

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

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

Learning Objectives (cont'd)

- **Cite statistics about Magistrate's Orders**
- **Increase the reporting rate for Magistrate's Orders**
- **State what triggers the 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 at Rick's magistration if she chooses because in setting bond, 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: A Predicate Offense Will Occur?

Family Violence Offenses	193,505
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Sexual Assaults	19,007
------------------------	---------------

Stalking	Unknown
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TOTAL = 212,512+

Almost 20% of all crimes

WHAT ARE THE CHANCES?: A 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: A Firearm Will Cause a Family Violence Homicide ?

65 %

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

WHAT ARE THE CHANCES?: A 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 CHANCE?: Protective Order Statistics

ANSWER: C

**Municipal Courts judges issued
10,169
Magistrate's Orders**

District Courts	7,829
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County Court at Law	787
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WHAT ARE THE CHANCES?: Magistrate's Orders as Percentage of All Protective Orders

About 75%

24,558
Issued in 2011

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

REVIEW:

Sending the Order to Law Enforcement

By statute , who is responsible for forwarding the Magistrate's Order to local law enforcement?

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

REVIEW:

Sending the Order to Law Enforcement

ANSWER: **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 That the Order Gets into TCIC

- **Send** the 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 That the 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

Under CCP Art. 17.292, 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 . . .

REVIEW: Legislative Mandate-- the Magistrate's Duty to Protect

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

REVIEW: Magistrate's Powers to Fulfill the Mandate to Protect

Magistrate has power to:

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

In setting bond, the magistrate should consider:

- **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 consider
Ralph’s “explanation” in setting bond or deciding
whether to issue the Magistrate’s Order?**

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*)

Is there an 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-where to find

- **Texas Family Violence Bench book Ch. 2**
- **Magistrate's Order in the TMCEC Form Book**
- **Texas Family Code Chapter 71**

WHAT DO YOU MEAN BY?

Controlling definitions-highlights

- **“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)**

Under 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, the Magistrate's Order is 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 Aart. 6.09)**

REVIEW:

Protective Order Jurisdiction

ANSWER: C

CCP art. 6.09. statute reads “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

The Top Five Risk Factors

(#)- factor by which the victim's risk of homicide is increased relative to other domestic violence victims.

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

20.2x

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

14.9x

REVIEW: ASSESSING LETHALITY

The Top Five Risk Factors

3. CHOKING—attempt to strangle (choke) the victim

9.9x

4. JEALOUSY-- violent or constant jealousy of victim

9.2x

5. 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

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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 Form 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**

Speaker's Contact Information

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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: _____ CTZ: _____ 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): _____

Caution and Medical Conditions: (circle all that apply) 00 – Armed and Dangerous 05—Violent Tendencies 10—Martial Arts Expert
15—Explosive Expertise 20—Known to abuse drugs 25—Escape risk 30—Sexually violent predator 50—Heart condition
55—Alcoholic 60—Allergies 65—Epilepsy 70—Suicidal 80—Medication Required 85—Hemophiliac 90—Diabetic 01--Other

PROTECTION ORDER CONTIONS (PCO): (circle all that apply)

- 01—Respondent is restrained from assaulting, threatening, abusing, harassing, following, interfering with or stalking the protected person and/or child of the protected person.
- 02—Respondent may not threaten a member of the protected person's family/household.
- 03—The protected person is granted exclusive possession of the residence/household.
- 04—Respondent is required to stay away from the residence, property, school or place of employment of the protected person or other family or household member.
- 05—Respondent is restrained from making any communication with the protected person including, but not limited to, personal, written, or phone contact, or their employers, employees or fellow workers, or other whom the communication would be likely to cause annoyance or alarm.
- 06—Respondent is awarded temporary custody of the children named.
- 07—Respondent is prohibited from possessing and/or purchasing a firearm or other weapon.
- 08—See miscellaneous field for comments regards terms and conditions of the protection order.
- 09—The protected person is awarded temporary exclusive custody o the child(ren) named.

BRADY RECORD INDICATOR (BRD): N—Respondent is NOT disqualified Y—Respondent is disqualified U--Unknown

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: _____

***** 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: _____ SOCIAL SECURITY NO. (PSN): _____

Street: _____ 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: _____

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

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

TEXAS CODE OF CRIMINAL PROCEDURE PROTECTIVE ORDERS AT A GLANCE

	CCP 6.08	CCP 6.09	CCP 7A	CCP 7B	CCP 17.292
	VICTIMS OF CRIMES MOTIVATED BY BIAS OR PREJUDICE	STALKING VICTIMS	VICTIMS OF SEXUAL ASSAULT, COMPELLED PROSTITUTION, OR HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION	VICTIMS OF HUMAN TRAFFICKING	MAGISTRATE'S ORDER OF EMERGENCY PROTECTION (EPO)
Predicate Crime (Penal Code section (§))	Homicide (ch. 19) Kidnapping, unlawful restraint, and smuggling of persons (ch. 20) Trafficking of persons (ch. 20A) Sexual offenses (ch. 21) Assaults (ch. 22) Arson (§ 28.02) Criminal mischief	Stalking (§ 42.072)	Child sexual abuse (§ 21.02) Indecency with a child (§ 21.11) Sexual assault (§ 22.011) Human Trafficking (§ 20A.02(a)(3,4,7,8)) Stalking (§ 42.072) Compelling prostitution (§ 43.05)	Human trafficking (§ 20A.02)	Offenses involving family violence Sexual assault (§ 22.011) Aggravated sexual assault (§ 22.021) Stalking (§ 42.072)

TEXAS CODE OF CRIMINAL PROCEDURE PROTECTIVE ORDERS AT A GLANCE

	CCP 6.08	CCP 6.09	CCP 7A	CCP 7B	CCP 17.292
	(§ 28.03) Graffiti (§ 28.08)				
Filed charges required	Yes	Yes	No	No	Yes
Temporary order available	No	No	Yes	Yes	No
Family Code Title 4 applies	Yes	Yes	Yes	Yes	No
Standing	1) Victim 2) An adult member of the victim's family or household 3) Prosecuting atty. ¹	1) Victim 2) An adult member of the victim's family or household 3) Prosecuting atty. ²	1) Victim 2) Parent/guardian if victim is under 17 3) Prosecuting atty	1) Victim 2) Parent/guardian if victim is under 18 3) Prosecuting atty.	1) Victim 2) Victim's guardian 3) Peace officer 4) State's attorney 5) Magistrate's own motion ³
Courts with jurisdiction	1) District 2) Co. court at law 3) Consti. co. court	Any court with jurisdiction over the associated stalking charge	1) District 2) Juvenile with district court juris. 3) Co. court at law	1) District 2) Juvenile with district court juris.	Magistrate with jurisdiction over the associated criminal case

¹ Tex. Code Crim. Proc. Art. 6.08 states that "a person" may request a protective order under this statute." Reading "person" in the context of the applicable provisions in Tex. Fam. Code Title 4, the potential applicants are those listed.

² Tex. Code Crim. Proc. Art. 6.09 states that "a person" may request a protective order under this statute." Reading "person" in the context of the applicable provisions in Tex. Fam. Code Title 4, the potential applicants are those listed.

³ **NOTE:** The EPO is mandatory if the alleged offense is family violence and if it is alleged that the offense resulted in serious bodily injury or that a firearm was used or exhibited during a crime.

TEXAS CODE OF CRIMINAL PROCEDURE PROTECTIVE ORDERS AT A GLANCE

	CCP 6.08	CCP 6.09	CCP 7A	CCP 7B	CCP 17.292
			4) Consti. co. court	3) Co. court at law 4) Consti. co. court	
Venue	County where the associated criminal charge is filed	County where the associated criminal charge is filed	County where either the applicant or the alleged offender resides	County where either the applicant or the alleged offender resides	County where the magistration for the associated criminal charge is performed
Hearing required	Yes	Yes	Temporary order: No Permanent order: Yes	Yes	Yes, but victim need not be present
Evidentiary standard	Probable cause to believe	Probably cause to believe	Temporary order: Clear and present danger Permanent order: Reasonable grounds to believe	Temporary ex parte order: Clear and present danger Pretrial order: Reasonable grounds to believe Post trial order: Reasonable grounds to believe	Not stated
Required findings⁴	1) The alleged offender was arrested for one of the predicate offenses. 2) The alleged criminal conduct was motivated by bias or prejudice	1) Evidence exists to believe that alleged offender stalked the victim in violation of Penal Code § 42.072. 2) Based on nature of the scheme or course of conduct	Temporary order: The alleged offender poses a clear and present danger of further harm to the applicant. Permanent order: 1) There are reasonable grounds to believe that a protective order is	Temporary ex parte order: A clear and present danger exists that the alleged offender will traffic the victim in violation of Penal Code § 20A.02 OR	Discretionary order: The alleged offender has been arrested for an offense involving family violence or for an offense under Penal Code § 22.011, 22.021, or 42.072. Mandatory order:

⁴ The required finding set out in the table is in addition to a universal finding that a protective order is necessary to protect the applicant from the alleged offender.

TEXAS CODE OF CRIMINAL PROCEDURE PROTECTIVE ORDERS AT A GLANCE

	CCP 6.08	CCP 6.09	CCP 7A	CCP 7B	CCP 17.292
Required findings cont'd	(as defined by Penal Code § 42.014) against the victim. 3) Based on nature of the scheme or course of conduct underlying the alleged criminal conduct, the defendant is likely to engage in further criminal conduct against the victim that violates Title 5 or § 28.02, 28.03, or 28.09, Penal Code.	underlying the alleged criminal conduct, the defendant is likely to engage in further criminal conduct against the victim that violates Penal Code § 42.072.	necessary; and 2) There are reasonable grounds to believe that the applicant is the victim of the predicate crime committed by the alleged offender.	A clear and present danger exists that the victim will otherwise suffer harm as described in Penal Code § 20A.02. Pretrial order: There are reasonable grounds to believe the applicant is the victim in a human trafficking criminal case filed against the alleged offender; AND The applicant is either: 1) under 18 years of age; OR 2) regardless of age, is the subject of a threat that reasonably places the applicant in fear of further harm from the alleged offender Post-trial order:	The alleged offender is under arrest for an offense involving family violence and the offense either: (1) involved serious bodily injury to the victim; OR (2) involved the use or exhibition of a firearm by the alleged offender.

TEXAS CODE OF CRIMINAL PROCEDURE PROTECTIVE ORDERS AT A GLANCE

	CCP 6.08	CCP 6.09	CCP 7A	CCP 7B	CCP 17.292
Required findings cont'd				There are reasonable grounds to believe the applicant is the victim of human trafficking criminal offense for which the offender has been convicted; AND The applicant is either: 1) under 18 years of age; OR 2) regardless of age, is the subject of a threat that reasonably places the applicant in fear of further harm.	
Duration⁵	1) Up to 2 years 2) If the respondent is confined or imprisoned when the order would expire, the order	1) Up to 2 years 2) If the respondent is confined or imprisoned when the order would expire, the order expires on	Temporary order: 14 days except up to 20 days in counties over 2 million or in district courts covering more than one county.	Temporary order: 14 days except up to 20 days in counties over 2 million or in district courts covering more than one county.	Discretionary order: 31-61 days Mandatory order for offense with serious bodily injury:

⁵ For all the CCP protective orders except the EPO, the procedures in Texas Family Code Title 4 control how long the order may last. Although Title 4 protective orders may last for the lifetime of a party if certain findings are made, one of the required factual findings involves family violence, a fact that will seldom be found in a CCP protective order application.

TEXAS CODE OF CRIMINAL PROCEDURE PROTECTIVE ORDERS AT A GLANCE

	CCP 6.08	CCP 6.09	CCP 7A	CCP 7B	CCP 17.292
	expires on the first anniversary of the date the respondent is released	the first anniversary of the date the respondent is released	Permanent order: 1) Up to 2 years 2) If the respondent is confined or imprisoned when the order would expire, the order expires on the first anniversary of the date the respondent is released.	Pretrial order: Until the date the alleged offender is convicted or acquitted or the date of the final disposition of the criminal case. Post trial order: 1) The duration stated in the order; OR 2) 2 years if no duration is specified in the order; OR 3) Up to the lifetime of a party if the court finds reasonable cause to believe the applicant is the subject of a threat that reasonably places the applicant in fear of further harm from the offender.	31-61 days Mandatory order for using or exhibiting a weapon during commission of the offense: 61-91 days

TEXAS CODE OF CRIMINAL PROCEDURE PROTECTIVE ORDERS AT A GLANCE

	CCP 6.08	CCP 6.09	CCP 7A	CCP 7B	CCP 17.292
Concealed handgun license suspension required	Yes	Yes	Yes	Yes	Yes
Firearms possession prohibited⁶ of order's duration	Yes ⁷	Yes ⁸	Yes	Yes	Yes
Enforcement	Criminal ⁹ or civil	Civil	Criminal ¹⁰ or civil	Civil	Criminal ¹¹ or civil
Recission or modification	Not stated	Not stated	Upon request of the victim or the parent/guardian of a victim under 17	Upon request of the victim or the parent/guardian of a victim under 18	After notice to all affected parties and a hearing upon finding that: 1) The original order is unworkable; 2) modification will

⁶ Tex. Penal Code § 46.04 makes it a felony for a person restrained by a protective order issued under Family Code Ch. 85 or § 6.504 or under CCP Arts. 7A or 17.292 to possess a firearm. That statute does not apply to protective orders issued under CCP Arts. 6.08 or 6.09. The federal Gun Control Act makes it a crime to possess ammunition or a firearm if the person is subject to an order that prohibits harassing, stalking, or threatening an intimate partner or engaging in conduct that would put the intimate partner in reasonable fear of bodily injury to self or child. See 18 U.S.C. 922(g)(8).

⁷ A violation of that prohibition is only criminally enforceable under federal and only if the order protects a current or former intimate partner (or child of that intimate partner) from stalking, harassment, or threats by the person restrained.

⁸ A violation of that prohibition is only criminally enforceable under federal and only if the order protects a current or former intimate partner (or child of that intimate partner) from stalking, harassment, or threats by the person restrained.

⁹ Tex. Penal Code § 25.071

¹⁰ Tex. Penal Code § 38.112

¹¹ Tex. Penal Code § 25.07

TEXAS CODE OF CRIMINAL PROCEDURE PROTECTIVE ORDERS AT A GLANCE

	CCP 6.08	CCP 6.09	CCP 7A	CCP 7B	CCP 17.292
					not increase risk of harm to the victim; AND 3) modification will not endanger a person protected under the order.

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.

DEFINITIONS RELEVANT TO MAGISTRATE’S ORDERS OF EMERGENCY PROTECTION
UNDER TEXAS CODE OF CRIMINAL PROCEDURE ART. 17.292

DATING RELATIONSHIP—TEX. FAM. CODE § 71.0021(b)

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:

- (1) consideration of the length and nature of the relationship and the frequency; and
- (2) the type of interaction between the persons involved in the relationship.

EXCLUSION: It does not include a casual acquaintanceship or ordinary fraternization in a business or social context.

DATING VIOLENCE--TEX. FAM. CODE § 71.0021

An act, other than a defensive measure to protect oneself, by an actor that is committed against:

- (1) a victim with whom the actor has or has had a dating relationship; or
- [New] (2) a victim because of the victim’s spousal or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and
 - (a) is intended to result in physical harm, bodily injury, assault, sexual assault; or
 - (b) is a threat that reasonably places the victim in fear of imminent harm, bodily injury, assault, or sexual assault.

DEADLY WEAPON--Tex. Penal Code § 1.07(17)

- (1) a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or
- (2) anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

FAMILY—TEX. FAM. CODE § 71.003

- (1) individuals related by consanguinity or affinity, as determined under Tex. Gov’t Code § 573.022 and Tex. Gov’t Code § 573.024;
- (2) individuals who are former spouses of each other;
- (3) individuals who are the parents of the same child, without regard to marriage; or

(4) a foster child and foster parent, without regard to whether those individuals reside together. If the relationship is established only by virtue of a marriage (e.g., mother-in-law), the familial relationship ceases to exist once the marriage ends.

FAMILY VIOLENCE—TEX. FAM. CODE § 71.004

- (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 Tex. Fam. Code § 261.001(C), (E) and (G), by a member of a family or household toward a child of the family or household; or
- (3) dating violence.

FAMILY VIOLENCE OFFENSE (See Texas Family Violence Benchbook § 10.1)

An offense that either:

- (1) has family violence as an element; or
- (2) requires a mandatory finding of family violence in the judgment of conviction under Texas Code of Criminal Procedure Art. 42.013

Crimes with family violence as element of the offense are:

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

Crimes for which the judgment must contain an explicit finding of family violence under Texas Code Crim. Pro. Art. 42.013 are those that:

- (1) Are charged under Penal Code Title 5 (Offenses Against the Person); and
- (2) Are proven by the evidence at trial admitted at trial to have involved family violence.

INTIMATE PARTNER

- (1) Under the Federal Gun Control Act, an individual is an intimate partner if that person is the: (a) spouse or former spouse of the accused; (b) parent of the accused's child; or (c) a person who currently cohabitates, or formerly cohabitated, with the accused. (18 U.S.C. § 921(a)(32)).
- (2) As defined by the U.S. Department of Justice, Bureau of Justice Statistics, "intimate partner" relationships involve current spouses, former spouses, current boy/girlfriends, or former boy/girlfriends. Individuals involved in an intimate partner relationship may be of the same gender.

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 Subchapter H, Chapter 411, 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

MAGISTRATE'S ORDER OF EMERGENCY PROTECTION (Art. 17.292, C.C.P.) (Page 3 of 4)

☐ **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

Signature of Defendant acknowledging receipt of
copy of this Order

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 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.

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:

(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;

The term "family" as defined by Section 71.003, Family Code, includes individuals related by consanguinity or affinity, as determined under Sections 573.022 and 573.024, Government Code, 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, without regard to whether 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.

The term "household" as defined by Section 71.005, Family Code, means a unit composed of persons living together in the same dwelling, without regard to whether 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.

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

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.

(3) "Dating violence," as that term is defined by Section 71.0021, Family Code, which 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," as defined by Section 71.0021(b) and (c), Family Code, 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.

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 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; or (3) would cause a reasonable person to fear the same. Section 42.072, Penal Code.

CLERK'S LETTER: COPY OF MAGISTRATE'S ORDER OF EMERGENCY PROTECTION (Art. 17.292(h), C.C.P.)

Dear _____:

Enclosed is a copy of a Magistrate's Order of Emergency Protection entered by Judge _____ on _____, 20__.

You are a person protected by this Order. Please read this Order carefully because it restrains _____ from committing threats or acts of violence against you. The terms of the Order may contain other important restrictions as well. The Order is in effect for _____ days after it was signed.

A copy of this Order is on file with this Court and with the (Sheriff of _____ County) (Chief of Police of _____). However, we suggest you keep this copy of the Order in a safe place. If the person restrained by this Order should violate the Order in any way, it is important that you call the (Sheriff) (Police) at (telephone number).

This is a **Court Order**. No one, including yourself, can give permission to anyone to ignore or violate any provision of the enclosed Order.

Sincerely,

(Deputy) Clerk

Municipal Court

MOTION TO MODIFY MAGISTRATE'S ORDER OF EMERGENCY PROTECTION (Art. 17.292(j), C.C.P.)

NO: _____

STATE OF TEXAS

§

MAGISTRATE FOR

VS.

§

§

COUNTY, TEXAS

MOTION TO MODIFY MAGISTRATE'S ORDER OF EMERGENCY PROTECTION

I, _____, the undersigned Respondent or Protected Person, hereby move to modify the Magistrate's Order of Emergency Protection (MOEP) issued on _____, 20__ by Judge _____. In support of this motion, I submit the following facts:

1. The following changes have occurred since 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,

Signature

ORDER MODIFYING MAGISTRATE'S ORDER OF EMERGENCY PROTECTION (Art. 17.292(j), C.C.P.)

NO: _____

STATE OF TEXAS

§

MAGISTRATE FOR

VS.

§

§

COUNTY, TEXAS

ORDER MODIFYING MAGISTRATE'S ORDER OF EMERGENCY PROTECTION

On this the ____ day of _____, 20__, came to be heard at the request of the _____, to modify the Magistrate's Order of Emergency Protection entered on _____, 20__, issued by a judge of this Court in his or her capacity as a magistrate for the protection of _____, an alleged victim.

Said ORDER was issued:

- ☐ On the Magistrate's own motion;
- ☐ At the request of the alleged victim of the offense;
- ☐ At the request of the guardian of the alleged victim;
- ☐ At the request of a peace officer;
- ☐ At the request of an attorney representing the State.

Having provided NOTICE to each affected party and conducted a hearing, the Court FINDS:

1. The order as originally issued is unworkable;
2. The modification will not place the victim of the offense at greater risk than did the original Order; and
3. The modification will not in any way endanger a person protected under the Order.

The Court hereby MODIFIES AS FOLLOWS:

1. The above-named Defendant may return to the:

- ☐ Alleged victim's residence located at: _____
- ☐ Alleged victim's place of employment or business located at: _____
- ☐ The residence, childcare facility, or school located at: _____

2. Other modification(s):

UNLESS EXPRESSLY STATED IN THIS ORDER, ALL OTHER TERMS OF THE MAGISTRATES'S ORDER OF EMERGENCY PROTECTION ARE STILL IN **FULL FORCE AND EFFECT**.

ENTERED this ____ day of _____, 20__.

Magistrate
Municipal Judge, City of _____

County, Texas

JUDICIAL CHECKLIST

**Prepared by the Judicial Subcommittee of the American
Bar Association Commission on Domestic Violence**

DEFINING THE ISSUE

Domestic violence is about **POWER AND CONTROL**. Physical abuse is only one tactic among many used by batterers to enforce their control over a victim. Other methods include emotional abuse, psychological coercion, isolation, economic control, immigration status-related abuse, sexual assault, and stalking or harassing behavior.

Domestic violence is **CHOSEN BEHAVIOR** and is rarely caused by substance abuse, genetics, anger, stress, illness, or problems in the relationship, although these factors are often used as excuses and can exacerbate violent behavior. Abusers may justify their actions by blaming the victim, but courts should not accept this as a justification.

Courts are uniquely positioned to hold batterers accountable and to increase safety for victims. **DOMESTIC VIOLENCE** civil protection orders are available in every U.S. jurisdiction. Some jurisdictions have additional civil protection orders for victims of **STALKING** and/or for victims of non-intimate partner **SEXUAL ASSAULT**, including teens and other affected family members.

COMMON EFFECTS OF VIOLENCE ON VICTIMS

- fear of offender violence
- denial, detachment, lack of affect
- rage
- blames self or circumstances
- rationalizes batterer's behavior, minimizes violence
- unaware of legal and social options
- isolation from family and friends, and/or from others who share the victim's language, faith, culture, etc.
- self-medication by use of alcohol and/or drugs
- low self-esteem, shame
- depression, anxiety, suicidal thoughts
- post-traumatic stress disorder, exhaustion
- use of defensive/protective violence
- difficulty managing daily tasks because of obstacles created by the abuse

COMMON PERPETRATOR ATTITUDES & CONDUCT

- "Jekyll-Hyde" personality: polished and likeable in public while abusive at home
- intimidating
- consistent, persistent attempts to control victim
- self-centered, narcissistic, claims to be the "real" victim
- minimizes and denies own behavior & instead blames victim, circumstance or others
- dependent on victim, jealous and possessive
- low self-esteem, inadequate or desperate feelings once caught
- promises "It won't happen again" or "I didn't mean it"
- authoritarian, uses children to "spy" on other parent
- substance abuse

FULL FAITH & CREDIT

The Violence Against Women Act 2005 (VAWA) mandates that every state, recognized tribe and territory provide full faith and credit to protection orders issued by other states, tribes or territories. This includes provisions in protection orders relating to custody, visitation and support. For the purposes of full faith and credit under VAWA, a protection order is any injunction, protection order, restraining or other order issued for the protection of victims of domestic violence, sexual assault, dating violence or stalking.

- ❑ VAWA requires enforcement of orders issued by other jurisdictions, including custody provisions, if:
 - ✓ *the issuing court had jurisdiction over the subject matter and parties, and*
 - ✓ *the respondent had both notice and the opportunity to be heard.*

There is no requirement that the order be registered to receive full faith and credit.

- ❑ Help facilitate full faith and credit enforcement by including the following language in your protection orders:
"This civil protection order has been issued in compliance with the notice and due process requirements set forth in the Violence Against Women Act of 2005, 18 U.S.C. §2265 and the laws of this state. This order, and all of its provisions, is enforceable in all fifty (50) states, the District of Columbia, tribal lands, and U.S. territories."

MUTUAL ORDERS (i.e., orders issued against both parties on the basis of only one petition)

Because mutual orders are issued *sua sponte*, without a petition by the respondent and a finding that the respondent is entitled to protection, they are unauthorized in most jurisdictions and should be discouraged. Mutual orders can increase the risk to victims.

- ✓ Pursuant to VAWA, mutual orders are not entitled to full faith and credit in other jurisdictions.

- ✓ Courts and law enforcement agencies receiving federal funding must certify that their laws, official policies or practices prohibit the issuance of mutual protection orders.

FIREARMS AND OTHER WEAPONS

18 U.S.C. §922(g)(8) prohibits persons subject to "qualifying orders of protection" from possessing a firearm or ammunition in or affecting commerce. Violation of the law is punishable by up to ten years in prison.

- ❑ Ensure the order is a "qualifying order of protection" under federal law:
 - ✓ *respondent has been accorded notice and opportunity to be heard*
 - ✓ *petitioner is an "intimate partner" or the child of either party (18 U.S.C. §921(32))*
 - ✓ *order includes a finding that the respondent is a credible threat to the intimate partner or child, or prohibits future use or attempted use of physical harm reasonably expected to cause bodily injury; or*
 - ✓ *order prohibits respondent from continuing to harass, threaten, stalk or otherwise engage in acts that would place the intimate partner in reasonable fear of bodily injury to themselves or the child*
- ❑ Where appropriate, order and verify surrender of weapons to law enforcement; respondents should be ordered to file the receipt from the police agency or proof of sale to the court.
- ❑ When the protection order issues, provide the following warning, either verbally or in writing, to the respondent, as required by 42 U.S.C. 3796gg-1(e):
"As a result of this order, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition pursuant to federal law under 18 U.S.C. 922(g)(8) [and/or state law]. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney."

Studies indicate that at least 50% of disputed custody cases involve domestic violence, and that abusive fathers are more likely to seek sole custody than non-abusive fathers. Studies also indicate the risk of international child abduction is higher when the respondent is foreign-born and can legally travel outside the US. Adverse effects to children who witness domestic violence are well-documented, including aggressive behavior, depression and cognitive difficulties. Children are at a greater risk of being abused if their mother has been abused. This is particularly true after separation, even if there was no prior abuse of the children.

JURISDICTION

- ❑ Is respondent from another jurisdiction? Consult state's long-arm statute or tribe's statute conferring jurisdiction.
- ❑ Is petitioner from another jurisdiction? If so, is petitioner fleeing abuse?
- ❑ Consult state's relocation statute.
- ❑ Consult state's enactment of the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) [or Uniform Child Custody Jurisdiction Act (UCCJA)].
- ❑ Consult Federal Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. § 1738A ("Full faith and credit given to child custody determinations").
- ❑ Is child Native American/Alaska Native? Consult Indian Child Welfare Act (ICWA), 25 U.S.C. §§1901-1963.

EFFECTIVE ORDERS: Carefully craft custody/visitation arrangements to serve the child's best interest by protecting the child and the victimized parent.

- ❑ Award sole custody to non-abusive parent, at least until batterer completes court ordered programs and otherwise demonstrates that children will be safe.
- ❑ Explicitly articulate the day, time and location for visitation or exchange. Do not order visitation as "reasonable" or "mutually agreeable." Police and courts will be unable to enforce such a ruling.

- ❑ Address holidays and birthdays, in case they do not fit into the regular visitation/exchange schedule.
- ❑ Include timed windows for exchanges and consequences for a perpetrator's lateness or failure to appear.
- ❑ Consider supervised visitation and/or exchange through visitation center, intermediary not involved in perpetuating the violence, or location away from abused party (especially when parental abduction and/or safety of child is a concern).
- ❑ Start with short, time specific, supervised visits to batterer, and increase time pending compliance; restrict overnight visitation.
- ❑ Order no use of alcohol or drugs during or prior to visitation.
- ❑ Order that child's passport be turned over to non-abusive parent, that abusing parent post bond and that child not be removed from the jurisdiction.
- ❑ When necessary have the order translated into a parent's primary language.

CUSTODY EVALUATIONS: Custody evaluations must be performed by experts who have had appropriate training in domestic violence and who understand:

- ✓ How domestic violence affects adult and child safety.
- ✓ How the perpetration of domestic violence (not acts of self-defense) may reflect on parental fitness.
- ✓ That domestic violence may encompass physical, sexual, or emotional abuse or threats of abuse to the children.
- ✓ When it is appropriate to limit the perpetrator's access to the child(ren), based on the abuser's history and pattern of abuse.

The views expressed herein have not been approved by the House of Delegates of the Board of Governors of the American Bar Association and accordingly should not be construed as representing the policy of the ABA.

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LEGAL ACCESS:

PARTIES & STANDING

Domestic violence is documented across all boundaries of race, class, ethnicity, sexual orientation, national origin, physical ability and age. Mistaken assumptions about who can be a victim and who can be a perpetrator can restrict access to the courts by discouraging certain victims from coming forward. Consider the following potential victims of domestic violence:

- ✓ Minors in dating relationships
- ✓ Elders abused by spouses, dating partners, adult children or grandchildren, or caregivers
- ✓ Persons with disabilities abused by intimate partners, parents, siblings or caregivers
- ✓ Immigrants (with or without legal status) and persons with limited English proficiency
- ✓ Victims of human trafficking, commercial sex trade, and international “matchmaking” agencies
- ✓ Lesbian, gay, bisexual and transgendered persons

- ✓ Military personnel and/or their intimate partners

PHYSICAL ACCESS: American with Disabilities Act; state law

- ❑ Consult state and federal laws to ensure compliance with legal minimums for physical access to the courts.
- ❑ Ensure courtroom is free of architectural and communication barriers (e.g., signs, alarms).
- ❑ Provide auxiliary aids or services when they are necessary to ensure effective communication (e.g., using a TTY or relay service for litigants who are Deaf or hard of hearing; providing Braille documents or reading documents to a blind litigant).
- ❑ Ensure that service and companion animals are permitted in facilities unless the animals pose a direct threat to the health or safety of others.
- ❑ Ensure that persons with disabilities are not charged to cover the costs of needed accommodations, including cost to hold hearings at accessible locations.

sible locations. When the respondent has means, order that the costs of accommodation be paid by respondent.

LANGUAGE ACCESS: Title VI of the Civil Rights Act; Americans with Disabilities Act; state law

- ❑ Consult federal and state law to ensure compliance with legal requirements for language access to the courts.
- ❑ Utilize professional and/or qualified interpreters. Know how to qualify an interpreter for legal proceedings. In no case should a party’s child or other family member interpret.
- ❑ Be aware that some language communities are very small, and effective communication requires that the party must be comfortable with the interpreter chosen and satisfied that there are no potential conflicts of interest or safety concerns.
- ❑ When the respondent has means, order that the costs of interpreters/translators be paid by respondent.

GOALS OF JUDICIAL INTERVENTION

stop the violence • protect the abused party, children • protect family members, general public • hold perpetrator accountable for violence through court sanctions and regular compliance reviews • restore and validate victim • provide adequate security for all parties prior to, during and after court proceedings, including exclusion of weapons • stop emotional, financial, physical, immigration-related and other forms of abuse used to control and coerce victims and children • provide restitution to abused party and financial support (e.g., property division, child support, and maintenance of basic needs such as clothing and health insurance) • convey to the general public that domestic violence is a crime and “not just a family matter” • break intergenerational cycle of violence • referrals to supportive, culturally competent community-based services, such as victim services programs, counseling, employment, immigration or housing assistance • order structured visitation or custody arrangements to ensure stable, safe environment for children with the non-abusing parent

DUE PROCESS

- ❑ Personal service and/or prior notice to all parties?
- ❑ Notify victim when service will be attempted or has been completed.
- ❑ Opportunity for all parties to be heard?
- ❑ Protections for *pro se* petitioners and defendants?

JURISDICTION

- ❑ Any violence or threats made to victim within court's jurisdiction?
- ❑ Is respondent from another jurisdiction? Consult state's long-arm statute or tribe's statute conferring jurisdiction.
- ❑ Is petitioner from another jurisdiction? If so, is petitioner fleeing abuse?
- ❑ Are children involved? (if so, see custody and visitation section)
- ❑ Is there an existing civil order from another jurisdiction requiring full faith and credit pursuant to 18 U.S.C. 2265?
- ❑ Valid orders of protection from other jurisdictions must be honored and enforced, even if not registered.
- ❑ All foreign-born persons, without regard to immigration status, are constitutionally guaranteed access to US courts. *Plyer v. Doe*, 457 U.S. 202, at 210 (1982).

EFFECTIVE ORDERS

- ❑ Use clear, precise and concise language; avoid any ambiguity which could result in misinterpretation by parties or law enforcement.
- ❑ When necessary have the order translated into a party's primary language.
- ❑ Avoid conflicting orders. Identify other orders governing the conduct of the parties (criminal, family, protection order, child/adult protective, orders from other jurisdictions).
- ❑ Include information relevant to enforcement such as jurisdictional basis, penalties for violation, weapons prohibitions, and contact information for the court.

- ❑ Protect confidentiality of victim's address/ phone number. VAWA confidentiality provisions also preclude use of the family courts to learn about any U or T visa case.
- ❑ If your court posts court records publicly on the Internet, seal information relating to victim's and children's names and locations.
- ❑ Include clear & specific consequences of deviating from provisions of order.
- ❑ Notify respondent of any firearms prohibitions that may apply once the order issues, particularly the federal firearms prohibition under 18 U.S.C. 922(g)(8).
- ❑ Use "catch-all" provisions creatively to permit maximum safety for victims and children, e.g.
 - ✓ *Order respondent to pay mortgage/rent, or not to deplete assets*
 - ✓ *Order respondent to retain and produce immigration documents, to cooperate with immigration proceedings, and not to contact DHS regarding the petitioner*
 - ✓ *Award ownership of car, pets, etc.*
 - ✓ *Where needed, order support for victim and children*
 - ✓ *Order respondent to relinquish firearms to local law enforcement for the duration of the order*

ENFORCEMENT

- ❑ Include in orders consequences for failure to comply, and enforce them against the respondent (to whom the order is directed).
- ❑ Schedule case monitoring conferences when necessary, and consider excusing the petitioner from appearing.
- ❑ Consider civil and/or criminal contempt sanctions, as appropriate.
- ❑ No removal of protections unless victim has had prior notice and opportunity to be heard.

MEDIATION, PARENTING EDUCATION AND/OR COUPLES THERAPY

Any program requiring the parties to communicate or spend time together is **dangerous** and **ill-advised**, as it provides an opportunity for further abuse, manipulation and retaliation.

- ✓ When a consent order is presented to the court, be sure that no coercion was used to obtain the consent of the petitioner; be sure all consent orders include anti-violence provisions, and that certified interpreters are utilized where necessary.
- ✓ Couples therapy and/or joint parenting classes should not be ordered in domestic violence cases.
- ✓ Mediation and other forms of alternative dispute resolution are usually inappropriate due to safety, control, and intimidation concerns.
- ✓ Mediation should not be ordered over the objection of an alleged victim. If mediation is ordered, a mediator should not undertake family mediation without appropriate and adequate domestic violence training.

ANGER MANAGEMENT VS. BATTERER'S INTERVENTION

- ✓ Anger management programs are **not appropriate** for perpetrators of domestic violence, sexual assault or stalking, because they fail to adequately address the seriousness of the violence, they can minimize the dynamics of power and control at the root of these behaviors, and they have not been shown to reduce violence.
- ✓ The effectiveness of batterer's intervention programs (BIPs) is undetermined. If the respondent is ordered to attend a BIP, the court should ensure that the program is a certified program that is designed to address the unique needs of this perpetrator population.
- ✓ Compliance with the program does not in itself ensure the safety of the parties. Perpetrators should be required to demonstrate reformed behavior for a period of time after completing a BIP.

PLANNING FOR SAFETY

In most cases, violence will escalate in frequency and severity when the victim attempts to end the relationship. Court staff should be prepared to address the heightened safety considerations to the victim and to court staff.

COURTHOUSE SAFETY

- ☐ screen for weapons at entry to the courthouse
- ☐ always have bailiffs available in the courtroom and hallways
- ☐ never require the parties to spend time alone together, and arrange for separate or guarded waiting areas
- ☐ order respondents to remain in the courthouse an additional 10-15 minutes after petitioners leave
- ☐ provide a bailiff escort for petitioners, witnesses, advocates and counsel as they leave the courthouse
- ☐ have a bailiff stand between the parties when they appear at the bench
- ☐ prevent respondent from attempting to directly address petitioner in court
- ☐ require that parties sit on opposite sides of the courtroom
- ☐ require certified interpreters when any party is limited English proficient

DANGER ASSESSMENT: An assessment, typically via a screening instrument, designed to gauge the future risk of injury or homicide to the victim by the perpetrator of domestic violence, sexual assault and/or stalking.

Common Risk Factors in Perpetrator:

- ☐ suicidal and/or homicidal ideation
- ☐ escalation in frequency & severity of violence
- ☐ access to weapons
- ☐ threatened or actual violence against children or animals
- ☐ violence toward pregnant victim
- ☐ short courtship
- ☐ victim has children not by perpetrator
- ☐ depression or other mental health issues
- ☐ substance abuse
- ☐ stalking
- ☐ intense jealousy
- ☐ perpetrator makes statements like "Maybe I love her too much"

**Women's
Justice Center**



**Centro de Justicia
Para Mujeres**

250 Sebastopol Rd. — Santa Rosa, CA 95407 — (707) 575-3150 — E mail: rdjustice@monitor.net

Domestic Violence Homicide Risk Assessment (data from USDOJ Scale)

**** Weapons ** Threats ** Strangling **
** Constant Jealousy ** Forced Sex ****

Note: The top five risk factors for domestic violence homicide usually don't bleed! In fact, these high risk factors often don't leave any visible marks at all.

The only sure way to determine the presence of these high risk factors is through careful, comprehensive victim interviews.

Ask & Document

The Top Five Risk Factors

The numbers in parenthesis indicate the factor by which a domestic violence victim's risk of homicide is increased relative to other domestic violence victims.

- 1. Has the abuser ever used, or threatened to use, a gun, knife, or other weapon against victim? (20.2x)**
- 2. Ever threatened to kill or injure victim? (14.9x) Document complete and accurate quotes of the threats**
- 3. Ever tried to strangle (choke) the victim? (9.9x)**
- 4. Is abuser violently or constantly jealous? (9.2x)**
- 5. Has abuser ever forced victim to have sex? (7.6x)**

More Notes: *The US Dept. of Justice has now compiled a number of smaller studies into a lethality assessment list of 17 risk factors for domestic violence homicide. (The full lethality risk scale can be found at www.ncjrs.org/pdffiles1/jr000250e.pdf Scroll to bottom of document.)*

The numbers in parenthesis indicate the factor by which a domestic violence victim's risk of homicide is increased relative to other domestic violence victims. For example, if the abuser has used or threatened to use weapons, the victim's risk of domestic violence homicide is 20.2 times that of the average domestic violence victim.

- **Always Keep in Mind: All Domestic Violence Victims Are at Heightened Risk of Homicide.**
- *Don't dismiss threats to kill and maim as "just words". All victims should be asked about threats, and all threats should be quoted accurately and in detail. Also, threats to kill or maim are a crime in California, PC 422.*
- *Even victim advocates often fail to ask about sexual violence in the relationship. **Sexual violence is serious trauma, and, is a high risk factor for domestic violence homicide. Don't be shy. Always ask!***
- *The USDOJ lethality scale deals only with factors inside the relationship. Other studies have found that factors outside the relationship - such as the quality of prior law enforcement or court response - correlate with future lethality. But again, the key to uncovering these risk factors is the same; a careful, comprehensive victim interview.*

How You Can Help

Please pass this page on to health workers, teachers, clergy, counselors, friends, police, and neighbors... Or post it at your work, school, church or home.

Feel free to photocopy and distribute this information as long as you keep the credit and text intact.

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Women's Justice Center,
www.justicewomen.com
rdjustice@monitor.net**

OFFICE OF COURT ADMINISTRATION
DOMESTIC VIOLENCE RESOURCES PROGRAM

Domestic Violence Resources Attorney (DVRA)

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<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>

Navigating the Texas Family Violence Benchbook:

Navigation pane/document Map (expandable table of contents) feature.

Open the Benchbook (it is an Adobe pdf document).

Right click anywhere on a page in the Benchbook.

A pop-up box will appear; left click on the last entry "Navigation pane."

Three icons will appear in the upper left corner. Left clicking on the middle icon ("bookmarks" icon) will open the Document Map, which contains a navigable table of contents (TOC).

Left click on the "+" or "-" sign to the left of each entry to collapse or expand the levels of TOC displayed.

Left clicking on an entry on the Document Map to move directly to the page in the document for that entry.

Texas Remote Interpreter Project (TRIP)

<http://www.courts.state.tx.us/oca/DVRA/trip.asp>

512 936-6390

RESOURCES

ONLINE RESOURCES

Abuse, Rape, and Domestic Violence Aid and Resource Collection

<http://www.aardvarc.org/>

American Bar Assn.

Center on Children and the Law

<http://www.abanet.org/child/>

Civil Law Manual: Protection Orders and Family Law Cases, 3rd Ed.

<http://www.abanet.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=3480008>

Commission on Domestic Violence

<http://www.abanet.org/domesticviolence/Pages/default.aspx>

[Domestic Violence in the LGBT Community: bibliography](http://www.abanet.org/irr/enterprise/lgbt/Bibliography_updated.pdf)

http://www.abanet.org/irr/enterprise/lgbt/Bibliography_updated.pdf

Domestic violence safety tips (available in English, Spanish, Chinese, Japanese, Korean, and Vietnamese)

<http://www.abanet.org/tips/publicservice/DVENG.pdf>

Human Trafficking Victims: An introduction for domestic violence attorneys and advocates

http://www.abanet.org/domviol/pdfs/DV_Trafficking.pdf

Human Trafficking Cases: How and Why to Use an Expert Witness

http://www.abanet.org/domviol/pdfs/DV_Trafficking.pdf

The Impact of Domestic Violence on Your Legal Practice: A Lawyer's Handbook, 2nd Ed.

<http://www.abanet.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=5480020>

Lawyers' Domestic Violence Handbook

<http://www.abanet.org/domviol/lawyershandbooktoc.pdf>

Judicial checklist for domestic violence cases

<http://www.abanet.org/abastore/index.cfm?fm=Product.AddToCart&pid=348001>

Parental Kidnapping Prevention and Remedies
<http://www.abanet.org/child/pkprevrem.pdf>

Screening tools for attorneys for domestic violence
<http://www.abanet.org/domviol/screeningtoolcdv.pdf>

Screening tool for civil attorneys representing victims of domestic and dating violence, sexual assault, and stalking
http://www.abanet.org/domviol/pdfs/Issue_Spotting_FINAL.pdf

State-by-state statutory summary chart.
<http://new.abanet.org/domesticviolence/Pages/StatutorySummaryCharts.aspx>

VAWA 2005 Guide for Attorneys
<http://www.abanet.org/domviol/docs/VAWA2005forAttorneys.pdf>

American Psychological Association

Hate crimes
<http://www.apa.org/about/gr/issues/violence/hate-crimes-faq.pdf>

American Probation and Parole Assn.

Community Corrections Response to Domestic Violence: Guidelines for Practice (2009). Guidelines for community corrections officers taking a proactive approach to supervision of domestic violence offenders.
<http://www.appa-net.org/eweb/docs/APPA/pubs/CCRDV.pdf>

Responding to Stalking-a guide for community corrections officers
<http://www.ncvc.org/src/AGP.Net/Components/DocumentViewer/Download.aspx?DocumentID=47528>

Asian and Pacific Islanders Institute on Domestic Violence

apidinstitute@apiahf.org

Asian Task force Against Domestic Violence

www.atask.org

Bureau of Alcohol, Tobacco, and Firearms-

Firearms forms
<http://www.atf.gov/forms/firearms/>

Brochure on “Information needed to enforce the firearm prohibition:
misdemeanor crimes of domestic violence”
<http://www.fbi.gov/hq/cjisd/nics/medvbrochure.pdf>

Bureau of Justice Statistics-

Criminal Victimization in the U.S., 2007 Statistical Tables
<http://bjs.ojp.usdoj.gov/content/pub/pdf/cvus07.pdf>

List of Statistics
<http://www.ojp.usdoj.gov/bjs/pubalp2.htm#vvcs>

Family Violence Statistics (2005)
<http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=828>
<http://bjs.ojp.usdoj.gov/content/pub/pdf/fvs06.pdf>

Female Victims of Violence (2009)
<http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2020>

Intimate Partner Violence
<http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=971>
<http://www.ojp.usdoj.gov/bjs/intimate/ipv.htm>

Profile of Intimate Partner Violence Cases in Large Urban Counties
<http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2024>

Publications and Products Overview
<http://bjs.ojp.usdoj.gov/index.cfm?ty=pbo>

Stalking statistics
<http://www.ncvc.org/src/AGP.Net/Components/DocumentViewer/Download.aspx?DocumentID=45862>

Stalking Victimization in the United States (2009)
<http://www.ojp.usdoj.gov/bjs/pub/pdf/svus.pdf>.

State Court Processing of Domestic Violence Cases (criminal) (2008)
<http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1201>

Center for Court Innovation

<http://www.courtinnovation.org/index.cfm?fuseaction=page.viewPage&pageID=550&documentTopicID=38>

Center for Disease Control

Adverse Health Conditions and Health Risk Behaviors Associated with Intimate Partner Violence. 2008. Morbidity and Mortality Weekly Report (February 2008).
<http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5705a1.htm>

Adverse Childhood Experiences Study
<http://www.cdc.gov/NCCDPHP/ACE/index.htm>

Costs of Intimate Partner Violence Against Women in the United States (2003)
http://www.cdc.gov/ncipc/pub-res/ipv_cost/IPVBook-Final-Feb18.pdf

The Effects of Childhood Stress on Health Across the Lifespan.
http://www.cdc.gov/ncipc/pub-res/pdf/Childhood_Stress.pdf

Dangerassessment.org (Dr. Jacqueline Campbell)

Intimate partner violence risk assessment
<http://www.dangerassessment.org/WebApplication1/pages/product.aspx>

Danger assessment questionnaire for victim
<http://www.dangerassessment.org/WebApplication1/pages/da/DAEnglish2010.pdf>

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Department of Health and Human Services

Child victims of human trafficking
http://www.acf.hhs.gov/programs/orr/programs/unaccompanied_alien_children.htm

Children and domestic violence
<http://www.childwelfare.gov/pubs/factsheets/domesticviolence.cfm>

Department of Justice

Guidelines for Non-discrimination of services to LEP persons
<http://www.justice.gov/crt/cor/lep/DOJLEPGuidApr122002.php>

Limited English Proficiency Resource Document
http://www.lep.gov/resources/tips_and_tools-9-21-04.htm

Misdemeanor Crimes of Domestic Violence-Information Needed to Enforce Firearm Prohibition
<http://www.fbi.gov/hq/cjisd/nics/mcdvbrochure.pdf>

Missing and Exploited Children's Program
<http://ojjdp.ncjrs.org/missing>
(202) 616-3637

Teaching Domestic Violence Legal Issues in the Law Schools
<http://www.ojp.usdoj.gov/ovc/publications/infores/etadv/advan.htm>

Family Violence Prevention Fund-

Collaborating to Help Human Trafficking Survivors
<http://www.endabuse.org/userfiles/file/ImmigrantWomen/Collaborating%20to%20Help%20Trafficking%20Survivors%20Final.pdf>

Facts on Children and Domestic Violence
http://www.endabuse.org/userfiles/file/Children_and_Families/Children.pdf
http://endabuse.org/userfiles/file/PublicPolicy/facts_children_dv.pdf

Facts on Domestic Violence
<http://www.lessonsfromliterature.org/docs/DomesticViolence.pdf>

Facts on Domestic, Dating and Sexual Violence
http://www.endabuse.org/userfiles/file/Children_and_Families/DomesticViolence.pdf

Facts on Immigrant Women and Domestic Violence
http://www.endabuse.org/userfiles/file/Children_and_Families/Immigrant.pdf

Power and Control Tactics Used Against Immigrant Women
<http://www.endabuse.org/userfiles/file/ImmigrantWomen/Collaborating%20to%20Help%20Trafficking%20Survivors%20Final.pdf>

Federal Bureau of Investigation

Hate Crime Statistics 2004, (Washington, DC: GPO, 2005)
<http://www.fbi.gov/ucr/hc2004/openpage.htm>.

Hate Crime Statistics, 2007 (Washington, DC: GPO, 2008),
<http://www.fbi.gov/ucr/hc2007/index.html>

Ford Foundation Innovation in Government Award winners
(List of finalists and winners including those whose programs focused on family violence, child abuse, elder abuse, and juvenile justice)

www.innovations.harvard.edu

Institute on Domestic Violence in the African American Community

www.dvinstitute.org/

(Located at the University of Minnesota School of Social Work)

International Child Abduction Database

<http://www.incadat.com/>

Judicial Education Center-domestic violence evidence chart

http://jec.unm.edu/resources/benchbooks/dv/hearsay_chart/index.htm

Legal Momentum

National Immigrant Victim Service Provider Resource Directory
http://www.legalmomentum.org/help-center/national-resources-for.html#Legal_Momentums_Immigrant_Women_Program_

Minnesota Center Against Violence and Abuse

Results of studies of families where both mothers and children are abused
<http://www.mincava.umn.edu/pages/link>

National Center for Missing and Exploited Children

<http://www.missingkids.com>
1-800-843-5678

National Center on Protection Orders and Full Faith and Credit

(Information and training on full faith and credit, firearms, inter-jurisdictional child custody issues, federal laws relating to domestic violence and stalking)

Home
http://www.bwjp.org/ncffc_home.aspx

Key Provisions of the UCCJA, PKPA, UCCJEA and ICWA for battered women
<http://www.bwjp.org/files/bwjp/files/Child%20Custody%20Flow%20Chart.pdf>

Interstate Child Custody: A practitioner's guide to the PKPA
<http://www.bwjp.org/publications.aspx>

Interstate Child Custody: a practitioner's guide to the UCCJEA
<http://www.bwjp.org/publications.aspx>

Model Law Enforcement Policy: protective orders and firearms in domestic violence cases
<http://www.bwjp.org/files/bwjp/files/ModelLEPolicyFINAL.pdf>

National Center for State Courts-

Benchmark for interpreters in protective order hearings

http://www.ncsconline.org/D_Research/Documents/LEP_AttachM_Benchmark-Final.pdf

Domestic Violence Resource Guide

<http://www.ncsconline.org/wc/courttopics/ResourceGuide.asp?topic=famvio>

Serving Limited English Proficiency Battered Women

http://www.ncsconline.org/D_Research/past_projects.htm#LEP

Leveraging Technology to Meet the Needs for Interpreters

<http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/accessfair&CISOPTR=184>

Limited English Proficiency and Access to Protection Orders (video)

<http://www.ncsconline.org/interpreting-dv-po/index.asp>

Model Policies and Procedures-Judge's Guide to Standards for Interpreted Proceedings

http://www.ncsconline.org/wc/publications/Res_CtInte_ModelGuideChapter6Pub.pdf

National Center for Victims of Crime-

Resource Library

http://www.ncvc.org/ncvc/main.aspx?dbID=DB_ReportsStudies213

Responding to Stalking

<http://www.ncvc.org/src/AGP.Net/Components/DocumentViewer/Download.aspx?DocumentID=47528>

Victim assistance for Lesbian, Gay, Bisexual, Transgender and Queer Victims of Hate Violence & Intimate Partner Violence

<http://www.ncvc.org/ncvc/AGP.Net/Components/documentViewer/Download.aspx?DocumentID=47632>

National Coalition Against Domestic Violence

www.ncadv.org

National Coalition of Anti-Violence Programs

Report on hate crimes against lesbian, gay, bisexual, and transgender people (2009)

http://ncavp.org/common/document_files/Reports/2008%20HV%20Report%20smaller%20file.pdf.

National Council of Juvenile and Family Court Judges

www.ncjfcj.org/domviol

Guide for Effective Intervention in Domestic Violence & Child Maltreatment Cases (the Green Book)

<http://www.thegreenbook.info/documents/Greenbook.pdf>

The Green Book Initiative

<http://www.thegreenbook.info/init.htm>

Guide for Effective Issuance and Enforcement of Protection Orders (the Burgundy Book)

http://www.ncjfcj.org/images/stories/dept/fvd/pdf/burgundy_book_final.pdf

Judicial Guide to Child Safety in Child Custody Cases

<http://www.ncjfcj.org/images/stories/dept/fvd/pdf/judicial%20guide.pdf>

Model Code on Domestic Violence

<http://www.aardvarc.org/programs/modelcodeondv.pdf>

Navigating Custody & Visitation Evaluation in Cases with Domestic Violence: A Judge's Guide

http://www.ncjfcj.org/images/stories/dept/fvd/pdf/navigating_cust.pdf

National Crime Victims Law Institute

www.lclark.edu/org/ncvli/ncvlilibrary.html

(Located at Lewis & Clark Law School, Portland, OR)

National Institute of Justice-

Best Practices Institute-Family Violence

<http://www.ncsconline.org/WC/Publications/BestPrac/BPFamVio.htm#judges>

Center for Family Violence and the Courts

<http://www.ncsconline.org/famviol/index.html>

Domestic Violence Courts

<http://www.ojp.usdoj.gov/nij/topics/courts/domestic-violence-courts/welcome.htm>

Serving Limited English Proficient Battered Women
<http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/accessfair&CISOPTR=26>

Violence Against Women and Family Violence Program
<http://www.ojp.usdoj.gov/nij/topics/crime/violence-against-women/welcome.htm>

National Network to End Domestic Violence

<http://www.nnedv.org/>

National Online Resource Center on Violence Against Women

Home
<http://www.vawnet.org/>

Interpersonal Violence and Women with Disabilities: A research update
http://new.vawnet.org/category/Main_Doc.php?docid=2077

Violence in the Lives of Persons who are Deaf or Hard of Hearing
http://new.vawnet.org/category/index_pages.php?category_id=966

National Sexual Violence Resource Center

<http://www.nsvrc.org/publications/nsvrc-publications>

Office of Violence Against Women

<http://www.ovw.usdoj.gov/overview.htm>

Rural Domestic Violence, Dating Violence, Sexual Assault, Stalking and Child Abuse Enforcement Assistance Program
http://www.raconline.org/funding/funding_details.php?funding_id=1413

Stalking: 2001 Report to Congress
<http://www.ncjrs.gov/pdffiles1/ojp/186157.pdf>

Stalking Resource Center

http://ncvc.org/src/main.aspx?dbID=dash_Home

State Department

Office of Children's Issues

http://travel.state.gov/abduction/abduction_580.html
(202) 736-7000

Trafficking in Persons Report (2008)
<http://www.state.gov/documents/organization/105501.pdf>.

Texas Council on Family Violence

www.tcfv.org

Texas Municipal Court Education Center

Magistrate's order of emergency protection form
<http://www.tmcec.com/tmcec/public/files/File/Resources/Final%20Website%20Forms%20Book/PDF/05%20Magistrate%20Duties.pdf>

Texas State Agencies

Texas Office of The Attorney General Sexual Assault Prevention and Crisis Services
www.oag.state.tx.us/victims/sapcs.shtml

Texas Office of The Attorney General Crime Victims Compensation
www.oag.state.tx.us/victims/cvc.shtml

Texas Department of Criminal Justice Victims Services Division
www.tdcj.state.tx.us/victim/victim-home.htm

Texas Office of the Governor Criminal Justice Division
www.governor.state.tx.us/divisions/cjd

Adult Protective Services
www.dfps.state.tx.us/Adult_Protection/About_Adult_Protective_Services/

Child Protective Services
www.dfps.state.tx.us/Child_Protection/About_Child_Protective_Services/

Texas Department of Health Council for Sex Offender Treatment
www.dshs.state.tx.us/csot/default.shtm

Texas Department of Human Services Office of Immigration and Refugee Affairs
www.dhs.state.tx.us/programs/refugee/

Texas Department of Public Safety Crime Statistics
www.txdps.state.tx.us/administration/crime_records/pages/crimestatistics.htm

University of Texas Libraries

<https://login.ezproxy.lib.utexas.edu/>
(Access to all UT libraries-requires login)

University of Texas Tarlton Law Library Catalogue

<http://tallons.law.utexas.edu/>
(Access to many journals and resources not available on Westlaw or Lexis)

Violence Against Women On-line Resources

<http://www.vaw.umn.edu/>

WomensLaw.org

http://www.womenslaw.org/simple.php?sitemap_id=9

MISCELLANEOUS RESOURCES

State sexual assault protective order statutes

http://www.rainn.org/pdf-files-and-other-documents/Public-Policy/Legal-resources/sa_cpo_chart.pdf

Department of Family and Protective Services

For reporting abuse against children, people with
disabilities or the elderly
Abuse/Neglect Hotline
1-800-252-5400

International Marriage Broker Regulation Act

Opinion upholding the constitutionality of the IMBRA with detailed explanation
of domestic violence and mail-order spouses.
<http://www.usaimmigrationattorney.com/JudgeCooperDecision.pdf>

National Domestic Violence Hotline

Crisis intervention, safety planning and referrals to local domestic violence
programs

1-800-799-SAFE (7233)
1-800-787-3224 (TTY) for the Deaf

Texas Advocacy Project

Information and referrals regarding legal issues.
Family Violence Legal Line
1-800-374-HOPE (4673)

Texas Association Against Sexual Assault

National Sexual Assault Hotline: 1-800-656-HOPE

Welfare benefits-waiver of time limits

Family Violence Option –Tex. Hum. Res. Code § 31.0322; 42 USC § 602(a)(7)