



Family Violence

CORPUS CHRISTI 2019

1

What are we covering?

- Improving initial response
 - Early victim contact
 - Using Lethality Assessments
- Ensuring safety after arrest
 - ✓ MOEPs
 - ✓ Bond and bond conditions
 - ✓ Modifying and increasing bond
 - ✓ Revoking and denying bond
- Creating a Community Coordinated Response
 - Domestic Violence High Risk Teams

2

Making contact with the Victim

Research shows that the sooner a victim receives services, she is more likely to cooperate, maintain safety, and feel satisfied with the response of the criminal justice system.

“Police Departments’ Use of the Lethality Assessment Program: A Quasi-Experimental Evaluation,” Jill Theresa Messing, Ph.D., M.S.W., Jacquelyn Campbell, Ph.D., R.N., F.A.A.N., et al. U.S. Department of Justice, July, 2014.

3

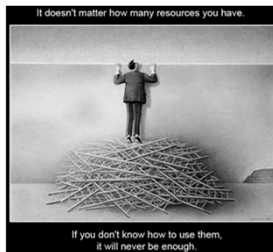
Making contact with the Victim

- ▶ Good practice: within days of the arrest, have VAC or advocate make contact with the victim and help connect to services.
- ▶ Better practice: within 24 hours of the arrest, have VAC or advocate make contact with the victim and help connect to services.
- ▶ Best practice: have police at scene put victim on the phone with VAC or advocate to help connect them to services.

4

Prioritizing victim contact

- ▶ We all have limited resources – must prioritize
- ▶ Focus on high risk victims of family violence
 - ▶ How do we know who is high risk?
 - ▶ Strangulations, deadly weapon, serious bodily injury, continuous?
 - ▶ Gut feeling?



5

Prioritizing victim contact

- ▶ Lethality Assessments
 - ▶ Responding officers should utilize a lethality assessment as part of their investigation in family violence cases
 - ▶ Common tools are the Domestic Violence Lethality Screen for First Responders (LAP), the Danger Assessment, and the Ontario Domestic Assault Risk Assessment (ODARA)

6

Using Lethality Assessments

- ▶ The Lethality Assessment can play a role in the handling of the case at every phase:
 - ▶ Screen in for immediate services.
 - ▶ Assists officer in determining the urgency of the case, and may encourage filing of higher charges.
 - ▶ Can assist a magistrate in determining conditions of bond and whether a Magistrate's Order of Emergency Protection should be issued

10

Using Lethality Assessments

- ▶ Use by prosecutor:
 - ▶ Helpful in determining priority of case
 - ▶ Helpful in determining whether to file for Protective Order
 - ▶ Provides useful background information on history of abuse in the relationship (CCP Art. 38.371)

11

Ensuring Safety on Paper

12

Magistrate's Order of Emergency Protection (MOEP)

- ▶ CCP Art. 17.292: MOEP may be issued at a defendant's appearance before a magistrate after arrest for certain offense, including family violence
- ▶ The MOEP may be issued at request of:
 - ▶ Victim,
 - ▶ Guardian of victim,
 - ▶ Peace Officer, or
 - ▶ Prosecutor
- ▶ MOEP **shall** be issued for family violence offense involving:
 - ▶ Serious Bodily Injury,
 - ▶ Use or exhibition of deadly weapon.

13

Magistrate's Order of Emergency Protection (MOEP)

- ▶ MOEP prohibits the defendant from:
 - ▶ Committing a new offense:
 - ▶ Communicating
 - ▶ Directly with the person protected under the order or a member of family/household in a **threatening or harassing** manner,
 - ▶ A threat through any person to the protected person or family household member,
 - ▶ **If the magistrate finds good cause**, in any manner with a person protected under the order or a member of the family or household, except through the party's attorney
 - ▶ Going to or near (1) the residence, place of employment, or business of the protected person or a family/household member; or (2) the residence, child care facility, or school where a protected child resides or attends

14

Magistrate's Order of Emergency Protection (MOEP)

- ▶ MOEP prohibits the defendant from:
 - ▶ Possessing a firearm **unless** the person is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency of political subdivision.
- ▶ Magistrate can impose GPS as condition (or use bond condition)
- ▶ The victim need not be present when the MOEP is issued.
- ▶ The order is good for a minimum of 31 days up to 61 days.
- ▶ If the offense involved a DW, then good up to 91 days and not less than 61 days.

15

Magistrate's Order of Emergency Protection (MOEP)

- ▶ A violation of the MOEP is a criminal offense under Penal Code Section 25.07
 - ▶ Class A Misdemeanor
 - ▶ first offense
 - ▶ 3rd Degree Felony
 - ▶ Two prior convictions of PO, MOEP, or FV Bond Conditions, or
 - ▶ Violation involved a new assault or stalking

16

Sample App. & MOEP Included

17

Bond and Bond Conditions

- ▶ The bail set in any given case must:
 - ▶ Be sufficiently high to give reasonable assurance that the defendant will comply with its terms,
 - ▶ Consider the nature and circumstances of the offense, and
 - ▶ Consider the **future safety of the victim** and the community. (CCP 17.15)
- ▶ However, bail may not be used as an instrument of oppression.

18

Modifying/Increasing Bond

- ▶ Why increase or modify a defendant's bond?
 - ▶ The bond does not have any conditions
 - ▶ The bond does not have appropriate conditions
 - ▶ The bond is simply too low
 - ▶ The defendant has failed to comply with conditions
 - ▶ Failed to report
 - ▶ Failed U/A
 - ▶ Contacted victim
 - ▶ The defendant has committed a new crime

22

Modifying Bond Conditions

- ▶ Why increase, modify, or revoke bond?
 - ▶ The bond is simply too low
 - ▶ The bond does not have appropriate conditions
 - ▶ The defendant has failed to comply with conditions
 - ▶ Failed to report
 - ▶ Failed U/A
 - ▶ Contacted victim
 - ▶ The defendant has committed a new crime
- ▶ Err on the side of victim safety!

23

Modifying/Increasing Bond

Trial courts have the discretion to increase any bond after a finding that it is defective, too low, the sureties are unacceptable, or for any good and sufficient cause shown. CCP 17.09 §3. *Miller v. State*, 855 S.W.2d 92, 93-94 (Tex. App. – Houston [14th Dist.] 1993)

24

Factors to consider

- ▶ Factors the Courts must consider:
 - ▶ Whether the defendant has complied with the conditions of bond,
 - ▶ The nature circumstances, and aggravating factors of the charged offense,
 - ▶ The defendant's prior criminal history, and
 - ▶ The future safety of the victim and the community. CCP Art. 17.40 & 17.152, *Ex parte Green*, 940 S.W.2d 799, 801 (Tex. App. – El Paso 1997)

25

Increasing or Modifying Bond

- ▶ Items to include in the motion:
 - ▶ Defendant's original bond and requested amount
 - ▶ Defendant's criminal history
 - ▶ Nature of underlying offense
 - ▶ Victim safety concerns
 - ▶ Reason for filing (new offense, lack of compliance with terms, insufficient amount, insufficient conditions, etc.)
 - ▶ Attach PC affidavits from new offenses
 - ▶ Any request for additional bond conditions (no contact, GPS, etc.)

26

What happens next?

- ▶ Bond practices vary by jurisdiction
- 1. **The trial court may issue an arrest warrant** for the defendant and raise the bond based solely on the "good and sufficient cause" included in the motion.
 - ▶ The statute does not require notice to defendant or counsel prior to issuance of the warrant
 - ▶ Defendant may challenge the increase through a *habeas corpus* motion.
- ▶ Good News: Rules of Evidence don't apply to *habeas*. TRE 101(e)(3)(C)

27

Revoking and Denying Bond

- ▶ Cases where bail can be denied:
 - ▶ Capital murder where proof evident,
 - ▶ Offenders who violate a condition of bail related to the safety of the victim or the community, and
 - ▶ Offenders who violate protective orders.
- ▶ Denying bail is a powerful remedy
 - ▶ Not appropriate for every case
 - ▶ Vital tool in high-risk cases

31

Revoking and Denying Bail

- ▶ CCP 17.152 contains the provisions related to denial of bail in family violence cases
- ▶ Three categories of conduct
 1. If the defendant committed an offense under PC 25.07 by violation a condition of bond in a FV case, state must show bond has been revoked for the violation, that the defendant violated the condition of bond, and that the bond condition was related to the safety of the victim or community. CCP 17.152(b).

EXAMPLE: Def. on bond for Class A FV Asslt with "no communications" condition contacts victim on phone.

32

Revoking and Denying Bail

2. If the defendant committed an offense under PC 25.07, other than by violating a bond condition, the state must prove the new offense. CCP 17.152(c).
- EXAMPLE: Defendant subject to a protective order who violates it by possessing a firearm.

33

Revoking and Denying Bail

- 3. If the defendant committed an offense under PC 25.07, including violating a bond condition, by going to or near a protected place (home, work, school), the state must prove the conduct and prove that the defendant went to the place with the intent to threaten or commit FV or stalking.

EXAMPLE: Defendant subject to PO who shows up at residence of victim and threatens victim with assault.

34

Revoking and Denying Bail

- ▶ Defendant is entitled to a hearing
 - ▶ Rules of Evidence apply
 - ▶ You may (probably will) need your victim
 - ▶ The possibility of a no bond may provide your victim with relief
- ▶ Prove up your case without the victim if possible
 - ▶ Admissible hearsay (medical records, 911, non-testimonial utterances)
 - ▶ Third-party witnesses and officer observations
 - ▶ Forfeiture by wrongdoing if necessary

35

The Statute is Clunky

- ▶ Envisions a hearing revoking bail, and then a second hearing where judge makes additional determinations
 - ▶ We do it all at the same hearing.
- ▶ Timing of Motion
 - ▶ CCP 17.152(f): "A person arrested for committing an offense under PC 25.07, shall without unnecessary delay and after reasonable notice is given to the attorney representing the state, but not later than 48 hours after the person is arrested, be taken before a magistrate in accordance with Art. 15.17. At that time, the magistrate shall conduct the hearing and make the determination required by this article."
 - ▶ Nothing in the statute prevents the state from filing a motion at a later date.

36

State v. William Gates, Jr.

- ▶ March 8, 2019 – Gates arrested on indictment and signs acknowledgment of bond conditions
- ▶ March 9, 2019 – Gates visits the home of the victim in violation of bond conditions



40

State v. William Gates, Jr.

- ▶ March 8, 2019 – Gates arrested on indictment and signs acknowledgment of bond conditions
- ▶ March 9, 2019 – Gates visits the home of the victim in violation of bond conditions
- ▶ March 11, 2019 – Gates texts and calls the victim



41

State v. William Gates, Jr.

- ▶ March 8, 2019 – Gates arrested on indictment and signs acknowledgment of bond conditions
- ▶ March 9, 2019 – Gates visits the home of the victim in violation of bond conditions
- ▶ March 11, 2019 – Gates texts and calls the victim (from new number)
- ▶ March 11, 2019 – after receiving messages, victim comes to DAO to file ANP



42

Using Bond to Increase Safety

- ▶ Monitor compliance of defendants closely in serious cases
 - ▶ Strangulation
 - ▶ Agg. asslt. DW or SBI
 - ▶ Continuous
- ▶ Monitor closely those deemed high-risk
 - ▶ Even a Class A misdemeanor with a high-risk lethality assessment deserves attention

46

But what about bail reform?

"The Texas cases make clear that a judge may arrive at a bail amount that a defendant cannot pay when the defendant is facing a felony charge carrying an extended prison sentence...In misdemeanor cases, pretrial preventive detention is permitted only when a defendant is facing a **family violence case**. In those cases, it is not necessary to use secured money bail to effect the detention of those who cannot pay. The Texas Constitution permits a transparent order of pretrial preventive detention."

O'Donnell v. Harris County, Texas, 251 F.Supp.3d 1052, 1077-78 (S.D. Tex 2017).

47

Err on the side of victim safety!

48

Community Coordinated Response

A community coordinated response involves prosecutors, law enforcement, and service-providers working together to create programs and protocols that provide better protection for victims and that increase offender accountability.

49

Community Coordinated Response

- ▶ Inter-agency collaboration
 - ▶ Advocates
 - ▶ Law enforcement
 - ▶ Prosecutors
 - ▶ Interested parties (non-profits, health care providers, etc.)
 - ▶ Media
- ▶ Task forces, Domestic Violence High Risk Teams, informal meetings, etc.

50

Domestic Violence High Risk Teams

- ▶ Interdisciplinary team
 - ▶ Law enforcement
 - ▶ Advocates/shelter representatives
 - ▶ Prosecutors
 - ▶ Probation department
 - ▶ Others?
- ▶ Monthly meetings
 - ▶ Discuss individual cases
 - ▶ Formulate individual plans

51

Five Things to Say to a Victim of Family Violence:

- 1) I am afraid for your safety.
- 2) I am afraid for the safety of your children.
- 3) It will only get worse.
- 4) I am here for you when you are ready to leave.
- 5) You don't deserve to be abused.

By Sarah Buel