

# Municipal Court Recorder

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## Magistrate's Order for Emergency Protection

By Kimberly A.F. Piechowiak, Assistant City Attorney II  
Family Violence Prosecutor, San Antonio

In cases of domestic violence, victim safety should be a primary concern. State law has been crafted to emphasize this priority, not only for law enforcement personnel and prosecutors, but also for judicial officers. Article 5.01(b) of the Texas Code of Criminal Procedure states:

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

To assist a magistrate in fulfillment of this goal, Section 17.292 of the Code of Criminal Procedure allows for a Magistrate's Order for Emergency Protection (MOEP).

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## After the MOEP: What Happens Next?

By Robert J. Gradel, Municipal Judge, Lampasas

You head down to the jail on Sunday morning about 8:00 a.m. Eleven people have been arrested overnight, and your Sunday School class begins at 9:00 a.m., so you have no time to waste. Waiting for you is a woman (and her mother) who wants an emergency protective order. She tells you that her husband has an alcohol abuse problem. Last night, he clenched his fists like he was going to hit her, called her bad names, threatened her, pushed her, and threw the remote at her, all in front of the children. She has no visible red marks, bruises, or abrasions. He has done this before, but she never called the police. They have been married 10 years and have three children. The police officer who answered the call and made the arrest got off at 6:00 a.m. On his sketchy report, he indicated that he thought you should consider granting a protective order. The husband admits calling her bad names and having a

*After the MOEP continued on page 6*

## FAQs about MOEPs

By Karrie Key, Associate Judge, Austin

**1 Why do we need to worry about MOEP's?** Because the Code of Criminal Procedure instructs judges to extend maximum protection to victims of family violence. Art. 5.01, C.C.P.

**2 Do I need a motion from the arresting officer or the victim before I can issue a MOEP?** No. You may accept motions from a peace officer, the alleged victim, a prosecutor, or the guardian of the alleged victim. However, you may issue a MOEP on

your own motion. Practice tip: On the MOEP itself, never recite that the victim requested the MOEP. Remember, the defendant receives a copy. Given possibly volatile circumstances, I wouldn't alert the defendant that the victim requested a MOEP.

**3 Do I need a reason to issue a MOEP?** This is a great question. The statutes don't really address this

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## AROUND THE STATE

### TMCEC Legislative Update

TMCEC has added a *Lubbock Legislative Update* to its schedule of summer programs. It will be held on August 13 (Wednesday) at the Lubbock Holiday Inn Hotel & Towers (801 Avenue Q).

A limited number of sleeping rooms will be provided at grant expense. Please call TMCEC if you do not have a registration form. A check for \$50, payable to TMCEC, should be submitted with the registration form.

**Note:** The Lubbock *Update* is the **only** TMCEC Legislative seminar that is still open. Both Houston and Austin have wait lists.

### Looking Ahead: Fall Conferences

September 18-20, 2003 *Annual Meeting of the Texas Municipal Courts Association*, Galveston, San Luis Resort Spa. For more information, contact Judge Robert Richter, 281/333-9229 ([www.txmca.com](http://www.txmca.com)).

October 5-8, 2003 *Annual Conference of the Texas Court Clerks Association*, San Antonio, Holiday Inn Riverwalk. Contact David Preciado, 210/207-7109 for more information ([www.courtclerks.org](http://www.courtclerks.org)).

November 11-14, 2003 *Texas Teen Court Conference*, Wichita Falls. Contact Myra Weeks, Wichita County Teen Court, 940/716-8575 for more information ([www.tcat.com](http://www.tcat.com)).

November 19-22, 2003 *Texas Municipal League Annual Conference*, San Antonio. Contact TML for more information: 512/719-6300 ([www.tml.org](http://www.tml.org)).

### Certification Program Affiliates with Southwest Texas University

The Clerks Certification Program is now officially affiliated with South West Texas University. Faculty from SWT will participate in the governing committees for the program and as instructors in the training sessions. Special appreciation is shown to Dr. Quint Thurman, Chair of the Criminal Justice Department, and Judge David Perkins of New Braunfels who is also a Professor in the CJ Department. The University will change its name in the fall to Texas State University - San Marcos.



# FROM THE GENERAL COUNSEL

## W. Clay Abbott

### Constitutional & Statutory Victims' Rights

Many concerns about the impact of Magistrate's Order for Emergency Protection (MOEPs) on divorce and child custody cases are addressed by the recently passed changes to MOEPs in HB 297. A summary of that bill appears on page 8 in this newsletter.

Due to the nature of the offenses that come before the municipal court, we deal with victims far less than our counterparts in the higher courts. We are, however, obligated to follow the Texas Constitution and Code of Criminal Procedure in dealing with victims of crime when they come before our courts. As magistrates, the victim is rarely in attendance at a 15.17 hearing but, again, the rights provided to victims by the State Constitution and laws apply to the magistrate as well.

Article I, Section 30, Texas Constitution, provides to the victim of a criminal offense certain rights in the criminal justice system. A portion of that section is set out below:

*(a) A crime victim has the following rights:*

- (1) the right to be treated with fairness and with respect for the victim's dignity and privacy throughout the criminal justice process; and*
- (2) the right to be reasonably protected from the accused throughout the criminal justice process.*

*(b) On the request of a crime victim, the crime victim has the following rights:*

- (1) the right to notification of court proceedings;*

- (2) the right to be present at all public court proceedings related to the offense, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial;*
- (3) the right to confer with a representative of the prosecutor's office;*
- (4) the right to restitution; and*
- (5) the right to information about the conviction, sentence, imprisonment, and release of the accused.*

The rights due to a victim fall into two categories: rights that must be provided regardless of a request and rights guaranteed upon a request of the victim. A victim has the same right as a defendant to be treated with fairness, dignity, and respect. The victim is also provided with a right to privacy. This right to privacy must clearly be balanced with the defendant's rights to notice and other due process. It should not, however, be violated for the sake of expediency

or a lack of concern.

The other right that must always be provided is the right to be secure in the criminal justice process. If victims are harmed, threatened, or intimidated in our courtrooms and courthouses, then we have failed and need to close up our doors and go do something else. If a court of law is not a safe refuge, then there is no safe place; the victimizers win and "justice," "order," and "the rule of law" are meaningless phrases. Good security does not just happen. It is planned, carefully executed, and vigilantly enforced.

The rights due a victim on request are generally the right to notice, the right to be present, and the right to information. The prosecutor has a specific duty to confer with the victim. The prosecutor represents the State of Texas and not the victim, but has an obligation to hear the victim's entreaty and provide him or her information. The court also must be open to a victim and be free with information about the proceedings, procedure, and rulings of the court. The victim is still a witness and can be excluded from hearing testimony to protect the

### Recent CCA Opinion

If you are engaged in hearings or objections to Lidar or Radar under the *Daubert* or *Kelly* cases then you will want to take a look at *Hernandez v. Texas* No. 2053-01. The Court of Criminal Appeals returned the case on June 4, 2003. It can be found at [www.cca.courts.state.tx.us/opinions/205301a.html](http://www.cca.courts.state.tx.us/opinions/205301a.html). There are several opinions that can be found as 205301 (b)-(d). The opinion concerns urinalysis and addresses judicial notice and the record necessary to take notice. The case's impact on Lidar and Radar objections is significant, if not a little confusing, due to the number of opinions.

defendant's right to a fair trial, but the court's rulings should be thoughtfully made based on the individual circumstances and provide as much access to the victim as due process will allow.

The Texas Constitution also allows the Legislature to define what a "victim" is, and the Legislature has done so in Article 56.01(3), Code of Criminal Procedure. In that article, victim is defined as:

*a person who is the victim of sexual assault, kidnapping, or aggravated robbery or who has suffered bodily injury or death as a result of the criminal conduct of another.*

This definition excludes many "victims" that come into municipal court. Yet, while a person may not qualify as a victim in a case in municipal court, he or she may qualify as a victim in cases pending in a higher court. In that event, municipal courts do have a constitutional and statutory obligation to provide information, notice, and access. The interest of those citizens excluded from this definition should still be carefully guarded if our courts are to be courts of the people. In addition, the municipal judge as a magistrate will routinely interact with and impact persons defined by law as victims.

More significant details about a victim's rights are provided in Article 56.02, Code of Criminal Procedure. Portions of that article are set out below:

*(a) A victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:*

*(1) the right to receive from law enforcement agencies adequate protection from harm and threats of harm arising from cooperation with prosecution efforts;*

*(2) the right to have the magistrate take the safety of the victim or his family into consideration as an element in fixing the amount of bail for the accused;*

*(3) the right, if requested, to be informed:*

*(A) by the attorney representing the state of relevant court proceedings, including appellate proceedings, and to be informed if those proceedings have been canceled or rescheduled prior to the event; and*

...

*(4) the right to be informed, when requested, by a peace officer concerning the defendant's right to bail and the procedures in criminal investigations and by the district attorney's office concerning the general procedures in the criminal justice system, including general procedures in guilty plea negotiations and arrangements, restitution, and the appeals and parole process;*

...

*(8) the right to be provided with a waiting area, separate or secure from other witnesses, including the offender and relatives of the offender, before testifying in any proceeding concerning the offender; if a separate waiting area is not available, other safeguards should be taken to minimize the victim's contact with the offender and the offender's relatives and witnesses, before and during court proceedings;*

*(9) the right to prompt return of any property of the victim that is held by a law enforcement agency or the attorney for the state as evidence when the property is no longer required for that purpose;*

*(10) the right to have the attorney for the state notify the employer of the victim, if requested, of the necessity of the victim's cooperation and testimony in a proceeding that may necessitate the absence of the victim from work for good cause;*

...

*(b) A victim, guardian of a victim, or close relative of a deceased victim is entitled to the right to be present at all public court proceedings related to the offense, subject to the approval of the judge in the case.*

*(c) The office of the attorney representing the state, and the sheriff, police, and other law enforcement agencies shall ensure to the extent practicable that a victim, guardian of a victim, or close relative of a deceased victim is afforded the rights granted by Subsection (a) of this article and, on request, an explanation of those rights.*

*(d) A judge, attorney for the state, peace officer, or law enforcement agency is not liable for a failure or inability to provide a right enumerated in this article. The failure or inability of any person to provide a right or service enumerated in this article may not be used by a defendant in a criminal case as a ground for appeal, a ground to set aside the conviction or sentence, or a ground in a habeas corpus petition. A victim, guardian of a victim, or close relative of a deceased victim does not have standing to participate as a party in a criminal proceeding or to*

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*contest the disposition of any charge.*


Prosecutors and peace officers obviously have the greatest duty owed to the crime victim. Their duty is to protect, inform, notify, and listen. However, neither the police nor the prosecutor becomes the advocate for the victim. The police may not act as a legal advocate without violating rules against Unauthorized Practice of Law. The prosecutor's duty is to the State of Texas and must "see that justice is done," rather than simply advocate the victim's position. Both of these executive agents must, however, be available to victims to listen, consider, and explain.

There are several specific items that may be overlooked in municipal court. The victim is entitled to a separate

waiting room from the defendant and defense witnesses. Common sense and rudimentary security analysis should also mandate this. The prosecutor, if requested, has a duty to keep the victim informed of court dates, procedures, continuances, or delays.

Magistrates have two important duties to a victim. The first is to take the safety of the victim and his or her family into consideration as an element in fixing the amount of bail for the accused. Traditionally, the only bail issue was the amount necessary to secure the defendant's appearance. Now, the safety of the victim and the public are factors that must be incorporated into the magistrate's determination of bail amounts. The second duty may be harder to accommodate as a practical matter.

The victims, should they request, are entitled to be present at all public court proceedings in the case in which they are involved. This would include 15.17 hearings in the jail. Obviously, this may pose security and logistical problems. This right is "subject to the approval of the judge in the case." While it may not always be possible to accommodate, a blanket ban is also not appropriate. The magistrate should make every effort to provide for the rights and security of all persons affected.

It is an important task judges and court staff serve in protecting the rights of those accused of fine-only offenses. It is important that the security and rights of victims be protected as well. A justice system that fails to protect, inform, and provide access to defendants or victims is not just. 

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***MOEP continued from page 1***

In the ten years that I have been involved in family violence prosecution, first with the Bexar County District Attorney's Office and now the San Antonio City Attorney's Office, I have dealt with literally thousands of domestic violence complainants. It has been my experience that the majority of family violence victims not only reconcile with their batterer, they often attempt to drop charges and/or recant their original statements to police officers. A petition for divorce and/or custody is rarely pursued.

Given the dynamics of domestic violence, such behavior is not surprising and is also not usually an indicator that the violence did not occur. It is, more often than not, a symptom of the insidious nature of the crime and the fact that family violence perpetrators have an inordinate amount of control over their victims. That being said, not every self-proclaimed victim of domestic violence is a true victim. However, the percentage of false

victims is not nearly as high as some would have you believe. In fact, according to San Diego Sgt. Anne O'Dell (retired), there is no greater rate of false reporting for crimes involving domestic violence than for any other types of crimes. According to the Texas Council on Family Violence, the rate of false reports for all crimes is approximately three percent.

In cases of family violence, the suspect and the victim are usually married, live together, and/or have children together. A violent situation is complicated by the familiarity of the parties. If either party initiates divorce, custody, and/or visitation proceedings, the paramount concern of the Family Court is to order custody and visitation that is in the best interest of the child. While the potential exists that a MOEP can play a role in such determinations, it is rare for such an order to be the sole determining factor. I have conferred with local district court judges who routinely hear family law cases, and they seemed to agree that

the issuance of a MOEP is viewed as a "helpful indicator" rather than the final consideration when making their decisions.

Since the safety and security of children is so important, many types of evidence are, by necessity, taken into account. The presence of violence in the home is considered for both its direct impact on the physical safety of children (who often physically intervene when one parent is assaulting another), as well as its indirect effect on the child's future as a perpetrator or victim of violence. Children who merely witness domestic violence are six times more likely to commit suicide, and 24 times more likely to commit sexual assault than children who have not been exposed to such abuse. According to the American Bar Association, children of battered women are 15 times more likely than children from the general population to also be physically abused.<sup>1</sup> While there is no question that conditions ordered by a court




such as batterers' intervention, alcohol classes, and special exchange provisions can be difficult on children, the trauma of continued exposure to domestic violence cannot be ignored.

Taking into account the emphasis that has been placed on victim safety by the Texas Legislature, the potential benefits of issuing a MOEP must be acknowledged. A MOEP can help to immediately calm a heated and dangerous situation while allowing the parties to regroup and explore options. As previously stated, many victims do not pursue other legal remedies at all. Others may use the allotted time period to apply for a permanent protective order, during which the suspect is entitled to a full hearing. Either way, the MOEP expires no later than up to the 61<sup>st</sup> day after the day of issuance. After that, the existence of a permanent protective order determines the allowable contact between the parties.

It is important to remember that the magistrate can review the officer's determination of probable cause to arrest and require further information before issuance of the MOEP, such as having the arresting officer report back to the court so that the magistrate can make appropriate inquiries. Lack of physical injuries does not mean that the situation is not potentially lethal. The cycle of abuse leading up to serious injury often begins with assaults during which there is little to no injury.

Since many victims of domestic violence neither pursue legal remedies nor report the crimes to police, they and their families do not receive available assistance and protection. Many feel they will not be believed or that they cannot handle the stress of navigating a system that has not traditionally been progressive in providing the safety that the law has promised. MOEPs are among the tools that judicial officers have at their disposal to provide that safety.

Frequent training is also extremely important for all criminal justice personnel, as are carefully enforced "no-drop" prosecution policies, such as we have here at the San Antonio City Attorney's Office. The message must be sent to perpetrators that they can no longer control the system by intimidating victims into dropping the charges. Due to the very real danger of retaliation against a victim for pursuing criminal justice intervention, it is important for all system participants to utilize whatever tools are available under the law, and not depend on the victims for enforcement. It is up to the participants in the criminal justice system to make the law keep its promise. 

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<sup>1</sup>Due to the breadth of statistical and other information that is currently available on this issue, it is difficult to adequately discuss it at length in this article. However, for more information, please contact the Texas Council on Family Violence at [www.tcfv.org](http://www.tcfv.org) or 512/794-1133.

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After the MOEP continued from page 1

few beers, but denies he was trying to hurt her when he threw the remote (he didn't hit her anyway), and also denies he threatened her or clenched his fists at her. His mother-in-law confirms that he has not been treating her daughter right, but has never witnessed any violence towards her or the children. What are you going to do?

Issuance of Magistrate's Order for Emergency Protection (MOEPs) are a common occurrence for magistrates who set bonds for inmates at the local jails every morning. That encounter is usually very brief, and may be the last time the magistrate will see either of the individuals. But after the MOEP is issued, there can be far reaching ramifications in the criminal and family law arenas for the parties and the

children. The family violence accusations often occur in a context in which the parties are either married and/or have children together. When the magistrate sees the couple at the jail the morning after one of them has been arrested for prevention of family violence and assault, it is possible that some kind of family law litigation has already begun, or will shortly thereafter. After a divorce or Suit Affecting the Parent Child Relationship (SAPCR) case has been filed, there is usually a temporary hearing in which the trial court determines the primary residence of the parties and children, and sets the child support and visitation with the absent parent. The existence of a MOEP gives the victim a huge stick with which to figuratively beat up the other side at the next court hearing.

The public policy of the State of Texas is that children should have continuing and frequent contact with their parents (Section 153.001(a), Family Code). This is, of course, conditioned on the parent providing a safe, stable, and nonviolent environment for the child. The best interest of the child is always the court's primary consideration (Section 153.002, F.C.). It is presumed that a parent should be appointed a Joint Managing Conservator (JMC) of his/her child (Section 153.131, F.C.). JMC will give the absent parent the right to make many important decisions for the child, and usually results in restrictions on the custodial parent being allowed to relocate with the child to cities far away from the absent parent (Section 156.136, F.C.). Both the father and the mother have equal

legal standing when it comes to getting custody of the children (Section 153.003, F.C.).

The Standard Possession Order (SPO) visitation is presumed to be the minimum that a parent should receive (Section 153.252, F.C.). The SPO, when all alternative visitation periods are elected, results in the children spending about one-third of the time with the absent parent. Court orders pertaining to possession and access to the abuser's children are restricted by Section 153.004(c), F.C. If there is evidence of family violence within a two year period, the court is directed to consider that evidence in deciding whether to make the parties JMCs. If the court finds that there has been abuse, it is prohibited from making the parents JMCs of the children (Section 153.004(b), F.C.). This effectively eliminates the abuser from any chance of obtaining custody of the children. The court is further directed to make findings concerning access to the children by the abuser. The court can either (a) find that access would not endanger the children (not very likely); (b) enter an order completely eliminating visitation with the abuser (not too likely); or (c) render an order that includes supervised visitation, exchange of the children in a protective setting, alcohol counseling, and battering prevention classes (very likely). These orders are difficult on all the parties and their children, and dramatically reduce visitation with the absent parent.

When a divorce is filed, the *ex parte* temporary order may not kick the spouse out of the house without a hearing, unless there is also a protective order (Section 6.502, F.C.). Under the Family Code, an *ex parte* "kick-out" order is difficult to get from a divorce judge. Affidavits must be prepared and filed, the family violence must be recent, the victim must appear before the judge in

person, and the court may recess the hearing to contact the respondent (Sections 83.006, 83.007, F.C.). This is a big hassle. If a person was of a mind to abuse the system to get a "leg up" in the litigation, or to undo an adverse ruling in a previous hearing, the MOEP is very quick, cheap, and effective.

In the criminal context, a Texas resident is not eligible for a license to carry a concealed handgun if the person is restricted by a court protective order, or subject to a restraining order affecting the spousal relationship. Section 46.06(6) of the Penal Code prohibits a person from purchasing a handgun while under a protective order (Section 411.172(a)(13), Government Code). But the big net is cast by 18 U.S.C Sec 922(g)(8), which states:

*(g) It shall be unlawful for any person*

...

*(8) who is subject to a court order that*

*(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;*

*(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and*

*(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or*

*(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical*

*force against such intimate partner or child that would reasonably be expected to cause bodily injury;*

...

*to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.*

Once the person is under a protective order, mere possession of ammunition subjects that person to prosecution, the 2<sup>nd</sup> Amendment notwithstanding *United States v. Emerson*, 270 F.3rd 203 (2001).

One cannot underestimate the pressures that magistrates face when there is a request for a MOEP by a person who claims they were abused. The last thing the magistrate needs is to have a correspondent from the *Dallas Morning News* call for a comment after a request for a MOEP was denied, and the applicant was promptly killed by the abuser. But at the same time, family law litigants are becoming very savvy to the leverage a MOEP provides. Most magistrates are poorly equipped to deal with the request for issuance of a MOEP at the jail the morning after an arrest. The victim has obviously convinced the police officer that some action was necessary, but the police officer is rarely available, and the respondent has had no opportunity to consult with an attorney or produce witnesses. As magistrates, we need to be sensitive to the potential for abuse, and make a serious inquiry before issuing a MOEP. When I confronted the situation outlined in the first paragraph, I issued the protective order. I have had doubts about whether I made the right decision. ↵

issue (and there is no case law on point). The only statutory guidance is found in the statute referred to in Article 5.01, C.C.P.—judges should extend maximum protection to victims of family violence. Consider the position you are in: You have signed the probable cause affidavit, which means that probably family violence occurred. Should you always issue a MOEP? I don't. Magistrates could issue a MOEP in every case, but not necessarily order the defendant to stay away from a shared residence.

**4 Is a MOEP ever mandatory?**

You must issue a MOEP in cases alleging serious bodily injury or when a deadly weapon is used.

**5 Isn't it true that I may issue a MOEP only in assault cases?**

You may issue a MOEP in a case involving family violence or dating violence. Family violence includes any conduct that is intended to result in physical harm, bodily injury, assault, sexual assault, or a threat that reasonably places a victim in fear of imminent physical harm, bodily injury, assault or sexual assault. Dating violence carries the same definition, with the additional requirement that the victim and the defendant has or had a dating relationship. See, Section 71.003, *et seq* Family Code. So, depending on the facts, you could issue a MOEP in offenses including but not limited to criminal trespass, criminal mischief, burglary, sexual assault, injury to an elderly individual, injury to a child, and indecency with a child.

**6 In terms of timing, when must I issue a MOEP?**

You issue the MOEP when the defendant appears before you shortly after arrest. Each judge conducts the hearing a bit differently, but MOEPs are emergency, *ex parte* orders. The defendant need only listen to your instructions, ask questions about the terms of the order, and acknowledge receipt of the

order by signature. I do not ask for the defendant's side of the story. Some judges do. In my opinion, the better practice is to tell the defendant that you are issuing the order based on your assessment of the circumstances. I always tell them that I do not know if they are not guilty or guilty, and the MOEP has no impact on that question.

**7 Doesn't a MOEP contain a general "stay-away" provision?**

No. The MOEP statute allows a magistrate to order a defendant to stay away from the victim's (and/or a member of his or her her family or household) home, work place, school, day care, and college campus. In other words, the MOEP's "stay-away" provisions are place-specific. The

statute does not authorize a general "stay-away" order. Accordingly, the defendant and the victim may meet in a restaurant, a therapist's office, a lawyer's office, and so forth. Of course, if the defendant engages in any harassing, threatening, or assaultive conduct, the defendant may be arrested for that conduct and for violating the MOEP.

If you feel it is appropriate, you may require a "no contact with victim" as a condition of release on bond. You may also add home curfew and electronic monitoring as a condition of release. See, Art. 17.34, C.C.P.

**8 Under what circumstances may I modify a MOEP?\***

You may modify the protective order on your own motion, the defendant's motion,

FAQs continued on page 10

**\*New Legislation Concerning Modifying MOEPs**

*Subject: MOEP Conflicts, Modifications, and Transfers*  
*HB 297*

*Effective Date: September 1, 2003*

Act amends Article 17.292, Code of Criminal Procedure, by adding two new sections and amending a third. The addition of subsections (f-1) and (f-2) clarify that a protective order subsequently issued by a family law court after a hearing (Chapter 85, Subtitle B, Title 4, Family Code, or under Title 1 or Title 5, F.C.) controls over the Magistrate's Order for Emergency Protection (MOEP). A temporary *ex parte* order issued by the family court (Chapter 83, Subtitle B, Title 4, F.C.) does not control over the magistrate's order, unless the judge making such an order is informed of the existence of the MOEP and specifically dictates that the new order supercedes the MOEP.

Perhaps more importantly, amendments to Article 17.292(j), Code of Criminal Procedure, allow the issuing magistrate to modify the MOEP after notice and a hearing. To make the modification the magistrate must find: (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. All three findings must be established at a hearing after notification of every affected party. This would include both the protected parties and the prosecutor.

Finally, the act goes on to allow transfer of the MOEP to the trial court with jurisdiction of the offense which gave rise to the MOEP. The transfer can only take place upon agreement of the parties—presumptively the Defendant and the State—or upon a motion, notice and a hearing. Since the action is a transfer to the trial court, the motion and the hearing should be before the magistrate.

The change in law applies only to a MOEP issued after September 1, 2003.



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# Domestic and Family Violence: Vicarious Trauma and Judges

By Peter Jaffe, PhD

Over the past decade, there has been increasing recognition of the impact of working with trauma victims on the helpers themselves. The term vicarious trauma, (or secondary trauma, or compassion fatigue), describes this impact in which the helper develops symptoms that parallel the symptoms of the trauma victim. In fact, the DSM IV (Diagnostic and Statistical Manual) of the American Psychiatric Association suggests that the development of post-traumatic stress disorder (PTSD) can happen from witnessing or hearing graphic details of life threatening events.

When the term *helper* is used, we most often picture a therapist for sexually abused children, an emergency room doctor, or a police officer investigating a homicide. However, judges face the same challenges in the courtroom (as do prosecutors and other lawyers). Judges may face greater obstacles in confronting these problems because they are supposed to remain neutral and unemotional in reviewing the

“facts” of a case before their findings and ultimate decision.

As a forensic psychologist with close to 30 years of experience working with the justice system in the areas of domestic violence, child abuse, and child custody litigation, I have gained some insight into the plight of many judges in this area. Although community members may perceive judges as privileged in their power and prestige, their suffering is no less significant, both personally and to the administration of justice itself. Their physical and emotional health is essential for an accessible and effective courtroom.

In my work as a consultant to the National Council of Juvenile and Family Court Judges and the Family Violence Prevention Fund in their program for judges entitled *Enhancing Judicial Skills in Domestic Violence Cases*, I have begun to survey participant judges on the impact of their work. Many of the participants sit on the

criminal or civil bench, and some specialize in domestic violence courts. With very few exceptions, judges can relate to the impact of traumatic material on themselves and their colleagues. Domestic homicides, horrific assaults, and sexual exploitation of children relived in court by 911 tapes, graphic photographs, and victim-impact statements are examples of traumatic material.

Vicarious trauma may be exhibited by a wide variety of symptoms that are emotional, interpersonal, cognitive, behavioral, and even spiritual. Judges have described how the nature of what they see and hear in the courtroom can shake their very faith in humanity. Along the way they describe depression, anxiety, sleep disturbances, hypervigilance, nightmares, and withdrawal from family and friends. The impact may be mild and short term or last for years and require mental health

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*continued*

## ***Amicus Curiae***

The *Amicus Curiae* program is designed to identify and assist members of the judiciary who have impairments and to provide a confidential resource for those judges to seek help. Impairments include substance abuse, addictions, and mental or emotional disorders. This program operates within the disciplinary role of the State Commission on Judicial Conduct.

*Amicus Curiae* translates as “friend of the court.” The program is the first of its kind in the United States. The program is voluntary and confidential. *Amicus* locates treatment resources, refers judges to needed services, monitors judges through appropriate recovery programs, and provides them with motivation and support throughout their recovery process. Its goal is to assist judges in locating

resources that can help identify and treat impairments that may be affecting their personal lives and their performance on the bench. For further information, contact Elaine Thompson (Program Manager) at the State Commission on Judicial Conduct, P.O. Box 12265, Austin, TX 78711, 512/463-8138 or 877/228-5750 (toll free).

intervention. The clinical literature in this field stresses that these reactions are normal in the context of the violence that is being considered on a daily basis.

The impact of this trauma is unique for each judge and interacts with a number of factors such as their own background, personal circumstances, and perceived support for their role in the community. In general, judges who have experienced abuse themselves in childhood or in their adult years may suffer greater vicarious trauma. Judges who are hearing cases of unspeakable abuse to young children the same ages as their own children may experience more profound effects. As well, judges who are struggling with life crises, such as illness, may be impacted in more pronounced ways.

Vicarious trauma also can be compounded by stress and burnout. Judges who are experiencing heavy dockets, budget cutbacks, and lack of resources may feel more hopeless about the challenges presented by cases of domestic violence and child abuse. The current budget crises across all states have forced judges to cope with greater volumes of cases without adequate court or community resources. Longer serving judges describe more short and long-term symptoms. Female judges appear to have more symptoms, but this finding may relate to gender differences in expressing feelings and innermost thoughts on this emotionally laden subject.

On a hopeful note, many judges articulate key coping and prevention strategies that are supported by the current research and clinical literature in this field. The key elements appear to be a search for balance between the bench and a home life as well as play and restful activities. An awareness of the importance of exercise and diet is essential to survival. Many judges stress the role of hobbies far removed

from the bench, such as gardening and antique collecting. Some judges seek mentors and training opportunities that nourish their life-long learning and support from colleagues. Most judges wish someone had addressed this topic prior to their election or appointment or early in their career. Some judges have begun discussions on this topic as part of regular judicial meetings and build in more peer support or access to specialized counselors.

We are in the process of analyzing surveys from more than 100 judges who identify their struggles with vicarious trauma, as well as their coping strategies. We hope to write a more detailed article for the field. From our work thus far, we believe that this issue needs to be raised in judicial workshops and meetings to provide understanding and support and to enhance the effectiveness and well-being of judges. The taxing expectations and demands placed on our colleagues in the justice system leave us no option to ignore this issue.✍

### Suggested Readings

Cerniss, Cary (1995). *Beyond Burnout*. New York: Routledge.

Covey, Stephen (1994). *First Things First*. New York: Fireside.

Covey, Stephen (1989). *The Seven Habits of Highly Effective People*. New York: Fireside.

Figley, C.R. (1995). *Compassion Fatigue: Coping with Secondary Traumatic Stress Disorder in Those Who Treat the Traumatized*. New York: Brunner/Mazel Publishers.

Hanb, Thich Nhat (1991). *Peace is Every Step: The Path of Mindfulness in Everyday Life*. New York: Bantam.

Herman, Judith Lewis (1992). *Trauma and Recovery: The Aftermath of Violence – from Domestic Abuse to Political Terror*. Basic Books.

Maslach, Christina (1982). *Burnout: The Cost of Caring*. Spectrum Books, Prentice-Hall.

Noer, D.M. (1993). *Healing the Wounds: Overcoming the Trauma of Layoffs and Revitalizing Downsized Organizations*. California: Jossey-Bass Inc. Publishers.

Perlman, L.A. & Saakvitne (1995). *Trauma and the Therapist*. New York: W.W. Norton & Co.

St. James, Elaine (1996). *Living the Simple Life*. New York: Hyperion.

Wilson, J.P. & Lindy, J.D. (Eds.) (1994). *Countertransference and the Treatment of PTSD*. New York: The Guilford Press.

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Dr. Peter Jaffe is presently the Director of the Centre for Children and Families in the Justice System of the London Family Court Clinic (London, Ontario, Canada), which is a children's mental health centre specializing in issues that bring children and families into the justice system.

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### FAQs continued from page 8

or the victim's motion. If the defendant calls you or files a motion to modify, my advice is that you tell the defendant that his or her attorney must contact you. If you are going to consider the defendant's motion, and it is unopposed by the protected person, try to ensure that the protected person has at least spoken to a victim counselor. If they have not done so, try to find someone to counsel them.

If the protected person opposes the defendant's motion, and you are considering granting the defense motion, conduct a hearing. Serve notice on the parties and record the hearing.

If the victim contacts you and requests modification, you can make your decision solely on her or his statement. Or you can insist that the victim receive some counseling before you even entertain the motion. If you are a

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*FAQs continued on page 14*

NO. \_\_\_\_\_  
THE STATE OF TEXAS § IN THE \_\_\_\_\_ COURT  
VS. § OF  
\_\_\_\_\_ § \_\_\_\_\_ COUNTY, TEXAS  
Defendant

**MAGISTRATE'S ORDER FOR EMERGENCY PROTECTION**

On this day, Defendant, \_\_\_\_\_, appeared before the Court after arrest for an offense involving:

- \_\_\_\_\_ family violence; or
- \_\_\_\_\_ stalking under Section 42.072 of the Texas Penal Code.

The Court considered entering a Magistrates Order for Emergency Protection pursuant to Art. 17.292 of the Texas Criminal Procedure — Code and Rules:

- \_\_\_\_\_ on its own motion;
- \_\_\_\_\_ at the request of the:
  - \_\_\_\_\_ victim, \_\_\_\_\_;
  - \_\_\_\_\_ guardian of the victim, \_\_\_\_\_;
  - \_\_\_\_\_ peace officer, \_\_\_\_\_;
  - \_\_\_\_\_ attorney representing the State, \_\_\_\_\_; or

\_\_\_\_\_ as a matter of law after the Court's finding that the Defendant has been arrested for an offense that also involves:

- \_\_\_\_\_ serious bodily injury to the victim;
- \_\_\_\_\_ the use of exhibition of a deadly weapon during the commission of an assault.

**Protected Person(s):**

Based on the information presented, this Court enters this Order for Emergency Protection on behalf of the following persons: \_\_\_\_\_.

**Prohibited Acts:**

IT IS HEREBY ORDERED that effective immediately Defendant (date of birth: \_\_\_\_\_, driver's license no. \_\_\_\_\_) is prohibited from:

- \_\_\_\_\_ committing family violence or an assault on the person protected under the 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 protected under the order;
- \_\_\_\_\_ going within \_\_\_\_\_ (specify minimum distance) of the residence, \_\_\_\_\_ (put address here unless requesting confidentiality), place of employment, \_\_\_\_\_ (put address here unless requesting confidentiality), or business, \_\_\_\_\_ (put address here unless requesting confidentiality), of a member of the family or household or of the person protected under the order;
- \_\_\_\_\_ going within \_\_\_\_\_ (specify minimum distance) the residence, \_\_\_\_\_ (put address here unless requesting confidentiality), child care facility, \_\_\_\_\_ (put address here unless requesting

NO. \_\_\_\_\_  
EL ESTADO DE TEXAS § EN LA CORTE \_\_\_\_\_  
CONTRA § DE  
\_\_\_\_\_ § CONDADO \_\_\_\_\_  
Acusado TEXAS

**ORDEN DE EMERGENCIA DE PROTECCIÓN DEL MAGISTRADO**

En este día, el Acusado, \_\_\_\_\_, se presentó enfrente de esta Corte después de haber sido arrestado por una ofensa que involucra:

- \_\_\_\_\_ violencia familiar; o
- \_\_\_\_\_ acechando bajo la sección 42.072 del Código Penal de Texas.

La Corte ha considerado una Orden de Emergencia de Protección del Magistrado como seguimiento al Artículo 17.292 de los Procedimientos Criminales de Códigos y Reglamentos de Texas:

- \_\_\_\_\_ por su propia moción;
- \_\_\_\_\_ requerido por:
  - \_\_\_\_\_ víctima, \_\_\_\_\_;
  - \_\_\_\_\_ tutor de la víctima, \_\_\_\_\_;
  - \_\_\_\_\_ oficial de la paz, \_\_\_\_\_;
  - \_\_\_\_\_ abogado representando al Estado, \_\_\_\_\_; o

\_\_\_\_\_ como asunto de la ley después de que la Corte haya encontrado que el Acusado fue arrestado por una ofensa que involucró:

- \_\_\_\_\_ serios daños físicos a la víctima;
- \_\_\_\_\_ exhibición de un arma de gravedad durante un acto de agresión.

**Persona(s) Protegida(s):**

Basado en la información que fue presentada, esta Corte otorga una Orden de Emergencia de Protección para las personas nombradas a continuación: \_\_\_\_\_.

**Actos Prohibidos:**

POR ESTE MEDIO ESTÁ ORDENADO que queda en efecto de manera inmediata, que el Acusado (fecha de nacimiento: \_\_\_\_\_, número de licencia de conducción \_\_\_\_\_) tiene prohibido:

- \_\_\_\_\_ cometer actos de violencia familiar o agredir a la persona protegida bajo la orden;
- \_\_\_\_\_ cometer un acto que implique una ofensa de violencia familiar bajo la Sección 42.072, del Código Penal (acecho);
- \_\_\_\_\_ comunicándose directamente con un miembro de la familia o de la vivienda o con la persona protegida bajo la orden de una manera amenazante o de manera acosante;
- \_\_\_\_\_ comunicando una amenaza a través de cualquier persona, hacia algún miembro de la familia de la vivienda o con la persona protegida bajo la orden;
- \_\_\_\_\_ acercándose \_\_\_\_\_ (especifique distancia mínima) a la residencia localizada en \_\_\_\_\_;

confidentiality), or school, \_\_\_\_\_ (put address here unless requesting confidentiality), where a child protected under the order resides or attends; and

\_\_\_\_\_ **possession of a firearm.**

**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.

**Delivery of Order:**

IT IS ORDERED that the Clerk of the Court shall send a copy of this order to the:

\_\_\_\_\_ Chief of Police in the municipality where the member of the family or household or individual protected by the order resides.

\_\_\_\_\_ Sheriff or Constable of the county where the member of the family or household or individual protected by the order resides.

\_\_\_\_\_ Principal, director, or person in charge of the school or childcare facility attended by a person protected by the order and named herein.

\_\_\_\_\_ Victim (*if not present at hearing*).

**Notice to the Victim:**

IT IS ORDERED that a law enforcement officer shall make a good faith effort to notify, within 24 hours, the victim that this order has been issued by calling the victim's residence and place of employment.

**Suspension of Concealed Handgun License:**

IT IS ORDERED that the license to carry a concealed handgun of \_\_\_\_\_, Defendant, is suspended for the duration of this order. A copy of this order shall be forwarded to the Concealed Handgun Licensing Unit, Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143. On receipt of this order suspending the license to carry a concealed handgun, the department shall record suspension of the license, report the suspension to the local law enforcement agencies, as appropriate, and demand surrender of the suspended license from the license holder.

o lugar de trabajo localizado en \_\_\_\_\_ a un miembro de la familia o de la vivienda o con la persona protegida bajo la orden; \_\_\_\_\_ acercándose \_\_\_\_\_ (especifique distancia mínima) a la residencia localizada en \_\_\_\_\_; guardería localizada en \_\_\_\_\_; o escuela localizada en \_\_\_\_\_, donde un niño protegido bajo esta orden atiende o vive, y \_\_\_\_\_ posesión de un arma de fuego.

**Confidencia del Domicilio:**

\_\_\_\_\_ Basado en los hechos presentados, la Corte encuentra que para mantener la seguridad de la persona o personas protegidas bajo esta orden, los domicilios y localidades específicas de la persona o personas protegidas por esta orden se mantendrán de manera confidencial y serán excluidas en la orden.

**Entrega de la Orden:**

ESTA ORDENADO que el Funcionario de la Corte deberá mandar una copia de esta orden: \_\_\_\_\_ al Jefe de Policía del municipio donde reside la persona o personas protegidas bajo esta orden.

\_\_\_\_\_ al Alguacil o Agente del condado donde reside la persona o personas protegidas bajo esta orden.

\_\_\_\_\_ al director o a la persona encargada de la escuela o guardería donde atiende una de las personas protegida y nombrada bajo esta orden.

\_\_\_\_\_ a la víctima (sino está presente en el tribunal).

**Aviso a la Víctima:**

QUEDA ORDENADO que un oficial de la ley deberá en buena fe hacer un esfuerzo para notificarle a la víctima por medio de una llamada a su hogar o lugar de empleo, en un periodo de 24 horas, que esta orden ha sido entregada.

**Suspensión de la Licencia Para Portar un Arma de Fuego Ocultada:**

QUEDA ORDENADO que la licencia para portar un arma de fuego ocultada de \_\_\_\_\_, Acusado, queda suspendida por la duración de esta orden. Una copia de esta orden será enviada a: Concealed Handgun Licensing Unit, Department of Public Safety, P.O. Box 4143, Austin, and Texas 78765-4143. En el momento que dicho departamento recibe la orden de suspensión de la licencia para portar armas de fuego, el departamento debe de documentar la suspensión de la licencia, reportar la suspensión a las agencias locales que hacen cumplir la ley, y pedir el rendimiento de la licencia al dueño.

**Duration of Order:**

This Order is effective upon issuance and shall remain in full force and effect until midnight on \_\_\_\_\_, \_\_\_\_\_ (this date should be no less than 31 and up to 61 days from the date of issuance).

Signed at \_\_\_\_\_ a.m./p.m. on this day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Judge Presiding, \_\_\_\_\_

**WARNING**

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

**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**

**WARNING UNDER FEDERAL LAW**

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

**INTERSTATE VIOLATION OF THIS ORDER MAY SUBJECT THE RESPONDENT TO FEDERAL CRIMINAL PENALTIES. 18 U.S.C. §§ 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 TEN YEARS IN PRISON AND/OR A FINE.**

**Duración de la Orden:**

Esta orden toma efecto en el momento que es emitida y se mantendrá válida hasta la media noche del día \_\_\_\_\_, 20\_\_\_\_ (no menos de 31 y no más de 61 días de la fecha que fue emitida).

Firmada a la(s) \_\_\_\_\_ a.m./p.m. en este día de \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Juez Presidiendo, \_\_\_\_\_

**ADVERTENCIA**

**ES UNA VIOLACIÓN DE ESTA ORDEN COMETER UN ACTO PROHIBIDO POR LA ORDEN, Y PUEDE SER CASTIGADO CON UNA MULTA DE NO MÁS DE \$4,000 O SIENDO ENCARCELADO POR UN PERIODO DE NO MÁS DE UN AÑO O AMBOS. UN ACTO QUE RESULTA EN VIOLENCIA FAMILIAR O UNA OFENSA DE ACECHAMIENTO, PUEDE SER ENJUICIADO POR SEPARADO COMO UN DELITO MENOR O UN DELITO GRAVE. SI UN ACTO ES ENJUICIADO COMO UN DELITO GRAVE POR SEPARADO, SERÁ CASTIGADO CON ENCARCELAMIENTO EN UNA PRISIÓN POR UN PERIODO DE NO MENOS DE DOS AÑOS. POSESIÓN DE UN ARMA DE FUEGO POR UNA PERSONA QUE NO SEA UN OFICIAL DE LA PAZ, COMO ES DEFINIDO EN LA SECCIÓN 1.07, DEL CÓDIGO PENAL, QUE ESTÁ PARTICIPANDO DE MANERA ACTIVA COMO EMPLEADO DE TIEMPO COMPLETO DE UNA AGENCIA ESTATAL O UNA SUBDIVISIÓN POLÍTICA, QUE HAYA SIDO JURADO BAJO LA LEY, QUE ES SUJETO A ESTA ORDEN, PUEDE SER ENJUICIADO CON UNA OFENSA POR SEPARADO Y CASTIGADA CON ENCARCELAMIENTO.**

**NINGUNA PERSONA, INCLUYENDO A LA PERSONA QUE ES PROTEGIDA BAJO ESTA ORDEN, PUEDE DAR PERMISO QUE ALGUIEN IGNORE O VIOLE CUALQUIER PROVISIÓN DE ESTA ORDEN. DURANTE EL PERIODO QUE ESTA ORDEN ES VÁLIDA, TODAS LAS PROVISIONES DE ESTA ORDEN SERÁN TOTALMENTE ENFORZADAS A MENOS QUE LA CORTE CAMBIE LA ORDEN.**

**ADVERTENCIA BAJO LA LEY FEDERAL**

**ESTA ORDEN ES ENFORZADA EN LOS CINCUENTA ESTADOS, EL DISTRITO DE COLUMBIA, TIERRAS TRIBALES Y TERRITORIOS DE LOS ESTADOS UNIDOS. 18 U.S.C. §2265**

**VIOLACIÓN ENTRE-ESTATAL DE ESTA ORDEN PUEDE SOMETER AL ACUSADO A CRIMENES PENALES EN EL ÁMBITO FEDERAL. 18 U.S.C. §§ 2261, 2262**



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

**RESPONDENT'S ACKNOWLEDGEMENT OF RECEIPT OF ORDER**

I, \_\_\_\_\_ (name of Defendant), the Defendant in this case received a copy of the Magistrate's Order For Emergency Protection in open court, on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Defendant

**STATEMENT OF SERVICE**

I the undersigned hereby state that I gave a copy of the Magistrate's Order for Emergency Protection attached hereto to the Defendant named above at \_\_\_\_\_ a.m./p.m. on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

POSESIÓN, TRANSPORTACIÓN O RECIBIMIENTO DE UN ARMA DE FUEGO MIENTRAS ESTA ORDEN ESTÁ EN EFECTO PUEDE SER UN DELITO GRAVE BAJO LA LEY FEDERAL, Y CASTIGADA CON ENCARCELAMIENTO DE UN PERIODO DE NO MÁS DE DIEZ AÑOS Y/O UNA MULTA.

ES ENCONTRA DE LA LEY QUE UNA PERSONA QUE SEA SUJETO EN UNA ORDEN DE PROTECCIÓN, TENGA UNA ARMA DE FUEGO O MUNICIONES. 18 U.S.C. §922(G)(8).

**RECONOCIMIENTO DEL ACUSADO DE HABER RECIBIDO LA ORDEN**

Yo, \_\_\_\_\_ (nombre del Acusado), el Acusado en este caso recibí una copia de la Orden de Emergencia de Protección del Magistrado en un tribunal abierto, el \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Acusado

**DECLARACIÓN DE SERVICIO**

Yo con mi firma a continuación, estoy declarando que le di una copia aquí adjunta de la Orden de Emergencia de Protección del Magistrado al Acusado nombrado anteriormente, a la(s) \_\_\_\_\_ a.m./p.m. el \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Nombre

\_\_\_\_\_  
Título

**FAQs continued from page 10**

court of record, conducting the hearing on the record is always the better practice.

A magistrate may, of course, modify the MOEP on his or her own motion.


**9 Do I need to talk to the victim before I issue a MOEP?** No. In some cases, the need for a MOEP is obvious or statutorily required. In the best of all possible worlds, a judge should have a victim counselor contact the victim. In Austin, we are lucky enough to have MOEP attorneys (typically a volunteer attorney) who call victims. However, late nights and some weekends, I do contact victims. If you choose to speak to the victim, your judicial demeanor is very

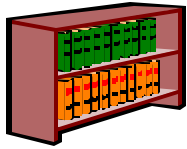
influential. If you wish, you may express empathy for the victim's stress and injuries, and assure him or her you will mobilize available resources. Always let the victim know that while a MOEP may offer some protection, it is not a shield. The victim should prepare a safety plan (e.g., notifying neighbors to call the police if defendant is seen in the neighborhood.) Remind the victim that a MOEP cannot keep the defendant 200 feet away from his or her person, only away from work, school, and home.

**10 What if the victim wants to come to the MOEP hearing?** Assure the victim that he or she will receive a copy in the mail. However, if he or she wants to come to the hearing,

he or she has the right to do so.

**11 What if the victim tells me that she wants to move out of state and just needs time to pack and move—can I issue a MOEP for two weeks?** Before September 1, 1999, the duration was no longer than 31 days. In 1999, the statute was amended to provide that the MOEP may remain in effect up to the 61<sup>st</sup> day of issue, but not less than 31 days after issue. I suppose modification would be an option under these facts. You could conduct an inquiry, make sure the victim is relocated and safe, and then modify.

If you have questions or comments, send Judge Key an email: [karrikey@yahoo.com](mailto:karrikey@yahoo.com) 



## RESOURCES FOR YOUR COURT

### DPS Forms

The Department of Public Safety (DPS) will no longer accept requests for driving records that are not on the required DR-1 form designed by the DPS. Forms created by other entities do not include all the information required by statute to produce a driving record. **All driving record requests received not utilizing this form will not be processed and will be returned to the requestor.** If you have any forms on hand with a revision date prior to 9/01, please destroy.

These forms may be reproduced on a standard 8½ X 11 size paper. Or, you can visit the DPS web site at: [www.txdps.state.tx.us](http://www.txdps.state.tx.us) under the online services, downloadable forms and print the DR-1 form.

### Purchase Family Violence Materials

The Texas Council on Family Violence (TCFV) offers a variety of materials to conduct domestic violence training. Materials available from TCFV (shown on pages 15 & 17) are helpful in promoting a violence-free society and the message that family violence is everyone's business.

#### *Circle of Accountability*

"Circle of Accountability" is a 17-minute video about the law enforcement and criminal justice response to the crimes of family violence. Also featured are men who

*TCFV Materials continued on page 17*

## Family Violence Policy Good for Workplace

### NCSC Creates Policy as Role Model for Courts

Continuing with its leadership role in the field of domestic violence, the National Center for State Courts (NCSC) incorporated a domestic violence workplace policy to its employee handbook, effective Jan. 1, 2003. By doing so, NCSC becomes one of the first court organizations in the country to enact such a policy.

The policy, developed by NCSC's Family Violence Community of Practice, has two specific intentions:

- To increase staff awareness of how domestic violence can impact employees and the workplace.
- To outline actions courts and staff members can take to provide assistance and resources to those affected by violence in the home.

In addition, the policy serves as a model for state courts across the country in how to introduce such

policies to the workplace.

"By enacting this policy, it is our hope that courts and other agencies will be encouraged to examine their own internal staff-related policies and take steps to develop a domestic violence workplace policy," said Brenda Uekert, NCSC senior research associate and a member of the Family Violence Community of Practice. NCSC researchers can assist courts that are interested in developing a domestic violence workplace policy specific to their needs, Uekert said.

A court implementing such a policy sends a signal that the court understands the tremendous impact domestic violence can have on employees and the workplace. Only an estimated five percent of companies have a policy to address domestic violence. That number is even smaller from courts and justice agencies,

although they see firsthand in their courtrooms every day the serious consequences that result from domestic violence.

The employee policy includes:

- **Education Program.** NCSC will provide training to increase awareness of the problem, to identify available resources and how to access them, and to educate supervisors how to support and counsel employees affected by family violence.
- **Counseling Assistance/ Intervention.** NCSC will maintain a registry of community agencies and organizations for referral. The NCSC Human Resources Department will advise employees how to access the resources covered by their insurance plan.

- **Performance Management.** NCSC will provide a reasonable amount of time for employees to get assistance.
- **Time Off.** Recognizing that employees experiencing family violence may be required to take time off for medical, legal, and family matters, NCSC will work with the employee to create a work schedule that accommodates these matters. Possibilities include flexible work schedules, family and medial leave, short-term disability, and personal leave of absence.
- **Confidentiality.** Employees can expect their disclosures to supervisors and Human Resources to remain confidential.

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## Family Violence Online Newsletter

The Family Violence Community of Practice newsletter is intended to share ideas and keep colleagues informed about practices that improve the justice system's response in family violence cases. More resources can be found on the NCSC website at www.ncsconline.org in the Court Information topic folder on Juvenile and Family Justice. Recent issues have focused on elder abuse and family violence in the military. The newsletter can be accessed online at www.ncsconline.org/Projects\_Initiatives/index.htm. Scroll down to the Communities of Practice section and click onto one of the newsletter issues.



# TMCEC PROGRAM AUDIOTAPES

The following are audiotape recordings from TMCEC's *Midland Regional 12-Hour Judges and Clerks Programs*. Duplicates are available through the Center at no charge; one set per court.



### JUDGES PROGRAM:

- \_\_\_ *The Law of Racial Profiling* — W. Clay Abbott, General Counsel, TMCEC
- \_\_\_ *Ethics* — Robin Smith, Presiding Municipal Judge, Midland
- \_\_\_ *Federal & State Case Law Update* — Ryan Turner, Program Attorney and Deputy Counsel, TMCEC
- \_\_\_ *The Importance of Diversity & Cultural Awareness in Municipal Court* — Ana M. Otero, Municipal Judge, Houston
- \_\_\_ *Working with Your Clerk* — C. Victor Lander, Municipal Judge, Dallas
- \_\_\_ *Forms Clinic* — Margaret Robbins, Program Director, TMCEC
- \_\_\_ *Fine Collections: Changing to a Proactive Approach* — Jim Lehman, Collections Specialist, Office of Court Administration
- \_\_\_ *Judgments & Enhancements* — Ross Fischer, County Attorney, Kendall County
- \_\_\_ *Personal Safety & Court Security* — Robert Williams, ASTEP Seminars, Austin
- \_\_\_ *Dealing with the Media* — W. Clay Abbott, General Counsel, TMCEC
- \_\_\_ *Magistrate's Order of Emergency Protection* — Karrie Key, Municipal Judge, Austin
- \_\_\_ *Radar & Laser: The Law & Science* — Robert Barfield, Municipal Judge, Pasadena
- \_\_\_ *Judicial Immunity* — Ninfa Mares, Chief Municipal Judge, Fort Worth
- \_\_\_ *Texas Fair Defense Act* — Wesley Shackelford, Special Counsel - Task Force on Indigent Defense, Office of Court Administration, Austin
- \_\_\_ *Disqualification & Recusal* — Linda Frank, Municipal Judge, Plano
- \_\_\_ *Attorney General Opinion Update* — Jeff Moore, Assistant Attorney General, Chief - Municipal Affairs Division, Austin
- \_\_\_ *Indigence & Enforcement* — Ryan Turner, Program Attorney and Deputy Counsel, TMCEC

### CLERKS PROGRAM:

- \_\_\_ *Ethics* — Margaret Robbins, Program Director, TMCEC
- \_\_\_ *Authority and Duties* — W. Clay Abbott, General Counsel, TMCEC
- \_\_\_ *Court Technology* — Jo Dale Bearden, Program Coordinator, TMCEC
- \_\_\_ *Financial Management* — Rene Henry, Collections Projects Manager, Research & Court Services, Office of Court Administration, Austin
- \_\_\_ *Trial Processes* — Margaret Robbins, Program Director, TMCEC
- \_\_\_ *Court Security* — Allen Gilbert, Municipal Judge, San Angelo
- \_\_\_ *Non-Contested Cases Workshop* — Carol Gauntt, Court Administrator, Richland Hills and Margaret Robbins, Program Director, TMCEC
- \_\_\_ *Fine Collection* — Jim Lehman, Collections Specialist, Office of Court Administration
- \_\_\_ *Juveniles* — Robin Smith, Presiding Municipal Judge, Midland

Return order to 1609 Shoal Creek Blvd. #302, Austin, TX 78701 or fax to 512/435-6118.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Court: \_\_\_\_\_

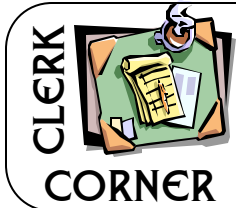
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Telephone Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_





## Margaret Robbins TMCEC Program Director

### Domestic Violence - What May a Clerk Do?

Municipal courts are part of the communities in which they serve. Therefore, courts should have some understanding of community issues and problems. One of those problems is domestic violence. In 2001, there were over 180,000 incidents of domestic violence reported in Texas.<sup>1</sup> Although municipal courts do not handle most domestic violence offenses, some of the offenses, such as public intoxication, simple assault, and disorderly conduct involve domestic violence. Also, defendants charged with other Class C misdemeanors, such as traffic offenses, may be involved in a violent relationship. Hence, it is important that court clerks understand what they may do.

Since many defendants in municipal court do not request trials, but opt for a driving safety course (DSC) or just want to pay their fines, municipal court clerks see more defendants than their judges do. Consequently, there is a high probability that a clerk assisting a defendant might be handling a person involved in domestic violence. Also, because of the high rate of domestic violence incidents, there is the possibility that co-workers or other city employees are involved in a violent relationship.

Because the court, including court clerks, is neutral and cannot advocate for someone in a domestic violence situation, what may a clerk do to help? Primarily, clerks can provide information to court users, such as defendants, witnesses, jurors, attorneys, and family members of defendants. To do that, clerks should

be aware of community resources for referrals, such as victims' advocates, crisis centers, battering intervention, anger resolution, and private counseling. Clerks should obtain information from these resources and make it available in the court lobby and restrooms. The information can include such things as:

- brochures on personal safety plans;
- brochures explaining how the criminal justice system works, specifically emergency protection orders, if one is issued; and
- literature about the location and telephone number of shelters.

Because municipal judges are also magistrates, most of the cases involving domestic violence seen by municipal judges and court personnel involve powers as a magistrate. In this capacity, judges handle the warnings and clerks process the accompanying

paperwork. The offenses associated with family violence include: assault; sexual assault; aggravated assault; aggravated sexual assault; kidnapping; injury to a child, elderly individual, or invalid; abandoning or endangering a child; and violation of protective orders.

Because of the violence involved in these types of offenses, courts should have security plans to deal with defendants who might become violent. Someone should periodically inspect and evaluate security hazards. This might be something as simple as having a glass sitting on a counter or desk that is within reach of a defendant or victim. Moreover, a separate room should be available for victims to be kept separate from the offender. This will help keep violence from erupting. Since many clerks work late hours and leave court facilities when it is dark, clerks should call the police department before departing

#### More Resources

In August 2002, TMCEC sent all municipal courts a copy of the *Domestic Violence Service Directory*, published by the Texas Council on Family Violence (TCFV). It is a comprehensive list of family violence shelters and service providers. Call TMCEC if you would like an additional copy or access the updated version at [www.tcfv.org](http://www.tcfv.org).

Another excellent resources is the National Domestic Violence Hotline which is a project of the TCFV. The Hotline serves as a link between individuals in need and community services. By calling the hotline, a caller can get immediate help in English or Spanish, 24 hours a day, seven days a week. Advocates provide crisis intervention, information, and referrals.

National Domestic Violence Hotline  
1/800-799-SAFE (7233)  
1/800-787-3224 (TTY)



the building and have an officer in the parking lot. Also, clerks should be trained in what to do if attacked. Clerks should always keep in mind the potential for violence.

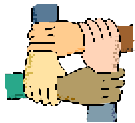
In 1995, the Texas Legislature amended Chapter 17 of the Code of Criminal Procedure and added Article 17.292, which gave magistrates the authority to issue a magistrate's order for emergency protection (MOEP). That statute requires court clerks to send a copy of the emergency protection order to the victim if the victim was not present in court at the time the order was issued. Clerks are required to do this even if a peace

officer notifies the victim of the order. When issuing a MOEP, if a magistrate orders the suspension of a concealed handgun license, Article 17.293, C.C.P. requires either the magistrate or the clerk to immediately send a copy of the order to the appropriate division of the Department of Public Safety at its Austin headquarters.

Clerks should coordinate procedures with their judges to ensure compliance with the law. Clerks should be given copies of the MOEP, name of the victim, and notified if the judge suspends a conceal handgun license. Clerks should have in place a process for notifying the victim and reporting

conceal handgun licenses. Because the Code of Judicial Conduct requires courts to remain neutral and impartial, clerks must be careful to not step over the line and advocate for a person involved in domestic violence. Nevertheless, clerks should be prepared with information on community resources so that court users or other city employees know where to go for help. This will help clerks to not become involved in giving legal advice. Clerks can simply point out the information on the community resources.

<sup>1</sup> Statistics from the Texas Council on Family Violence website: [www.tcfv.org](http://www.tcfv.org)



## INSIGHTS INTO DIVERSITY

### Gender Bias in Court

The Gender Bias Task Force was commissioned by the Texas Supreme Court to identify bias and implement strategies to bring about gender fairness in the Texas courts and practice of law. After a two-and-one-half year study, the Gender Bias Task Force discovered that many Texas women and men experience discriminatory or inequitable treatment in Texas courts simply because of their sex. Much of the gender bias documented by the Task Force occurs in the courtroom – in the exchanges among judges, attorneys, litigants, court personnel, and witnesses.

Gender bias may be defined as the predisposition or tendency to think about and behave toward people mainly on the basis of their sex. Gender bias can be subtle and unintentional. The Gender Bias Task Force has created a guide, *Guidelines for Practicing Neutral Courtroom Procedures*, to help judges, attorneys, and court personnel identify gender fairness in Texas courts. The guide is in the process of revision and reprinting and will be available through TMCEC in Fall 2003. Shown below is an excerpt from the guide.

*As to Domestic Violence and Sexual Assault Victims, the Task Force learned that domestic violence and sexual assault cases present special gender fairness problems. Gender biased behavior may include:*

- *Viewing domestic violence and sexual assault as less serious than other criminal acts.*
- *Minimizing victim's experiences, such as assuming that acquaintance rape is less traumatic than "stranger rape."*
- *Questioning the credibility of female crime victims in ways that the credibility of male crime victims is not questioned.*
- *Blaming victims for causing the abuse or assault.*

*In a gender neutral court, special care is taken to treat all victims of crime with respect and sensitivity to the trauma they have experienced. Victims of domestic violence and sexual*

*assault must not be subjected to unjust scrutiny because of the nature of the act(s) perpetrated against them. Their testimony is no less credible because the alleged acts are sexual or occurred in a domestic context.*

*One of the most striking findings of the Task Force was the significant gap between the perceptions of men and women concerning the extent of gender fairness. Although a majority of male attorneys and judges surveyed by the Task Force believed that bias against women does exist, most felt that it exists in only a few areas and involves a few individuals. In contrast, more than half of the women respondents indicated that bias against female litigants not only exists, but that it is widespread. Most women also said gender bias is subtle and hard to detect rather than readily apparent.*

closes with suggested actions that employers can take to deal with the issue.

Also included in the kit is a manual that guides you in effectively intervening when an employee is experiencing family violence; educating corporate leadership about the financial, emotional, and medical costs of family violence in your workplace; creating a multi-department task force; and designing an organizational action plan to combat the effects of family violence in your workplace.

***Un Nuevo Amanecer*** (New Dawn)

A recent video from TCFV that was conceived entirely in Spanish for Spanish speakers. The video portrays

the life of a Latina and the progression of domestic violence through her everyday life (family, friends, work and other systems). The 25-minute video was made especially for public education, outreach and training, and support groups. Production of this video was made possible by the Texas Department of Human Services in cooperation with TCFV's Latina Task Force.

To purchase any of the materials, use the order form shown on page 17. TCFV also houses a lending library with thousands of domestic violence-related resource materials. Information on the library is listed under the Family Violence Information section of the TCFV website: [www.tcfv.org](http://www.tcfv.org).

## DHS Videos

The Texas Department of Human Services (DHS) also offers family violence materials such as:

*Helping The Battered Woman: A Guide For Family And Friends*

*Sad Is How You Feel When Mom Is Being Beat.*

*Domestic Violence: Understanding A Community Problem.*

*When Love Hurts: Resources for Battered Women.*

*Family Violence and Addiction: Implications for Treatment.*

These pamphlets may be ordered in bulk for local distribution. For further information, contact DHS, P.O. Box 149030, Austin, Texas 78714-9030 (888/834-7406). [www.dhs.state.tx.us](http://www.dhs.state.tx.us).

The DHS website ([www.dhs.state.tx.us:80/programs/familyviolence/shelters.html](http://www.dhs.state.tx.us:80/programs/familyviolence/shelters.html)) contains a list of family violence shelters across Texas.

**TEXAS MUNICIPAL COURTS  
EDUCATION CENTER  
1609 SHOAL CREEK BLVD., SUITE 302  
AUSTIN, TX 78701  
[www.tmcec.com](http://www.tmcec.com)**

### TMCEC MISSION STATEMENT

To provide high quality judicial education, technical assistance, and the necessary resource material to assist municipal court judges, court support personnel, and prosecutors in obtaining and maintaining professional competence.

### Change Service Requested