Policy Revision Request

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This revision applies to   New Policy

      If new, recommended section 419.2.4 Bond Conditions

This revision is necessary to comply with   State Law (attach)

Whom does this revision affect?   Department

This revision has an unbudgeted financial impact of $ 0

Brief reason for the revision:
In 2021, the 87th Legislature passed House Bill 766, which added Article 17.50 to the Code of Criminal Procedure. This section requires magistrates to notify the sheriff the condition of the bond within one business day of their issuance and gives the sheriff one business day to enter the condition into TCIC.

Document the changes or additions to the policy below. Please include the specific policy number. ~~Red strikethroughs~~ are used for deletions and <u>blue underlined</u> for text insertions. Please email completed forms to APDPolicy@austintexas.gov. Use this email for any related questions or issues for policy.

419 Protective Orders

419.1 PURPOSE AND SCOPE
Victims of family violence are entitled by law to protection from harm or abuse and the threat of harm or abuse. ~~Various types of orders may be issued by various courts~~ <u>Various courts may issue various types of orders</u> in family violence cases.

419.2 PROTECTIVE ORDERS AND BOND CONDITIONS

419.2.1 EMERGENCY PROTECTIVE ORDERS
A magistrate may issue an emergency protective order (EPO) against a defendant at the defendant's initial appearance before the magistrate~~,~~ if the defendant is under arrest for family violence, sexual assault, aggravated sexual assault~~,~~ or stalking. The order may be issued on the magistrate's own motion~~,~~ or request of the victim, the guardian of the victim, a peace officer, or the attorney representing the State (Tex. Code of Crim. Proc. art 17.292).
(a)   An EPO may be effective for a period:
    1.   Between 31-61 days; or
    2.   Between 61-91 days if the suspect used or exhibited a deadly weapon during the assault.
(b)   A violation of an EPO is included in Penal Code § 25.07.
(c)   EPO~~'~~s for victims of family violence shall be filed by officers as outlined in Policy 418 (Family Violence).

419.2.2 TEMPORARY EX-PARTE ORDERS

Temporary ex-parte orders are issued by the court when the court finds there is a clear and present danger of family violence contained in the application for a protective order. ~~The court,~~ ~~w~~Without further notice to the individual alleged to have committed family violence and without a hearing, the court may enter a temporary ex-parte order for the protection of the applicant or any other member of the family or household of the applicant (Tex. Fam. Code § 83.001).

(a) Temporary ex-parte orders may be effective for a period not to exceed 20 days.
(b) A violation of a temporary ex-parte order is included in Penal Code § 25.07 but only after it has been served to the person named in the order.

419.2.3 FINAL PROTECTIVE ORDERS

A final protective order is designed to protect victims of violence by stopping violent and harassing behavior for a longer period of time (Tex. Fam. Code § 85.021).

(a) Final protective orders issued by a court may be effective for the following time periods:
    1. A period not to exceed two years; or
    2. If a period is not stated in the order~~,~~ until the second anniversary of the date the order was issued; or
    3. If the respondent is in prison on the date the protective order is set to expire, the expiration date ~~is~~ extend~~s~~ed for one year from the date the respondent is released.
(b) A violation of a final protective order is included in Penal Code § 25.07.

419.2.4 BOND CONDITIONS

Judges and magistrates can attach conditions to a bond set in a family violence case preventing certain actions. A violation of a bond condition is included in Penal Code § 25.07.

In most cases involving serious or violent offenses, bond conditions restrict the subject from going near to or interacting with crime victims, similar to a protective order.

(a) Criminally enforceable violations are:
    1. No-contact conditions
    2. 200 yard stay away violations (home, work, school, daycare)
    3. Firearm possession
    4. Interference with pet, companion or assistance animal
    5. Removal, attempted removal, or tampering with GPS monitor
(b) Travis County has begun entering current bond conditions into TCIC. Running a search of a wanted person (QW) will also yield a return for bond conditions, if they exist. Unlike protective orders, which have an expiration date, bond conditions are in place until the criminal charge or case is fully disposed, unless earlier vacated by the court.
(c) If someone is contacted and there is probable cause that the person is in violation of their bond conditions related to family violence, an on-scene arrest shall be made and the charge direct filed, just as if it was a violation of a protective order or an emergency protective order. The probable cause affidavit for a Violation of Bond Conditions will require the same elements as a Violation of Protective Order (VPO) charge.

419.3 ENFORCEMENT PROCEDURES

419.3.1 VERIFICATION OF ORDER

Whenever a complainant advises of the existence of a protective order, officers shall immediately attempt to determine the following:

(a) If the protective order is valid by checking the termination or expiration date of the order, or whether ~~the order has been vacated by the court~~ the court has vacated the order.

    1. Temporary ex-parte orders must have been served prior to enforcement action in order for them to be valid. Service of temporary ex-parte orders can only be verified by checking through APD Central Records.

(b) If a violation of the protective order has occurred by checking:

    1. The terms of the protective order; and

    2. The location of the protected address.

        (a) Some orders specify the applicant's county of residence rather than a specific street address. This attempt by the court to further protect the applicant does not invalidate the order's protection of the residence address. In these cases, if a residence appears to be the applicant's home, it shall be considered the protected address, and ~~the order will be enforced accordingly.~~ enforce the order accordingly.

419.3.2 ARREST GUIDELINES

Officers must carefully read a protective order prior to taking enforcement action to verify the details of the prohibited conduct and that the order is still in effect.

(a) No person can grant the subject of a protective order permission to violate any tenet of the order, including a law enforcement officer or the victim.

(b) The protected person cannot be arrested for personally violating any tenet of the order.

(c) If ~~it is found that~~ a person ~~has~~ violates a court order, the following arrest guidelines apply:

    1. An arrest shall be made when an officer witnesses a violation of any enforceable court order. (Tex. Court of Crim. Proc. art. 14.03(b)).

    2. An arrest ~~should~~ may be made when an officer has probable cause to believe a violation of any enforceable court order has been committed (Tex. Code of Crim. Proc. art. 14.03(a)(3)) outside the officer's presence.

(d) In the event the suspect is no longer at the scene, officers shall document the incident in a report for follow-up investigation.

419.3.3 WHEN THE ORDER IS NOT VERIFIABLE

If the victim is not in possession of the protective order and/or for any reason, the officer cannot verify the validity of the order, the following action shall be taken:

419.4 REPORTING

~~When officers investigate a family disturbance or similar incident and are~~ When informed that any person has violated a protective order during a family disturbance or similar incident, officers shall initiate an incident report regardless of whether an arrest is made.

(a) Officers shall use the appropriate title code ~~to~~ for the incident report:

    1. Viol of Bond Conditions (3006).

    2. Viol Temp Ex Parte Order (3007).

    3. Viol of Emerg Protective Order (3008).

    4. Viol of Protective Order (3009).

    5. Viol PO / Sexual Assault Victim (3010).

    6. Viol of Court Order - Non-EPO/PO (2008) - When the incident is of a civil nature (e.g., restraining order, child custody).

(b) Officers should document the identifying information of the protective order (e.g., order number, effective dates, judge's name) in the narrative.