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Family Violence, Peace Bonds & EPOs

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Family Violence in Texas

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2012: Family Violence Homicides in Texas

- 114 Texas women killed by intimate partners (10% of all homicides) PLUS
- 15 bystanders
- 60% committed with firearms

* Courtesy of Texas Council on Family Violence,
Honoring Texas Victims



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Statewide Prevalence of Intimate Partner Violence in Texas : 2011

- Phone surveys of 1074 adult Texans
- Nearly 32% of all Texans experienced intimate partner violence in their lifetimes
- 5,353,434 people
 - 37.7 % of Females
 - 26.8 % of Males

By Institute of Domestic and Sexual Assault - University of Texas at Austin,
Principal Investigator: Noel Busch-Armendariz, PhD, LMSW, MPA

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Texas Department of Public Safety:
Crime in Texas, 2012

- 188,992 DV incidents (6.2% increase over 2011)
- Assaults accounted for 96.7% of all reported DV offenses. Of these:
 - "Simple" Assault: 74.2%
 - Aggravated Assault: 15%
 - Intimidation: 7.5%

Disclaimer: "Offense information in the family violence program is collected according to federal UCR guidelines and does not necessarily conform to Texas state definitions."

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Peace Bonds

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Peace Bonds -- Grounds

- Whenever a magistrate is informed upon oath that an offense is about to be committed, the magistrate may issue a peace bond to prevent the offense.
- The offense is one against the person or property of the informant or of another
- Applies if a person has threatened to commit an offense

■ Art. 7.02, Code of Criminal Procedure

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Peace Bonds -- Grounds

- A complaint based upon an oath that the informant merely has "good reason to believe" that an offense is about to be committed is insufficient.
 - Ex parte Glass, 205 S.W.2d 46 (Tex. Crim. App. 1947)

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Peace Bonds -- Grounds

- Complaint must be written and allege serious threat of imminent or future harm.
 - In re Jones, 55 S.W.3d 243, 247-249 (Tex. Spec. Ct. Rev. 2000)
 - Ex parte McCain, 153 Tex. Crim. 517, 519, 221 S.W.2d 781, 782 (Tex. Crim. App. 1949)

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Issuance of Peace Bond

- When the complaint is presented to the magistrate, the magistrate shall immediately issue a warrant for the arrest of the accused
 - CCP, Art. 7.01
- TJCTC recommendation is substituting a summons for the warrant if reasonable to do so
- Respondent is entitled to post an appearance bond
 - CCP, Art. 7.02

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Peace Bond Hearing

- When the accused is brought before the magistrate, the magistrate shall hear proof as to the accusation.
 - CCP, Art. 7.03
- The accused is not entitled to a jury trial in a peace bond hearing.
 - Ex parte Johnson, 391 S.W.2d 407 (Tex. Crim. App. 1965)
- It is not necessary to appoint an attorney for the accused at the initial peace bond hearing.
 - AG Opinion JM – 977 (1988)

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Peace Bond Hearing

- If satisfied that there is just reason to apprehend that the offense was intended to be committed, or that the threat was seriously made,
- The magistrate shall order that the accused enter into a bond in such amount as he may in his discretion require

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Peace Bond Hearing

- If accused is found subject to the charge and required to give bond, costs of the proceeding shall be adjudged against him.
- If it appears from the evidence that the defendant has committed a criminal offense, the magistrate proceeds as in other cases where a person is charged with a crime.

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Peace Bond Hearing

- Accused shall be discharged, and costs may be taxed against the party who made the complaint, if the magistrate believes from the evidence:
 - There is no good reason to apprehend that the offense was intended or will be committed
 - No serious threat was made by accused
- CCP, Art. 7.10

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Form of Bond

- Payable to State of Texas
- For a certain amount
- Signed by defendant and sureties
- Dated
- Conditional as required by court order
- May be cash bond or surety but cannot require "cash" only bond
- Filed with County Clerk
- CCP, Art. 17.04

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Terms of Peace Bond

- Bond is conditioned on the accused not committing the offense, and that he will keep the peace toward the person threatened or about to be injured and all other persons named in the bond
- For a period of time up to one year

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Amount of Bond

- Amount is within the discretion of the magistrate
- Magistrate shall be governed by:
 - Financial circumstances and character of the accused
 - Nature of the offense threatened or about to be committed

■ CCP, Arts. 7.03 and 7.06; Ex parte Whatley, 136 Tex. Crim. 144, 146 (Tex. Crim. App. 1939)

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Admonishment by Magistrate

- Magistrate shall admonish the accused that if he violates the terms of the bond the court may order forfeiture of the bond
- And may also punish the accused for contempt

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Failure to Give Bond

- If defendant fails to give required bond, he **shall** be committed to jail for one year from the date of the first order requiring such bond.
- Before a defendant is committed to jail, counsel should be appointed in order that a determination may be made as to whether the defendant is financially able to post the required security.
- -- CCP, Art. 7.08; AG Opinion JM – 977 (1988)

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No Right of Appeal

- Defendant has no right of appeal from a magistrate's order requiring a bond.
- Only remedy is to seek a writ of habeas corpus in the county or district court.
- Ex parte Salamy, 147 S.W.2d 487 (Tex. Crim. App. 1941);
- Ex parte Wilkinson, 278 S.W. 426 (Tex. Crim. App. 1925)

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Peace Bond Forfeiture

- Upon violation of a peace bond the magistrate may:
 - Issue warrant for arrest of defendant upon sworn complaint for new offense
 - Issue summons for defendant to appear to answer accusation of violation
- CCP, Art. 15.03

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Peace Bond Forfeiture

- Justice of the Peace may **not** try a suit to forfeit a peace bond.
- District court has exclusive jurisdiction to try a suit to forfeit a peace bond regardless of the amount of the bond.
- Suit must be brought by the district or county attorney within two years from date of violation of bond.
 - CCP Art. 7.16;
 - Tex. Const. Art. V, § 8;
 - Gov. Code, Sect. 27.031(b)(1)

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Punishment for Violation

- Forfeiture of peace bond
- Imposition of fine and confinement for contempt
- Or both

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Magistrate's Orders of Emergency Protection

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EPO Issuance

- A Magistrate's Order for Emergency Protection (commonly referred to as an EPO or emergency protective order) is a separate order—as opposed to a bond condition—which may be issued at a defendant's appearance before a magistrate after arrest for family violence (including dating violence), sexual assault, aggravated sexual assault, stalking, or human trafficking
 - Art. 17.292, CCP
- An EPO may be issued at the time an Article 15.17 hearing is conducted, not before or after.
- Goal: protect victims, peace officers, and community.

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Family Violence

- Violence by member of family or household against another member intended to result in physical harm, bodily injury, assault or sexual assault
- or a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault or sexual assault
- Sec. 71.004(1) Family Code

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Family Violence

- Abuse by member of family or household toward a child including:
 - physical injury or a genuine threat of substantial harm
 - sexual conduct harmful to a child's mental, emotional or physical welfare
 - compelling or encouraging the child to engage in sexual conduct
- Sec. 71.004(2) and 261.001(1)(C),(E),(G) Family Code

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Dating Violence

- An act by an individual against another with whom that person has or has had a dating relationship OR because of the victim's relationship with someone the individual had a previous dating relationship with (ex b/f or g/f)
- Intended to result in physical harm, bodily injury, assault or sexual assault or a threat thereof
- Dating Relationship means individuals have or have had a continuing relationship of a romantic or intimate nature (not casual/social)
- Sec. 71.004(3) and 71.0021(b) and (c) Family Code

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Mandatory vs. Permissive EPOs

- The magistrate **shall** issue an EPO if the arrest is for a family violence offense that involves:
 - (1) serious bodily injury to the victim; or
 - (2) the use or exhibition of a deadly weapon during the commission of an assault.

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Serious Bodily Injury

- Bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ
- Sec. 1.07(46), Penal Code

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Deadly Weapon

(A) a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or

(B) anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

• Sec. 1.07(17) Penal Code

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Mandatory vs. Permissive EPOs

- The magistrate **may** issue an EPO following an arrest for any offense involving family violence if the magistrate believes it is appropriate or an EPO is requested by:
 - (1) the victim of the offense;
 - (2) the guardian of the victim;
 - (3) a peace officer; or
 - (4) the attorney representing the state.

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Contents of Order

- (1) Length the order will remain in effect
- If issuing a mandatory EPO involving an offense in which the defendant suffered serious bodily injury but no deadly weapon was used, or if issuing a permissive EPO, the order should remain in effect for at least 31 days but no later than 61 days.

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Contents of Order

- If issuing a mandatory EPO involving the "use or exhibition of a deadly weapon during the commission of the assault," the order should remain in effect for at least 61 days but no later than 91 days.
- To determine whether a deadly weapon was used, examine the probable cause affidavit or complaint presented to you.

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Contents of Order

- (2) Restrictions
- (a) The magistrate may prohibit the arrested party from committing family violence or an assault on the person protected under the order.
- (b) The magistrate may prohibit the arrested party from committing an act in furtherance of an offense under Section 42.072, Penal Code (stalking).

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Contents of Order

- (c) The magistrate may prohibit the arrested party from communicating directly with a member of the family or household or with the person protected under the order in a threatening or harassing manner.
- **As of May 23, 2015, a magistrate may prohibit all contact between parties, except contact via attorneys or intermediaries appointed by the court, if the magistrate finds good cause to do so.**

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Contents of Order

- (d) The magistrate may prohibit the arrested party from communicating a threat through any person to a member of the family or household or to the person protected under the order;
- (e) The magistrate may prohibit the arrested party from going to or near the residence, place of employment, or business of a member of the family or household or of the person protected under the order;

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Contents of Order

- (f) The magistrate may prohibit the arrested party from 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;

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Contents of Order

- (g) The magistrate may prohibit the arrested party from going to or near the residence, child care facility, or school where a child protected under the order resides or attends.
- In the order for emergency protection the magistrate shall specifically describe the prohibited locations and the minimum distances, if any, that the party must maintain, unless the magistrate determines for the safety of the person or persons protected by the order that specific descriptions of the locations should be omitted.
- Best practice: never, ever include the address of a shelter for victims of domestic violence in an EPO.

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Contents of Order

- (3) Use of electronic location monitoring to assist in enforcement of order
- The magistrate may impose a condition described by Article 17.49(b) in the manner provided by that article, including ordering a defendant's participation in a global positioning monitoring system or allowing participation in the system by an alleged victim or other person protected under the order.
- Condition of bond vs. condition of EPO

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Contents of Order

- (4) Warning
- The warning contained in Art. 17.292(g) of the Code of Criminal Procedure must be included and "printed in bold-face type or in capital letters."

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Contents of Order

- (5) Suspension of Handgun License
- In the order for emergency protection, the magistrate shall suspend a license to carry a concealed handgun issued under Subchapter H, Chapter 411, Government Code, that is held by the defendant.

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Conflicts with Other Orders

- If Order conflicts with existing court order granting possession of or access to a child, the EPO controls
- If Order conflicts with subsequent order issued under
 - Family Code Chpt. 85 (protective orders)
 - Title 1 (divorce) or
 - Title 5 (parent child relationship)
- Then, the Family Code order controls
- Art. 17.292(f-1&f-2) CCP

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Modification of Order

- Requires notice to each affected party and a hearing
- Court *may* modify order if it finds:
 - Order is unworkable
 - Modification will not place the victim at greater risk
 - Modification will not in any way endanger a person protected under the Order
- Art. 17.292(j) CCP

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Issuance of Order & Service

- The victim of the offense need not be present when the order for emergency protection is issued.
- An order for emergency protection issued under this article is effective on issuance, and the defendant shall be served a copy of the order by the magistrate or the magistrate's designee in person or electronically.
- The magistrate shall make a separate record of the service in written or electronic format.

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EPOs: Required Reporting

- (1) **As soon as possible but not later than the next business day** after the date the magistrate issues an order for emergency protection under this article, the magistrate shall send a copy of the order to the chief of police in the municipality where the member of the family or household or individual protected by the order resides, if the person resides in a municipality, or to the sheriff of the county where the person resides, if the person does not reside in a municipality.

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EPOs: Required Reporting

- (2) If the victim of the offense is not present when the order is issued, the magistrate issuing the order shall order an appropriate peace officer to make a good faith effort to notify, within 24 hours, the victim that the order has been issued by calling the victim's residence and place of employment. The clerk of the court shall send a copy of the order to the victim at the victim's last known address **as soon as possible but not later than the next business day after the date the order is issued.**

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EPOs: Required Reporting

- A magistrate or clerk of the court may delay sending a copy of the [magistrate's] order [for emergency protection] under [Article 17.292,] Subsection (h) only if the magistrate or clerk lacks information necessary to ensure service and enforcement.

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EPOs: Required Reporting

- (3) The magistrate or the clerk of the magistrate's court issuing an order for emergency protection under Article 17.292 that suspends a license to carry a handgun shall immediately send a copy of the order to the appropriate division of the Department of Public Safety at its Austin headquarters. On receipt of the order suspending the license, the department shall:
 - (a) record the suspension of the license in the records of the department;
 - (b) report the suspension to local law enforcement agencies, as appropriate; and
 - (c) demand surrender of the suspended license from the license holder.

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EPOs: Required Reporting

- (4) If an order for emergency protection issued under this article prohibits a person from going to or near a child care facility or school, the magistrate shall send a copy of the order to the child care facility or school.

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EPOs: After Issuance

- A person who violates an EPO commits an offense under Sec. 25.07, Penal Code.
- Typically, this offense is a Class A misdemeanor.
- 3rd degree felony if the EPO is violated by committing assault or stalking
- 3rd degree felony if the defendant has two or more prior convictions under 25.07

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EPOs: After Issuance

- After notice to each affected party and a hearing, the issuing court may modify all or part of an order issued under this article if the court finds that:
 - (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.

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EPOs: After Issuance

- On motion, notice, and hearing, or on agreement of the parties, an order for emergency protection may be transferred to the court assuming jurisdiction over the criminal act giving rise to the issuance of the emergency order for protection. On transfer, the criminal court may modify all or part of an order issued under this subsection.

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RESOURCES: Judicial
Office of Court Administration's
Domestic Violence Resources (DVR)
Program

DVR Program offers the following
resources:

- **Protective Order Resource Attorney (PORA)**
<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>

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RESOURCES: Judicial

PORA CONTACT INFORMATION

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RESOURCES: Victim Safety

Consider having handout or brochure for victims with info such as...

Local prosecutor's offices

Hotlines:

family violence, sexual assault, stalking

National Domestic Violence Hotline

(800) 799-SAFE (7233)

Local family violence shelters

Local legal aid offices

Other advocacy groups
