

MAGISTRATE'S ORDERS OF EMERGENCY PROTECTION
TEXAS CODE OF CRIMINAL PROCEDURE
CONTROLLING AND RELEVANT STATUTES SUMMARIZED

TEXAS CODE OF CRIMINAL PROCEDURE

ART. 5.01 Legislative statement. Victims of family violence are entitled to protection from harm. The magistrate shall protect the victim, regardless of the relationship between the alleged offender and the victim.

ART 5.03 Family or household relationship does not create an exception to official duties. A magistrate's duty to prevent 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.

ART. 5.06 Duties of prosecuting attorneys and courts. In family violence criminal cases, criminal proceedings may not be delayed, dismissed, or premised on the status of a civil case between the alleged victim and defendant. The court cannot delay or dismiss the criminal proceeding based on the status of a civil lawsuit.

ART. 5.08 Mediation in family violence cases. A court shall not refer or order the victim or defendant in a criminal case arising from family violence to mediation, dispute resolution, arbitration, or other similar procedures.

ART. 6.01. When magistrate hears a threat. If the magistrate hears a person threaten to harm himself, another person, or property, the magistrate must inform law enforcement of the threat.

ART. 6.02 Threat to take a life. If the magistrate hears a person threaten the life of another, including that person's spouse, the magistrate must issue an arrest warrant for the person making the threat.

ART. 6.03 On attempt to injure. If the magistrate observes a person attempt to inflict injury on himself, another person, or property, the magistrate must use all lawful means, up to and including issuing an arrest warrant, to prevent the injury.

ART. .6.05. May compel offender to give security. The magistrate may compel a person making threats to injure himself, another person, or property, to give security to keep the peace or commit the person to custody.

ART. 6.09. Stalking protective order. At any proceeding related to a stalking offense (as defined in Texas Penal Code § 42.072), the court may receive an application for a protective order.

ART. 14.02 Felony or breach of the peace within view of magistrate. A magistrate **may** verbally order a peace officer to arrest a person who has committed a felony or breach of the peace within the magistrate's view.

ART. 15.03 Magistrate may issue a warrant or summons. The magistrate's power to issue an arrest warrant or summons exists in any case where the magistrate has the authority to verbally order an arrest; when the magistrate receives a statement made under oath that a person has committed an offense; and in any case where the Code of Criminal Procedures authorized the magistrate to issue the warrant or summons.

ART. 17.04 –Requisites of personal bond. 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. [NOTE: The required identifying information is almost the same as the information required to enter a protective order into the statewide criminal database (i.e., TCIC). Therefore, if the accused was granted personal bond, the magistrate should have all the identifying information necessary to provide to law enforcement, along with the magistrate's order of emergency protection, so that law enforcement can enter the magistrate's order into TCIC.]

ART. 17.152-Denial of bail for violation of certain orders or conditions of bond in a family violence cases. Bond **may** be denied after an arrest for a violation of a certain types of protective orders if the defendant violated a condition related to community or victim safety or a condition prohibiting the defendant from going to or near a location if the defendant went to the location with the intent to commit family violence or in furtherance of a stalking offense.

ART. 17.153—Denial of bail for violation of certain conditions of bond where a child is the alleged victim. For bond given in a case where the defendant is charged with sexual offenses, trafficking of persons for sexual exploitation, and compelled prostitution and the victim is a child younger than 14 years old, a violation of a bond condition **may** result in denial of bond.

ART. 17.29 Accused Liberated [warning the victim before the accused is released] . Before the release of a person charged with stalking or a person held with or without bond in the prevention of family offense, the law enforcement agency holding the person **must** make a reasonable attempt to notify the victim or the victim's designee. [NOTE: This does not apply if there is probable cause to believe family violence will occur if the accused is released. See Art. 17.291.]

ART. 17.291—Further detention of certain persons [accused likely to commit another family violence offense after release]. If probable cause exists to believe the accused will commit further family violence upon release from detention, (1) law enforcement **may** extend the hold for up to four additional hours after bond is posted; (2) a magistrate **may** extend the hold up to 48 hours after bond is posted upon concluding that the violence will continue after release and, for holds over 24 hours, that in the prior 10-year period the accused has been arrested on more than one occasion for a family violence offense or for any other offense if the offense involved use or display of a deadly weapon during its commission or flight after commission.

ART. 17.272—Magistrate’s Orders of Emergency Protection. The magistrate **must** issue the order to protect a victim of family violence after an arrest for an offense involving family violence if the victim sustained serious bodily injury or if the accused used or displayed a deadly weapon during the assault. The magistrate **may** issue the order after an arrest for an offense involved a family violence assault, sexual assault, aggravated sexual assault (as defined in Tex. Penal Code §§ 22.011 or 22.021), or stalking (as defined in Tex. Penal Code § 42.072).

ART. 17.293. Delivery of order for emergency protection to other persons (i.e., the Dept. of Public Safety’s Concealed Handgun Division). Either the magistrate or the magistrate’s clerk **must** deliver the magistrate’s order of emergency protection to) the Department of Public Safety’s concealed handgun division, if the order suspends a concealed handgun license.

ART. 17.40. Conditions related to victim or community safety. The magistrate **may** impose any reasonable condition of bond related to the safety of a victim of the alleged offense or the safety of the community.

ART. 17.41. Condition where child alleged victim. As a condition of bond, if the victim of the alleged offense is under 14 years of age, the magistrate **must** order an accused charged with sexual or assaultive offenses, prohibited sexual conduct or sexual performance by a child not to (1) directly communicate with the alleged victim; or (2) not to go near the residence, school, or other locations frequented by the alleged victim. The magistrate **may** grant supervised visitation with the alleged victim.

ART. 17.46. Conditions for a defendant charged with stalking. As a condition of bond, the magistrate **may** require an accused charged with a violation of Texas Penal Code § 42.072 not to communicate directly or indirectly with the victim or not to go to or near the victim’s residence, place of employment, or business or to or near the victim’s child’s school, day-care facility, or similar facility.

ART. 17.49 Conditions for defendant charged with offense involving family violence [stay away provisions and global positioning monitors]. As a condition of bond, the magistrate **may** require an accused charged with a family violence offense: (1) not to go to or near the victim’s residence, school, place of employment, or other location; (2) wear a global positioning monitor; (3) pay costs of a global positioning monitor used by the victim. The magistrate **must** give the victim a chance to provide a list of locations from which the accused should be excluded. The magistrate **must** provide the victim with information regarding the victim’s rights to information about global positioning monitoring of the accused.

ART. 56.02 Crime victims’ rights. Among other rights, at any criminal proceeding involving the offender in a case, the victim, the victim’s guardian, or the close relative of a deceased victim have the right to have: (1) the magistrate take the safety of the victim and the community into consideration when setting bail; (2) be provided with either a secure waiting area separate from the offender and relatives of the offender or have the court implement other safeguards to minimize the contact with the offender, the offender’s relatives, and the offender’s witnesses; and (3) subject to the judge’s discretion, the right to be present at all public court proceedings.