the participant will be able to:**

- **List**
  - **predicate offenses for Magistrate's Order**
  - **types of restrictions that can be imposed by order**
  - **controlling statutory definitions**
  - **5 lethality factors for family violence offenses**
  - **resources for victims**
- **Assess seriousness of a predicate offense**

## Learning Objectives (cont'd):

- **Cite statistics about Magistrate's Orders**
- **Increase reporting rate for Magistrate's Orders**
- **State what triggers federal prohibition on firearms possession**
- **State how bond conditions of safety can enhance victims' safety**
- **Access judicial resources**

# WHAT'S YOUR ORDER?

## Grading the Assault



# WHAT'S YOUR ORDER?

## Did Ricky Commit a Predicate Crime?

- **Family Violence Offense**
- **Sexual Assault**
- **Aggravated Sexual Assault**
- **Stalking**



# WHAT'S YOUR ORDER?

## Did Ricky Assault Lucy?

### **A. Class C misdemeanor:**

- **Offensive contact**
- **Threatening another with imminent bodily injury**

### **B. Class A misdemeanor:**

- **Causing bodily injury to another**
- **Offensive contact with an elderly person**

### **C. Second degree felony:**

- **Impeding breathing of family member or dating partner**
- **Assault that causes serious bodily injury to victim**
- **Using or exhibiting a deadly weapon during assault**

### **D. First degree felony:**

- **Use of deadly weapon to inflict serious bodily injury on a family member**



# WHAT'S YOUR ORDER?

## Procedures

**Must Lucy file a written application?**



**A written application is not required.**

**Who else can request the Magistrate's Order on Lucy's behalf?**

**Lucy's parent or guardian, a peace officer, the state's attorney, or the court. *CCP Art. 17.292(a)***

# WHAT'S YOUR ORDER?

## Procedures

**When and how does Ricky get notice that the order is being considered?**



**Statute is silent**

**Must the court hold an adversarial hearing to consider the application?**

**An adversarial hearing is not required for an emergency order such as a Magistrate's Order .\***

**\*Ex parte Flores, 130 S.W.3d 100 (El Paso 2003, pet ref'd)**

# WHAT'S YOUR ORDER?

## Procedures

**Who may appear before the magistrate when the request is considered?**

**The statute is silent.**

**Can Lucy present information or evidence?  
Is her presence required?**

**Lucy may appear, the magistrate must consider:**

**\*Lucy's safety. *CCP art. 5.01 and art. 56.02***

**\*Lucy's list of "stay away" locations. *CCP art. 17.49***

**\*Whether Lucy wants to participate in global position monitoring of Ricky.  
*CCP art. 17.292(c-1) and art. 17.49***

# WHAT'S YOUR ORDER?

## Contents of the Order



### **Can Ricky be required to stay away from Lucy?**

**“Stay away” provisions apply to places, not people. CCP Art. 17.292 (c)(3)**

### **Can Ricky be forbidden from communicating with Lucy?**

**Order can limit *how* Ricky communicates, but cannot impose a total ban on communication. CCP Art. 17.292(c)(2)**

# WHAT ARE THE CHANCES?

- **A predicate crime will occur?**
- **Someone will request a Magistrate's Order of Emergency Protection?**
- **A Magistrate's Order will be entered into the statewide criminal database (TCIC)?**

# WHAT ARE THE CHANCES? Predicate Offense Will Occur

<b>Family Violence Offenses</b>	<b>193,505</b>
<b>Sexual Assaults</b>	<b>19,007</b>
<b>Stalking</b>	<b>Unknown</b>

**TOTAL = 212,512+**  
**Almost 20% of all crimes**

# WHAT ARE THE CHANCES?

Homicide Will Involve Family Violence

**1 in 10**

**142**

**Texans killed by intimate partners**

**10.5% of all Texas homicides  
in 2010**

# WHAT ARE THE CHANCES?

Firearm Will Cause Family Violence Homicide

**65 %**

**92 family violence homicide victims  
died from a gunshot wound  
in 2010**



# WHAT ARE THE CHANCES?

## Protective Order Will Be Issued

**In 2011, which group of judges disposed of the largest number of protective orders?**

- A. District Court judges**
- B. County Court at Law judges**
- C. Municipal Court judges**

# WHAT ARE THE CHANCES?

## Protective Order Statistics

**ANSWER: C**

**Municipal Courts judges issued**

**10,169**

**Magistrate's Orders**

<b>District Courts</b>	<b>7,829</b>
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<b>County Court at Law</b>	<b>787</b>
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# WHAT ARE THE CHANCES?

Magistrate's Orders

Percentage of All Protective Orders

**About 75%**

**24,558**

**Issued in 2011**

**Most frequently issued type of  
protective order in Texas**

# LAW ENFORCEMENT NOTIFICATION

**By statute , responsibility for forwarding Magistrate's Order to local law enforcement?**

- A. The magistrate's clerk**
- B. The magistrate who issued the order**
- C. The court's bailiff**

# LAW ENFORCEMENT NOTIFICATION

ANSWER: **B** (A?)

**The *magistrate shall* send a copy of the Magistrate's Order to either:**

- **Chief of police (if victim resides in municipality)**
- OR**
- **Sheriff (if victim resides outside municipality)**

*CCP art. 17.292(h)*

# WHAT ARE THE CHANCES?

## A Magistrate's Order Gets into TCIC

**In 2011, how many Magistrate's Orders were entered into the statewide criminal database (TCIC)?**

- A. Under 10%**
- B. 10%-49%**
- C. Over 50%**

# WHAT ARE THE CHANCES?

A Magistrate's Order Gets into TCIC

**ANSWER: A**

**24,558** Magistrate's Orders issued

**2,019** Magistrate's Orders entered into  
TCIC

**8.2%**

**Reporting Rate**

# TIP--IMPROVING THE ODDS

## Order Gets into TCIC

- **Send** order to local law enforcement agency (police or sheriff)
- **Include** identifiers for restrained person, which are:
  - **Name**
  - **Date of birth**
  - **Race**
  - **Sex**
  - **Hair/eye color**
  - **Weight**
  - **Height**



# TIP--IMPROVING THE ODDS

## Order Gets into TCIC

### **Identifying Information available from:**

- **Accused**
- **Court's own observation of accused**
- **Police report/affidavit/other official document**
- **Witness**
- **Personal bond**

**Art. 17.04 , CCP.** To be granted personal bond, the accused must provide the following identifying information: name, address, place of employment, date and place of birth, height, weight, color or hair and eyes, driver's license number and state of issuance, and name and address of nearest relative.

# WHAT'S YOUR ORDER?

## Victims' Rights

**What must the magistrate order an accused to do, regardless of whether the order is mandatory or discretionary?**

- A. Refrain from threatening a person protected by the order**
- B. Refrain from assaulting a person protected by the order**
- C. Surrender the accused's concealed handgun license**

# WHAT'S YOUR ORDER?

## Victims' Rights

**ANSWER: C**

**Must order the surrender of any the concealed handgun license**

**Except for suspending the concealed handgun license, for both mandatory and discretionary orders, the magistrate has discretion over what provisions to include in the order discretionary.**

**BUT . . .**

# Legislative Mandate-- Magistrate's Duty to Protect

- **Victims of FV are *entitled* to protection from harm.**  
*CCP Art. 5.01*
- **The magistrate *shall* protect the victim, regardless of relationship between the alleged offender and the victim.**  
*CCP Art. 5.01*
- **Victim has *right* ...to consider safety of the victim and the community in setting amount of bond.**  
*CCP art. 56.02(a)(2)*

# Magistrate's Powers to Fulfill Mandate to Protect

**Issue a Magistrate's Order with protective conditions on court's own motion**

*CCP Art. 17.292(a)*

**AND**

**Impose *any reasonable condition* of bond related to the safety of a victim of the alleged offense or the safety of the community**

*CCP Art. 17.40*

# WHAT'S YOUR ORDER?

## Victims' Rights



# WHAT'S YOUR ORDER? Setting Bond



**Did Ralph commit a predicate crime?**

**Class C misdemeanor assault:**

- **Threatening another with imminent bodily injury**
- **Offensive contact**

**How will the amount of Ralph's bond be determined?**

## REVIEW: Considerations In Setting Bond

- **Victim and community safety**  
*CCP arts. 17.15(5) and 56.02(a)(2)*
- **Violations of prior protective orders and bond conditions**  
*CCP art. 17.49(c)*
- **Imposing an additional (post-bond) hold to prevent violence**  
*CCP art. 17.291*



# REVIEW: Considerations in Setting Bond

- **Requiring electronic monitoring by state or victim**  
*CCP art. 17.49(b)(3)*
- **The victim's list of stay-away locations**  
*CCP art. 17.49(c)*
- **The victim's security during court proceedings**  
*CCP art. 56.02(a)(8)*

# REVIEW: Safety Provisions for Bonds

## **Safety** *CCP Art. 17.40*

Can impose *any* condition reasonably related to victim or community safety

## **Child Victim** *CCP Art. 17.41*

May restrict access to the child

## **Home Curfew/Electronic Monitoring**

*CCP Arts. 17.43 and 17.44*

May restrict and monitor the accused's mobility

## **Stalking** *CCP Art. 17.46*

May prohibit an accused from contact with or going to or near the victim or a member of the victim's family or household

## **Family Violence** *CCP Art. 17.49*

- (1) May prohibit the accused from having contact with or going to or near the victim or a member of the victim's family or household;
- (2) May require the accused to submit to electronic monitoring.

# WHAT'S YOUR ORDER?

## Duty to Protect Alice

**During his appearance before the magistrate, Ralph states:**

**“It was all a big misunderstanding. I’m entitled to communicate with my wife anyway I want. She never complained before.”**

**What weight should the magistrate give Ralph’s “explanation”?**



# WHAT'S YOUR ORDER?

## Bond Conditions for Safety



**What conditions could be included in Ralph's bond that would promote Alice's safety?**

**Any reasonable condition relating to the safety of Alice or the community *CCP art. 17.40***

**Advantage to putting safety conditions in the bond as well as the Magistrate's Order?**

**Bond conditions usually last longer than Magistrate's Order.**

# WHAT'S YOUR ORDER?



# WHAT'S YOUR ORDER?

## Assessing Credibility

- **After Granny's arrest, Cousin Pearl requests a Magistrate's Order to restrain Granny from further violence against her.**
- **Cousin Pearl claims she and Granny are members of the same family.**
- **Granny denies a blood tie to Pearl; Pearl is only related to Jed, who is Granny's son-in-law.**



# WHAT'S YOUR ORDER?

## Assessing Credibility

**Estimated incidence of  
psychopathy  
in general population\***

**1 in 25**

**\*Martha Stout, Ph.D., *The Sociopath Next Door*, MJF Books 2005**

# WHAT'S YOUR ORDER?

## Assessing Credibility

**Incidence of diagnosed  
psychopaths in group of family  
violence perpetrators\***

**1 in 4**

**\*Robert Hare, Ph.D., *Without Conscience*,  
Guilford Press 1993**



# WHAT'S YOUR ORDER?

## Assessing Credibility

### **Key character traits of psychopaths:**

- **Lack remorse or empathy**
- **Proficient and unscrupulous liars**
- **Manipulative, glib, superficial**
- **Impulsive, lack self-control or responsibility**

# WHAT DO YOU MEAN BY...?

## Controlling Definitions



**What definitions control whether  
Cousin Pearl qualifies for a Magistrate's Order?**

- **FAMILY**
- **FAMILY VIOLENCE**
- **FAMILY VIOLENCE OFFENSE**
- **DATING RELATIONSHIP**
- **DATING VIOLENCE**
- **DEADLY WEAPON**
- **INTIMATE PARTNER**

# WHAT DO YOU MEAN BY...?

## Controlling Definitions

- **Texas Family Violence Benchbook, Chapter 2**
- **TMCEC Forms Book, Magistrate's Order**
- **Texas Family Code, Chapter 71**

# WHAT DO YOU MEAN BY...?

## Controlling Definitions

- **“Family” means persons related by consanguinity or affinity, former spouses, and parents of same child. It also means a member of the same household**  
*Fam. Code 71.002*
- **“Family Violence” includes dating violence**  
*Fam. Code § 71.004*
- ***NEW* “Dating Violence” now includes assault on person who is a romantic rival if the rivalry motivated the assault**  
*Fam. Code § 71.0021*

# WHAT'S YOUR ORDER?

## Controlling Definitions



**Based on the information you have from Cousin Pearl and Granny, does Pearl qualify for a Magistrate's Order?**

- A. Yes**
- B. No**
- C. Maybe; cannot tell based on the facts stated.**

# WHAT'S YOUR ORDER?

## Controlling Definitions



**ANSWER: C**

**For instance, Pearl would qualify if she can prove she is a member of the Clampett household.**

# WHAT DO YOU MEAN BY...?

## Family Violence Offense

**Family Violence is an element of the offense:**

- **Penal Code § 22.01(b)(1) and (b-1)  
(family violence assault)**
- **Penal Code § 22.02(b)(1)  
(family violence aggravated assault)**

*Penal Code Title 5 --Offenses Against the Family*

**An offense involving family violence can be established by either intrinsic or extrinsic evidence.**

*CCP Art. 42.013*

# WHAT DO YOU MEAN BY...?

## Dating Violence

- **Ralph now dates Alice, who formerly dated Ed**
- **A jealous Ed assaults Ralph**
- **During the assault, Ed waives a gun**
- **Ed is arrested for assault**





# WHAT DO YOU MEAN BY...?

## Dating Violence

At Ed's magistration, must the judge impose a Magistrate's Order to protect Ralph from Ed?



- A. Yes, the Magistrate's Order is mandatory.**
- B. Yes, but only if Ralph requests the Magistrate's Order.**
- C. No, Ralph does not qualify for the Magistrate's Order.**

# WHAT DO YOU MEAN BY...?

## Dating Violence

**ANSWER: A**

**The order is mandatory**

**Because Ed's assault was motivated by jealousy about Ralph and Alice, Ralph is a victim of a dating violence assault.**

**Dating violence is a type of family violence.**

**Because Ed displayed a deadly weapon during the assault involving family violence, mandatory under CCP art. 17.292(b)(2).**



# REVIEW: Firearms Possession

- **State law: Discretionary**
  - Magistrate *may* forbid an accused from possessing a firearm unless the person is licensed peace officer in full time employment by state agency or political subdivision *CCP art. 17.292 (c)(4)*
  - *Except: Mandatory suspension of state concealed handgun license* *CCP art. 17.292(l)*
- **Federal: Applies automatically if the order protects an intimate partner and meets other criteria to be a qualifying order**

## **REVIEW: Federal Firearms Possession Prohibition**

### **Qualifying protective order:**

- **Issued after notice and an opportunity for a hearing; and**
- **Prohibits harassing, stalking, or threatening another who is**
- **The accused's intimate partner or the intimate partner's child**

**AND**

## **REVIEW: Federal Firearms Possession Prohibition**

- **The order contains a finding the accused poses credible threat of physical harm to protected persons**

**OR**

- **Prohibits use, attempted use, or threat of physical force capable of inflicting bodily injury to the protected persons.**

**18 USC §§ 921 and 922(g)(8)**

# WHAT'S YOUR ORDER?

## Firearms possession



# WHAT'S YOUR ORDER?

## Firearms Possession

- **Archie asks for and receives a Magistrate's Order against Edith.**
- **The Magistrate's Order does not specifically order Edith not to possess firearms.**



# WHAT'S YOUR ORDER?

## Federal Firearms Possession



**Under federal law, can Edith legally possess a firearm or ammunition for the duration of the Magistrate's Order?**

- **Did she have notice and an opportunity to be heard?**
- **Is she restrained from harassing, stalking or threatening Archie?**
- **Is Archie her intimate partner? AND**



# WHAT'S YOUR ORDER?

## Federal Firearms Possession



- **Is she a credible threat to Archie's physical safety?**

**OR**

- **Is she prohibited from using, attempting to use, or threatening bodily harm to Archie?**

## REVIEW: Protective Order Jurisdiction

**Municipal Courts have explicit or potential jurisdiction over Magistrate's Orders of Emergency Protection and what other type of protective order?**

- A. Human Trafficking *CCP Art. 7B***
- B. Sexual assault *CCP Art. 7A***
- C. Stalking *CCP Art. 6.09***

## REVIEW: Protective Order Jurisdiction

ANSWER: C

***CCP art. 6.09: “at any proceeding related to an offense under PC § 42.072 in which the defendant appears before the court” and statute does not otherwise mention types of courts having jurisdiction.***

# REVIEW: Assessing Lethality

## Top Five Risk Factors

**Factor by which victim's risk of homicide is increased relative to other domestic violence victims**

- **WEAPON—use or threat to use a gun, knife, or other weapon**

**20.2X**

- **THREATS— threats to kill or injure the victim**

**14.9X**

# REVIEW: Assessing Lethality

## Top Five Risk Factors

- **CHOKING**—attempt to strangle (choke) victim

**9.9x**

- **JEALOUSY**-- violent or constant jealousy of victim

**9.2x**

- **FORCED SEX**—forced victim to have sex

**7.6x**

<https://www.ncjrs.gov/pdffiles1/nij/grants/209731.pdf>

# WHAT'S YOUR ORDER?

## Lethality Assessment



# WHAT'S YOUR ORDER?

## Assessing Lethality

- **Weapon**
- **Threats**
- **Choking**
- **Jealousy**
- **Forced sex**



**Is Al Bundy potentially homicidal?**

# WHAT'S YOUR ORDER?

## Peg's Safety

### **Predicate offense:**

**Class C assault—threatening  
imminent bodily injury**

### **Lethality factor:**

**14 x --threat to kill or injure**

### **Victim safety:**

**Reasonable bonds conditions for Peg's  
safety can be imposed.**





# RESOURCES: Judicial

## Office of Court Administration's Domestic Violence Resources (DVR) Program

### **DVR Program offers the following resources:**

- Domestic Violence Resource Attorney (DVRA)  
<http://www.courts.state.tx.us/oca/DVRA/dvra-home.asp>
- Texas Family Violence Benchbook  
<http://www.courts.state.tx.us/oca/DVRA/tfvbb.asp>

# RESOURCES: Judicial

## DVRA CONTACT INFORMATION

**Kim Piechowiak**

**Office of Court Administration**

**205 W. 14<sup>th</sup> Street, Suite 600**

**Austin, Texas 78701-1614**

**(512) 936-6390**

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# RESOURCES: Judicial Texas Family Violence Benchbook

THE STATE OF TEXAS



**THE TEXAS FAMILY VIOLENCE  
BENCHBOOK**

September 2011 EDITION

A READY REFERENCE MANUAL PREPARED FOR  
THE JUDGES OF THE STATE OF TEXAS

PREPARED BY THE  
**OFFICE OF COURT ADMINISTRATION**

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# **RESOURCES: Judicial TMCEC Forms Book**

- **Magistrate's Order (with definitions)**
- **Clerk's Letter regarding Magistrate's Order**
- **Motion to Modify the Magistrate's Order**
- **Order Modifying Magistrate's Order**

## **RESOURCES: Victim Safety**

**Consider having handout or brochure available in court for victims that provides contact information, such as:**

- **Local prosecutor's offices**
- **Hotlines: family violence, sexual assault, and stalking**
- **Local family violence shelters**
- **Local legal aid offices**
- **Other advocacy groups**

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