

CODE OF CRIMINAL PROCEDURE
TITLE 1. CODE OF CRIMINAL PROCEDURE
CHAPTER 5. FAMILY VIOLENCE PREVENTION

Art. 5.01. LEGISLATIVE STATEMENT. (a) Family violence is a serious danger and threat to society and its members. Victims of family violence are entitled to the maximum protection from harm or abuse or the threat of harm or abuse as is permitted by law.

(b) 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. Added by Acts 1985, 69th Leg., ch. 583, Sec. 1, eff. Sept. 1, 1985.

Art. 5.02. DEFINITIONS. In this chapter, "family violence," "family," "household," and "member of a household" have the meanings assigned by Chapter 71, Family Code.

Added by Acts 1985, 69th Leg., ch. 583, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 7.002(c), eff. Sept. 1, 2003.

Art. 5.03. FAMILY OR HOUSEHOLD RELATIONSHIP DOES NOT CREATE AN EXCEPTION TO OFFICIAL DUTIES. A general duty prescribed for an officer by Chapter 2 of this code is not waived or excepted in any family violence case or investigation because of a family or household relationship between an alleged violator and the victim of family violence. A peace officer's or a magistrate's duty to prevent the commission of criminal offenses, including acts of family violence, is not waived or excepted because of a family or household relationship between the potential violator and victim. Added by Acts 1985, 69th Leg., ch. 583, Sec. 1, eff. Sept. 1, 1985.

Art. 5.04. DUTIES OF PEACE OFFICERS. (a) The primary duties of a peace officer who investigates a family violence allegation or who responds to a disturbance call that may involve family violence are to protect any potential victim of family violence, enforce the law of this state, enforce a protective order from another

jurisdiction as provided by Chapter 88, Family Code, and make lawful arrests of violators.

(a-1) A peace officer who investigates a family violence allegation or who responds to a disturbance call that may involve family violence shall determine whether the address of the persons involved in the allegation or call matches the address of a current licensed foster home or verified agency foster home listed in the Texas Crime Information Center.

(b) A peace officer who investigates a family violence allegation or who responds to a disturbance call that may involve family violence shall advise any possible adult victim of all reasonable means to prevent further family violence, including giving written notice of a victim's legal rights and remedies and of the availability of shelter or other community services for family violence victims.

(c) A written notice required by Subsection (b) of this article is sufficient if it is in substantially the following form with the required information in English and in Spanish inserted in the notice:

"It is a crime for any person to cause you any physical injury or harm EVEN IF THAT PERSON IS A MEMBER OR FORMER MEMBER OF YOUR FAMILY OR HOUSEHOLD.

"NOTICE TO ADULT VICTIMS OF FAMILY VIOLENCE

"Please tell the investigating peace officer:

"IF you, your child, or any other household resident has been injured; or

"IF you feel you are going to be in danger when the officer leaves or later.

"You have the right to:

"ASK the local prosecutor to file a criminal complaint against the person committing family violence; and

"APPLY to a court for an order to protect you (you should consult a legal aid office, a prosecuting attorney, or a private attorney). If a family or household member assaults you and is arrested, you may request that a magistrate's order for emergency protection be issued. Please inform the investigating officer if you want an order for emergency protection. You need not be present

when the order is issued. You cannot be charged a fee by a court in connection with filing, serving, or entering a protective order. For example, the court can enter an order that:

"(1) the abuser not commit further acts of violence;

"(2) the abuser not threaten, harass, or contact you at home;

"(3) directs the abuser to leave your household; and

"(4) establishes temporary custody of the children and directs the abuser not to interfere with the children or any property.

"A VIOLATION OF CERTAIN PROVISIONS OF COURT-ORDERED PROTECTION (such as (1) and (2) above) MAY BE A FELONY.

"CALL THE FOLLOWING VIOLENCE SHELTERS OR SOCIAL ORGANIZATIONS IF YOU NEED PROTECTION:

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Added by Acts 1985, 69th Leg., ch. 583, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 366, Sec. 4, eff. Sept. 1, 1991; Subsec. (c) amended by Acts 1995, 74th Leg., ch. 1024, Sec. 24, eff. Sept. 1, 1995; Subsec. (a) amended by Acts 1997, 75th Leg., ch. 1193, Sec. 23, eff. Sept. 1, 1997; Subsec. (c) amended by Acts 1997, 75th Leg., ch. 610, Sec. 2, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 524 (S.B. 723), Sec. 2, eff. June 16, 2007.

Art. 5.045. STANDBY ASSISTANCE; LIABILITY. (a) In the discretion of a peace officer, the officer may stay with a victim of family violence to protect the victim and allow the victim to take the personal property of the victim or of a child in the care of the victim to a place of safety in an orderly manner.

(b) A peace officer who provides assistance under Subsection (a) of this article is not:

(1) civilly liable for an act or omission of the officer that arises in connection with providing the assistance or determining whether to provide the assistance; or

(2) civilly or criminally liable for the wrongful appropriation of any personal property by the victim.

Art. 5.05. REPORTS AND RECORDS. (a) A peace officer who investigates a family violence incident or who responds to a disturbance call that may involve family violence shall make a written report, including but not limited to:

- (1) the names of the suspect and complainant;
- (2) the date, time, and location of the incident;
- (3) any visible or reported injuries;
- (4) a description of the incident and a statement of its disposition; and

- (5) whether the suspect is a member of the state military forces or is serving in the armed forces of the United States in an active-duty status.

(a-1) In addition to the written report required under Subsection (a), a peace officer who investigates a family violence incident or who responds to a disturbance call that may involve family violence shall make a report to the Department of Family and Protective Services if the location of the incident or call, or the known address of a person involved in the incident or call, matches the address of a current licensed foster home or a verified agency foster home as listed in the Texas Crime Information Center. The report under this subsection may be made orally or electronically and must:

- (1) include the information required by Subsection (a); and

- (2) be filed with the Department of Family and Protective Services within 24 hours of the beginning of the investigation or receipt of the disturbance call.

(a-2) If a suspect is identified as being a member of the military, as described by Subsection (a)(5), the peace officer shall provide written notice of the incident or disturbance call to the staff judge advocate at Joint Force Headquarters or the provost marshal of the military installation to which the suspect is assigned with the intent that the commanding officer will be notified, as applicable.

(b) Each local law enforcement agency shall establish a

departmental code for identifying and retrieving family violence reports as outlined in Subsection (a) of this section. A district or county attorney or an assistant district or county attorney exercising authority in the county where the law enforcement agency maintains records under this section is entitled to access to the records. The Department of Family and Protective Services is entitled to access the records relating to any person who is 14 years of age or older and who resides in a licensed foster home or a verified agency foster home.

(c) In order to ensure that officers responding to calls are aware of the existence and terms of protective orders, each municipal police department and sheriff shall establish procedures within the department or office to provide adequate information or access to information for law enforcement officers of the names of persons protected by a protective order and of persons to whom protective orders are directed.

(d) Each law enforcement officer shall accept a certified copy of an original or modified protective order as proof of the validity of the order and it is presumed the order remains valid unless:

- (1) the order contains a termination date that has passed;
- (2) it is more than one year after the date the order was issued; or
- (3) the law enforcement officer has been notified by the clerk of the court vacating the order that the order has been vacated.

(e) A peace officer who makes a report under Subsection (a) of this article shall provide information concerning the incident or disturbance to the bureau of identification and records of the Department of Public Safety for its recordkeeping function under Section [411.042](#), Government Code. The bureau shall prescribe the form and nature of the information required to be reported to the bureau by this article.

(f) On request of a victim of an incident of family violence, the local law enforcement agency responsible for investigating the incident shall provide the victim, at no cost to the victim, with any information that is:

(1) contained in the written report prepared under Subsection (a);

(2) described by Subsection (a)(1) or (2); and

(3) not exempt from disclosure under Chapter 552, Government Code, or other law.

Added by Acts 1985, 69th Leg., ch. 583, Sec. 1, eff. Sept. 1, 1985. Subsec. (d) amended by Acts 1989, 71st Leg., ch. 614, Sec. 27, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 739, Sec. 8, eff. Sept. 1, 1989; Subsec. (a) amended by and Subsec. (e) added by Acts 1993, 73rd Leg., ch. 900, Sec. 8.01, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 524 (S.B. 723), Sec. 3, eff. June 16, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1057 (H.B. 2210), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 327 (H.B. 2624), Sec. 2, eff. September 1, 2011.

Art. 5.06. DUTIES OF PROSECUTING ATTORNEYS AND COURTS. (a) Neither a prosecuting attorney nor a court may:

(1) dismiss or delay any criminal proceeding that involves a prosecution for an offense that constitutes family violence because a civil proceeding is pending or not pending; or

(2) require proof that a complaining witness, victim, or defendant is a party to a suit for the dissolution of a marriage or a suit affecting the parent-child relationship before presenting a criminal allegation to a grand jury, filing an information, or otherwise proceeding with the prosecution of a criminal case.

(b) A prosecuting attorney's decision to file an application for a protective order under Chapter 71, Family Code, should be made without regard to whether a criminal complaint has been filed by the applicant. A prosecuting attorney may require the applicant to provide information for an offense report, relating to the facts alleged in the application, with a local law enforcement agency.

(c) The prosecuting attorney having responsibility under Section 71.04(c), Family Code, for filing applications for protective orders under Chapter 71, Family Code, shall provide

notice of that responsibility to all law enforcement agencies within the jurisdiction of the prosecuting attorney for the prosecuting attorney.

Added by Acts 1985, 69th Leg., ch. 583, Sec. 1, eff. Sept. 1, 1985.

Amended by Acts 1989, 71st Leg., ch. 614, Sec. 28, eff. Sept. 1,

1989; Acts 1989, 71st Leg., ch. 739, Sec. 9, eff. Sept. 1, 1989.

Subsec. (c) added by Acts 1995, 74th Leg., ch. 564, Sec. 2, eff.

Sept. 1, 1995; added by Acts 1995, 74th Leg., ch. 1024, Sec. 25,

eff. Sept. 1, 1995.

Art. 5.08. MEDIATION IN FAMILY VIOLENCE CASES.

Notwithstanding Article 26.13(g) or 42A.301(b)(15), in a criminal prosecution arising from family violence, as that term is defined by Section 71.004, Family Code, a court shall not refer or order the victim or the defendant involved to mediation, dispute resolution, arbitration, or other similar procedures.

Added by Acts 1999, 76th Leg., ch. 389, Sec. 1, eff. Aug. 30, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 4.002, eff. September 1, 2019.