

APPLICATION FOR MAGISTRATE'S EMERGENCY PROTECTIVE ORDER

Cause/Case Number: _____

<p>STATE OF TEXAS</p> <p>On behalf of,</p> <p>_____, Victim</p> <p>vs</p> <p>_____, Defendant</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>Justice of the Peace, _____</p> <p>Sitting as Magistrate</p> <p>Precinct _____</p> <p>Wilbarger County, Texas</p>
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On the ____ day of _____, 20____, the undersigned applicant filed this application requesting the Court to issue a Magistrate's Emergency Protective Order for the benefit and protection of _____, hereinafter called the victim, and the following members of the victim's family or household, including a child or children, namely:

Member/Child Name		Member/Child Name	
Member/Child Name		Member/Child Name	

Applicant alleges _____, hereinafter called the Defendant, committed an offense involving family violence or a Penal Code offense under Section 42.072 (Stalking), Section 20A.02 (Trafficking of Persons), Section 20A.03 (Continuous Trafficking of Persons), Section 22.011 (Sexual Assault), or Section 22.021 (Aggravated Sexual Assault).

Applicant asks the Court to grant and the Court has authority to grant the statutory relief checked below, AND additional conditions deemed necessary by the Court, thereby giving the victim(s) the Court's protection and prohibiting defendant from:

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|---|----|
| <input type="checkbox"/> Committing Family/Dating Violence or an Assault against those person(s) listed above (CCP 17.292 (c)(1)(A)), AND / OR | 01 |
| <input type="checkbox"/> Stalking against those person(s) listed above (CCP 17.292 (c)(1)(B)), AND / OR | 01 |
| <input type="checkbox"/> Trafficking against those person(s) listed above (CCP 17.292 (c)(1)(B)) | 01 |

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|--|----|
| <input type="checkbox"/> Communicating directly with a member of the family/household/protected person(s) listed above in threatening or harassing manner (CCP 17.292 (c)(2)(A)) | 01 |
| <input type="checkbox"/> Communicating a threat through any person to a member of the family/household/protective person(s) listed above (CCP 17.292 (c)(2)(B)) OR | 01 |
| <input type="checkbox"/> Communicating in ANY manner with a member of the family/household/protected person(s) listed above because [insert basis for "Good Cause" (CCP 17.292 (c)(2)(C))]: _____ | 05 |

- | | |
|---|----|
| <input type="checkbox"/> Going to or within _____ feet of the residence, place of employment, or business of a member of the family/household/protected person(s) listed above (CCP 17.292 (c)(3)(A)) (<i>check all that apply</i>) | 04 |
| <input type="checkbox"/> Residence: _____ | |
| <input type="checkbox"/> Place of Employment: _____ | |
| <input type="checkbox"/> Business: _____ | |
| <input type="checkbox"/> Going to or near residence, child care facility, or school of a child protected under the order resides or attends (CCP 17.292 (c)(3)(B)) (<i>check all that apply</i>) | 04 |
| <input type="checkbox"/> Residence: _____ | |
| <input type="checkbox"/> Child Care Facility: _____ | |
| <input type="checkbox"/> School: _____ | |

- | | |
|---|----|
| <input type="checkbox"/> CONFIDENTIALITY OF ADDRESSES: Based on the above and following facts, for the safety of the person or persons named herein, the addresses and specific locations of the person or persons protected by the Order should remain confidential and be omitted from the Order served on the Defendant. (CCP 17.292 (e)) _____ | 07 |
|---|----|

- | | |
|---|----|
| <input type="checkbox"/> 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. (CCP 17.292 (c)(4)) | 07 |
| <input type="checkbox"/> Being mobile without having to participate in a global positioning monitoring system (CCP 17.292 (c-1)) | 08 |

_____ Signature of Applicant	_____ Printed Name of Applicant	_____ Date
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MAGISTRATE'S EMERGENCY PROTECTIVE ORDER

Cause/Case Number: _____

<p>STATE OF TEXAS</p> <p>On behalf of,</p> <p>_____, Victim</p> <p>vs</p> <p>_____, Defendant</p>	§ § § § §	<p>Justice of the Peace, _____</p> <p style="text-align: center;">Sitting as Magistrate</p> <p style="text-align: right;">Precinct _____</p> <p style="text-align: right;">Wilbarger County, Texas</p>
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On the ____ day of _____, 20____, _____, hereinafter called the Defendant, appeared before the undersigned Magistrate of the State of Texas, after arrest for an offense involving family violence or a Texas Penal Code offense Section 42.072 (Stalking), Section 20A.02 (Trafficking of Persons) under, Section 20A.03 (Continuous Trafficking of Persons), Section 22.011 (Sexual Assault), or Section 22.021 (Aggravated Sexual Assault).

As provided by Texas Code of Criminal Procedure Article 17.292(a), the Court: *(check all that apply)*

- Enters the following order for emergency protection as **MANDATED** by Texas Code of Criminal Procedure Article 17.292(b) because the arrest was for an offense that also involved **serious bodily injury to the victim** or **the use or exhibition of a deadly weapon during the commission of an assault;**
- Enters an order for emergency protection as allowed by Texas Code of Criminal Procedure Article 17.292(a), on its own motion; at the request of the victim; guardian of the victim; a peace officer; the attorney representing of the State;

intended to protect _____, hereinafter called the victim, and the following members of the victim's family or household, including a child or children, namely:

Member/Child Name		Member/Child Name	
Member/Child Name		Member/Child Name	

IT IS HEREBY ORDERED that effective immediately and for the next ____ days (31-61 days, or up to 91 days for assault with a deadly weapon) from the issuance of this Order, **the Defendant, is prohibited from:**

- Committing an act in furtherance of an offense under Section 20A.02 or 42.072, Penal Code; 01
- 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; 01
- Communicating a threat through any person to a member of the family or household or to the person(s) protected under the Order; 02
- Communicating in any manner with a person protected under the Order or a member of the family or household of a person protected under the Order, except through the party's attorney or a person appointed by the court, because the Court finds good cause exists; 05
- Being mobile without having to participate in a global positioning monitoring system (CCP 17.292 (c-1)) 08
- 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; 07
- Going to or within _____ feet (distance) of: 04

Victim	<input type="checkbox"/> the residence of the victim herein located at:
	<input type="checkbox"/> the place of employment of the victim herein located at
	<input type="checkbox"/> the business of the victim herein located at
Member	<input type="checkbox"/> the residence of a member of the family or household protected under this Order located at
	<input type="checkbox"/> the place of employment of a member of the family or household protected under this Order located at
	<input type="checkbox"/> the business of a member of the family or household protected under this Order located at
Child 1	<input type="checkbox"/> the residence of _____, a child protected by this Order at
	<input type="checkbox"/> the child care facility of _____, a child protected by this Order located at
	<input type="checkbox"/> the school of _____, a child protected by this Order located at

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Child 2	<input type="checkbox"/> the residence of _____, a child protected by this Order at <hr/> <input type="checkbox"/> the child care facility of _____, a child protected by this Order located at <hr/> <input type="checkbox"/> the school of _____, a child protected by this Order located at
Child 3	<input type="checkbox"/> the residence of _____, a child protected by this Order at <hr/> <input type="checkbox"/> the child care facility of _____, a child protected by this Order located at <hr/> <input type="checkbox"/> the school of _____, a child protected by this Order located at
Child 4	<input type="checkbox"/> the residence of _____, a child protected by this Order at <hr/> <input type="checkbox"/> the child care facility of _____, a child protected by this Order located at <hr/> <input type="checkbox"/> the school of _____, a child protected by this Order located at

- CONFIDENTIALITY OF ADDRESSES:** Based on the facts presented, the Court further finds that for the safety of the person or persons protected under this Order, the addresses and specific locations of the person or persons protected by the Order remain confidential and shall be omitted from the Order served on the Defendant. The original Order with the addresses included shall be provided to the victim and filed with the clerk under seal.
- IT IS FURTHER ORDERED** that the conditions imposed in this Order shall prevail over any existing order granting possession of or access to a child named herein for the duration of this Order.
- IT IS FURTHER ORDERED** that the Defendant be served with a copy of this Order by the Magistrate or the Magistrate's designee in person or electronically.
- IT IS FURTHER ORDERED** that the Magistrate, as soon as possible, but not later than the next business day after the date the Order is issued, 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 this Order resides;
 - the sheriff of the county where the member of the family or household or individual protected by this Order resides, if any of these persons do not reside in a municipality;
 - the principal, director, or other person in charge of the school or child care facility attended by a person covered by this Order and named herein.
- IT IS FURTHER ORDERED** that a law enforcement officer shall make a good faith effort to notify the victim, within 24 hours, that this Order has been issued by calling the victim's residence and place of employment (if not present at hearing). 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.
- (Check this box if the Defendant holds a Handgun License) **IT IS FURTHER ORDERED** that the license to carry a handgun issued under Subchapter H, Chapter 411, Government Code, held by the Defendant is **SUSPENDED** for the duration of this Order. The Clerk is **ORDERED** to send a copy of this Order to the appropriate division of the Department of Public Safety at its Austin headquarters (see below for address):

Note: Only if the Defendant is a handgun licensee should copies of Orders of Emergency Protection suspending handgun license be faxed (512.424.7284) or mailed to the following:

Attention: Suspension/Revocation
 Texas Department of Public Safety
 Concealed Handgun Licensing Section #0235
 Post Office Box 4143
 Austin, TX 78765-4143

A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THIS ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR OR BY BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE OR A STALKING OR TRAFFICKING OFFENSE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE, AS APPLICABLE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY

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CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS. THE POSSESSION OF A FIREARM BY A PERSON, OTHER THAN A PEACE OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO THIS ORDER MAY BE PROSECUTED AS A SEPARATE OFFENSE PUNISHABLE BY CONFINEMENT OR IMPRISONMENT.

NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER.

WARNINGS UNDER FEDERAL LAW

THIS ORDER IS ENFORCEABLE IN ALL 50 STATES, THE DISTRICT OF COLUMBIA, TRIBAL LANDS, AND U.S. TERRITORIES. 18 U.S.C., SECTION 2265.

INTERSTATE VIOLATION OF THIS ORDER MAY SUBJECT THE RESPONDENT TO FEDERAL CRIMINAL PENALTIES. 18 U.S.C., SECTIONS 2261, 2262.

POSSESSION, TRANSPORTATION, OR RECEIPT OF A FIREARM WHILE THIS ORDER REMAINS IN EFFECT MAY BE A FELONY UNDER FEDERAL LAW PUNISHABLE BY UP TO 10 YEARS IN PRISON AND/OR A FINE.

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

DEFINITIONS

The term "family violence" as defined by Texas Family Code Section 71.004 means:

(1) An act by a **member of a family** or **household** against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault, or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself;

The term "family" as defined by Texas Family Code Section 71.003 includes individuals related by consanguinity or affinity, as determined under Texas Government Sections 573.022 and 573.024 individuals who are former spouses of each other, individuals who are the parents of the same child, without regard to marriage, and a foster child and foster parent, without regard to whether those individuals reside together. Two individuals are related to each other by consanguinity if one is a descendent of the other, or they share a common ancestor. An adopted child is considered to be a child of the adoptive parent for this purpose. Two individuals are related to each other by affinity if they are married to each other, or the spouse of one of the individuals is related by consanguinity to the other individual. The ending of a marriage by divorce or the death of a spouse ends relationships by affinity unless a child of that marriage is living.

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

The term "member of a household" as defined by Texas Family Code Section 71.006 includes a person who previously lived in a household.

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

(C) "Physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;"

(E) "Sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of a young child or children under Section 21.02, Penal Code, indecency with a child under Section 21.11, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;" or

(G) "Compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code;"

The term "child" or "minor" as defined by Texas Family Code Section 101.003 means a person under 18 years of age who has not been married or who has not had the disabilities of minority removed for general purposes.

(3) "Dating violence," as that term is defined by Texas Family Code Section 71.0021 means "an act by an individual that is against another individual with whom that person has or has had a ***dating relationship*** and that is intended to result in physical harm, bodily injury, assault, or sexual assault, or that is a threat that reasonably places the individual in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself."

"Dating relationship," as defined by Texas Family Code Section 71.0021(b) and (c) means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The existence of such a

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relationship shall be determined based on consideration of: (1) the length of the relationship; (2) the nature of the relationship; and (3) the frequency and type of interaction between the persons involved in the relationship. A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a "dating relationship."

The term "firearm" has the meaning assigned by Texas Penal Code Chapter 46.

A person commits the offense of stalking if, he or she on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct, including following the other person, that (1) the actor knows or reasonably believes the other person will regard as threatening (a) bodily injury or death for the other person; (b) bodily injury or death for a member of the other person's family or household; or (c) that an offense will be committed against the other person's property; (2) causes the other person or a member of the other person's family or household to be placed in fear of bodily injury or death or fear that an offense will be committed against the other person's property; or (3) would cause a reasonable person to fear the same. Texas Penal Code Section 42.072.

The term "business day" means a day other than a Saturday, Sunday, or state or national holiday. Texas Code of Criminal Procedure Article 17.292(m)(3).

Note: Effective September 1, 2015, a magistrate or clerk may delay sending a copy of the order under Article 17.292(h) only if the magistrate lacks information necessary to ensure service and enforcement. Art. 17.292(h-1) The copy of the order and any related information may be sent under Article 17.292(h) or (i) electronically or in another manner that can be accessed by the recipient. Texas Code of Criminal Procedure Art. 17.292(i-1).

IT IS FURTHER ORDERED that this Order is effective upon issuance and shall remain in full force and effect until midnight on _____, 20__ (this date should be no less than 31 and up to 91 days from the date of issuance).

SIGNED, ENTERED, AND ISSUED at _____ o'clock __. m. on this the _____ day of _____, 20__.

Signature of Magistrate

Printed Name of Magistrate

Justice of the Peace, Pct. _____, Wilbarger County, Texas

DEFENDANT'S ACKNOWLEDGMENT of ORDER OF EMERGENCY PROTECTION

I, the undersigned defendant in this case state that I was presented with a copy of the Magistrate's Order for Emergency Protection attached hereto at _____ am/pm on the _____ day of _____, 20__.

Defendant

STATEMENT OF SERVICE to DEFENDANT

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 _____ am/pm on the _____ day of _____, 20__.

Corrections Officer/SO#