

On average, more than three women in the United States are killed by their husbands or boyfriends every day.

(Bureau of Justice Statistics Crime Data Brief, February 2003)

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More than 1,303 Texas women were killed by an intimate partner from **1998-2008**

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74% of all Texans have either themselves, a family member and/or a friend experienced some form of domestic violence.

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47% of all Texans report having personally experienced at least one form of domestic violence, severe (*physical or sexual*), verbal and/or forced isolation from friends and family at some point in their lifetime.

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31% of all Texans report that they have been severely abused (*physically or sexually*) at some point in their lifetime. Women report severe abuse at a higher rate than men.

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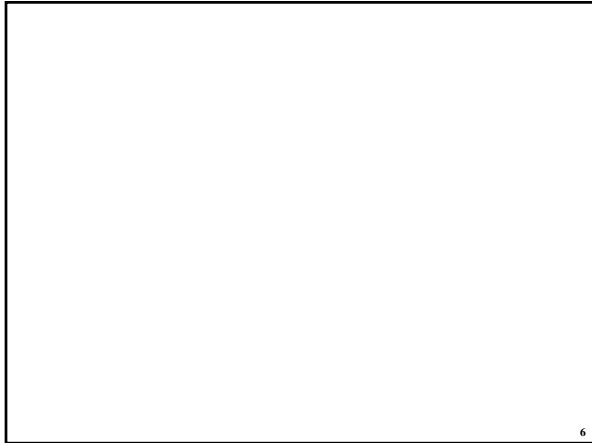
73% of all Texans believe that domestic violence is a serious problem in Texas.

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Estimates range from 960,000 incidents of violence against a current or former spouse, boyfriend, or girlfriend per year to 4 million women who are physically abused by their husbands or live-in partners per year.

Violence by Intimates: Analysis of Data on Crimes by Current or former Spouses, Boyfriends and Girlfriends, U.S. Department of Justice, March, 1988

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Domestic Violence

**By: Lester G. Rorick
Presiding Judge
City of Pasadena**

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SB 328 Blood Warrants

- Any magistrate who is an attorney
- Chapter 49 offenses where breath or blood test refused
- Mandatory blood or breath test in certain Chapter 49 offenses



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HB 1949 Agricultural Warrants

- Department may seek for plant pest or plant disease
- Issued by magistrate only after reasonable efforts to obtain consent search
- Single application sufficient for multiple warrants
- Interference with execution Class B misdemeanor
- Good until 61st day after issue



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SB 743 Extension of Time for Execution of Search Warrant for DNA Analysis

- 15 whole days exclusive of day of issuance and day of execution
- Is this a "Mere Evidence" Warrant?
- How is this different from a Blood Warrant?



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HB 358 Seizure of Circuit Boards of Gambling Device

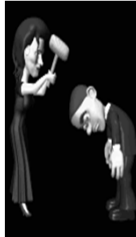
- Officer may seize only programmable main circuit board
- Optional seizure of main circuit board reduces costly transportation & storage



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HB 2240 Creating the Offense of Continuing Violence Against the Family

- Two or more incidents in 12 months or less in violation of 22.01 (a) (1) P.C. against persons described in Chapter 71 Family Code becomes 3rd degree felony
- Jury does not have to agree unanimously on the specific conduct or exact date



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HB 2066 Enhanced Penalty for Assaulting Family Member by Strangulation or Suffocation

- Amends 22.01 P.C. to create a 3rd degree felony
- Family Code Chapter 71 Victim
- Intentionally, Knowingly, Recklessly impedes breathing or circulation by pressure to throat or blocking nose or mouth
- Second offense can be enhanced to 2nd degree felony



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HB 1506 - Conditions for Bonds on Certain Defendants Charged with Family Violence

- Order defendant's participation in GPS; allow participation by victim
- GPS defined
- Magistrate can order costs of GPS for a victim paid by defendant
- Victim to provide magistrate with list of "Off Limits" locations
- Provision made for indigent defendants
- Magistrate shall provide victim with police contact in case of violation



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SB 1506 Payment of Costs Associated with Certain Bonds

- Magistrate may revoke bond and order arrest if defendant fails to pay cost of monitoring or testing for controlled substances
- Magistrate to determine defendant not indigent
- Cost of monitoring or testing may be assessed as court cost or ordered paid directly.



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HB 3751 Denial of Bail for Violation of Bond Where Child is Alleged Victim

- Related to certain sex offenses against child younger than 14 years of age
- Magistrate shall require defendant as a condition of bond not communicate with nor go near specified locations
- Magistrate may revoke bond, order defendant confined. Confinement and revocation discharge sureties from future liability



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HB 2236 Consideration of Impact on Victim of a Defendant's Motion for Continuance

- Amends Article 56.02 CCP (Crime Victims' Rights) and adds Article 29.14 CCP (Consideration of Impact on Certain Victims).
- Victim of Assault or Sexual Assault who is younger than 17 years of age OR whose case involves family violence under 71.004 FC has the right to have court consider impact on victim of defendant's request for continuance
- On request of state, the SHALL consider impact of victim
- On request by either counsel, the court SHALL state on the record the reason for granting or denying the continuance.



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HB 72 Relating to Waiting Period In Certain Divorces

- Amends 6.702 Family Code
- Sixty-day waiting period not required if
Respondent has been finally convicted or received deferred adjudication for family violence offense against petitioner or member of petitioner's household
or
Petitioner has active protective order or active magistrate's order of emergency protection against Respondents from family violence committed during the marriage



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HB 2730 Handgun Changes

- DPS now required to suspend concealed handgun license if person arrested for family violence and is subject to magistrates order of emergency protection
- Article 17.292 (1) CCP also amended to require suspension when issuing a magistrates order of emergency protection.
- Failure to display license is no longer an offense
- Judges need to demonstrate handgun proficiency



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Firearms Admonition

- Articles 14.06 and 27.14 CCP are amended to require an admonition relating to firearms.
- "If you are convicted of a misdemeanor offense involving violence where you are or were a spouse or intimate partner, parent, or guardian of the victim or are or were involved in another similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a hand gun or long gun, or ammunition pursuant to federal law under 18 U.S.C. Section 922(g)(9) or Section 46.04(b) Texas Penal Code. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney."



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HB 796 Disposition of Stolen Property and Use of Photographic Evidence

- Art 38.34 C.C.P. definition of property is expanded to "Any Tangible Property"
- Photos of stolen property as admissible as property itself
- With consent of State's Attorney any magistrate may hold 47.02 hearing to determine possession of property



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Art. 5.01 C.C.P. 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.



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Art. 5.01 C.C.P. Legislative Statement (continued)

- (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.



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Art. 5.02. Definitions

- Art. 5.02. In this chapter, “family violence,” “family,” “household,” and “member of household”, have the meaning assigned by Chapter 71, Family Code



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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



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Art. 5.06. Duties of prosecuting attorneys and courts (continued)

- (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.



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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.



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Provisions involving Family Violence

- Art. 17.291 – Further Detention of Certain Persons
- Art. 17.292 – Magistrate’s Orders of Emergency Protection
- Art. 17.293 – Delivery of Orders of Emergency Protection

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Orders for Further Detention

- Police may detain for additional four hours after posting bond
- With a determination of probable cause by a magistrate that family violence would continue, the magistrate may order that the accused may be held for an additional 24 or 48 hours after posting of bond
- Order by magistrate must be written and must make finding that violence would continue
- If order for hold beyond 24 hours, magistrate must find that accused has been arrested for family violence in last ten years or for any offense involving a weapon

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Magistrate's Order for Emergency Protection

- Occurs at the defendant's first appearance before a magistrate (not arraignment)
- Must involve family violence offense or stalking
- May be at the request of victim, state or on the court's own motion
- Victim need not be present

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Discretionary or Mandatory

- If offense involves class assault or stalking it is discretionary
- If it involves serious bodily injury or use of a weapon, issuance is mandatory
- Order in effect for 31 or 61 days; 61 to 91 in case of a deadly weapon

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Prohibited Conduct

- Family violence
- Stalking (42.072) communicating in threatening or harassing fashion
- Going near the residence, place of employment or business
- Possessing a firearm unless a peace officer
- Applies to protected person or member of family

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Contents of Order

- Order must contain locations and minimum distances; can incorporate conditions of Sec. 17.49 CCP, including GPS
- Mandatory language regarding punishment and enhancement
- Language informing defendant that no other person may give permission to disregard the order
- Copy of order must be delivered to the defendant, the person protected by the order and the chief of police, the sheriff of the county in which the victim lives and the day care or school if applicable

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MOEP/EPO Step 1

- A defendant is charged with family violence or stalking and taken into custody.



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Step 2

- Review the probable cause affidavit and approve if appropriate.



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Step 3

- Review the motion for EPO to determine whether it is complete. If not, request additional information.



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Step 4

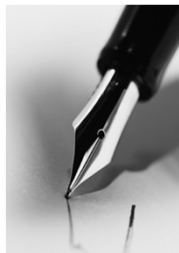
- If no motion for EPO was filed, review the probable cause affidavit and any available information to determine whether an EPO should be considered on the Magistrate's own motion.



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Step 5

- If the magistrate has sufficient information, prepare a draft EPO for possible issuance



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Step 6

- When the defendant is brought before the magistrate, advise the defendant of his/her legal rights, the nature of the pending charge and set bond



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Step 7

- Advise the defendant that a motion for EPO has been filed and explain the nature and purpose of an EPO



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Step 8

- Inform the defendant about the factual basis for the motion for the EPO



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Step 9

- After again warning the defendant about his/her right to remain silent, ask the defendant if he/she wants to respond to the motion for EPO



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Step 10

- If the defendant responds, focus the inquiry on whether there was physical violence and the nature of the violence.



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Step 11

- Decide whether to grant the motion and, if ordered, the particular matters to be included in the EPO



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Step 12

- If the EPO is granted, have a copy delivered to the defendant in court and ask the defendant to acknowledge receipt
- or
- If the motion for EPO is denied, make note of the decision on the motion

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MOEP's are

- ◆ Extraordinary remedies
- ◆ Not for resolving property or child custody issues
- ◆ A tool for reducing family violence

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