

# **Miscellaneous Writ: Sequestration, Attachment Protective Orders, and More**

Constable Chad Jordan  
Hood County, Precinct 4

## **Funded By A Grant From The Texas Court Of Criminal Appeals**

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## Resources

- ▶ [www.txcourts.gov](http://www.txcourts.gov)
  - ▶ Texas Rules of Civil Procedure (TRCP)
- ▶ [www.statutes.capitol.texas.gov](http://www.statutes.capitol.texas.gov)
  - ▶ All statutes other than the Rules of Civil Procedure
- ▶ TJCTC website ([www.tjctc.org](http://www.tjctc.org))
  - ▶ Deskbooks, including Texas Civil Process Field Guide
  - ▶ Legal question board, forms, webinars, modules, etc.

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## Agenda

- ▶ General Information (for all the writs/orders covered in this presentation)
- ▶ Detailed Info:
  - ▶ Writ of Sequestration
  - ▶ Writ of Attachment
  - ▶ Protective Order
  - ▶ Writ of Habeas Corpus
  - ▶ Capias
- ▶ Poll Quiz

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# General Information

Sequestration, Attachment, Protective Order, Habeas Corpus, And Capias

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## How The Writs/Orders Are Served

- ▶ Writs of sequestration and attachment **must** be served by:
  - ▶ Sheriffs,
  - ▶ **Constables, or**
  - ▶ **Their deputies.**
- ▶ Capias may be served by *any* peace officer.
- ▶ Protective Orders and Habeas Corpus can generally be served by anyone authorized to serve process.
- ▶ These may all be served anywhere in the state.
- ▶ All served via personal service.

*TRCP Rules 103 & 501.2(a)*

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## Date And Time Of Service

- ▶ Monday – Saturday (any time)
- ▶ Sunday service is allowed for all the writs/orders discussed in this class **except for** the writ of habeas corpus and the notice of application for a protective order.
- ▶ Time Computation for Saturdays, Sundays, and legal holidays:
  - ▶ Count **all** days.
  - ▶ District or County Courts: If the time period to serve is 5 days or less, don't include Sat, Sun, and holidays.
- ▶ If the last day to serve is a Saturday, Sunday, or legal holiday, the time period runs until the end of the next business day that ends at 5:00.
- ▶ The court has discretion to extend service period.

*TRCP Rules 4-6, 500.5, 621*

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## Expiration Of Service

- A writ not requiring enforcement of a judgment: no expiration on service, unless specifically indicated.
- Enforcing a judgment: 30, 60, or 90 days as specified in the writ.

*TRCP Rules 4-6, 500.5, 621*

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## Common Return Duties & Requirements

- ▶ Once the writ/order is executed, the officer must complete a return of service.
  - ▶ The return of service can be attached to the writ, **or** it can be a separate document.
- ▶ The officer must sign the return and file it with the clerk of the proper court.
  - ▶ May be returned in person, electronically, or by fax.
  - ▶ Return as soon as possible or as directed.

*TRCP Rules 16, 107, & 501.3*

## Common Return of Service Requirements

- ▶ Cause number & case name
- ▶ Name of the court and county where the case was filed
- ▶ Description of what was served
- ▶ Date and time the process was received for service
- ▶ Person and/or entity served
- ▶ Date & address of service
- ▶ Signed officially by the deputy
- ▶ Any other information required by rule or law

*TRCP Rules 16, 107, & 501.3*

## Record Retention Schedules

- ▶ Records must be retained and may be destroyed pursuant to established retention schedules.
- ▶ Retention of records relating to service of process:
  - ▶ Local Schedule PS – Retention Schedule for Records of Public Safety Agencies
  - ▶ [www.tsl.state.tx.us/slr/recordspubs/localretention](http://www.tsl.state.tx.us/slr/recordspubs/localretention)
  - ▶ Recordkeeping Deskbook

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## Fees

- ▶ The initial service fee may cover a specific amount of field time.
  - ▶ If the officer spends more time in the field executing a writ, an additional fee can be charged.
- ▶ The fee for serving each type of writ/order, how much field time is covered by that fee, and the additional fee that can be charged per hour vary by county. Fees are set in each county's Fee Schedule.
- ▶ Fees for service of civil process:
  - ▶ Set by the commissioner's court under Section 118.131, Local Government Code.
  - ▶ Listed in the Sheriffs' and Constables' Fees Listing published by the Comptroller's Office:
    - ▶ <http://www.tjctc-resources.org/docs/2017-SCFeeManual.pdf>.

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## Fee Collection

- ▶ The officer is **not** entitled to demand their service fee in advance of serving the process for a case filed in their county.
  - ▶ The officer's fee is to be taxed and collected as other costs in the case.
- ▶ **Exception:** A case pending in another county.
  - ▶ Then the officer may require payment before serving **unless** a Statement of Inability to Afford Payment of Court Costs has been filed.

TRCP Rule 126

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## Failure To Execute & Return

- ▶ If a constable fails or refuses to execute and return a process that is lawfully directed and delivered to them, the constable **shall** be fined for contempt on the motion of the person injured by the failure or refusal.
  - ▶ Applies to deputy constables in the same way.
- ▶ Fine:
  - ▶ \$10 - \$100 plus costs.
  - ▶ Paid to the injured person.
  - ▶ Constable must be given 10 days notice of the motion.

Local Government Code § 86.024

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## Officer Liability

- ▶ Liability for an officer involved in the execution of writs is covered in Chapters 7, 34, and 35 of the Civil Practice and Remedies Code.
- ▶ Liability will be discussed in depth in other classes.

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## Poll 1

If you receive a writ from a court and you think it might have been issued in error, you should:

- A. Contact the court and verify, then serve the writ as directed.
- B. Serve the writ as directed.
- C. Refuse to serve the writ.

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**Now, Details On Each  
Type Of Process**

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**Writ Of  
Sequestration**

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## What Is A Writ Of Sequestration?

- ▶ It is a **pre-judgment** court order that allows for the **temporary** seizure or setting aside of specific property while a case is pending.
  - ▶ Deputy can seize only the **property described in the writ**, nothing else.
  - ▶ Peaceful entry, but reasonable force to exit, as necessary.
- ▶ It lets a party protect and preserve the property, pending the outcome of the case.
- ▶ Issued by District, County, or Justice Court.

*Civil Practice and Remedies Code §62.002*

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## Writ Of Sequestration Process

- ▶ Application Filed –must be filed with affidavit supporting grounds for issuance of the writ
- ▶ Court Hearing –may be ex parte
- ▶ Bond –Plaintiff files bond payable to defendant in case filed writ wrongfully
  - ▶ Item taken by constable and stored
- ▶ Replevy Bond –If defendant posts bond, they can get property back
  - ▶ If defendant has not posted replevy bond within 10 days of seizure, plaintiff can post their own replevy bond and get property released to them

**See TRCP 696 and 698**

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## Requirements Of The Writ

- ▶ Styled "The State of Texas."
- ▶ Directed to any Sheriff or any Constable in Texas.
- ▶ Identifies:
  - ▶ Person who is to be served.
  - ▶ Name of county & court where the case is filed.
  - ▶ Cause number.
  - ▶ All parties in the case.
  - ▶ Date of issuance.
- ▶ Contains findings of fact to support that grounds exist for issuance of writ.

*TRCP Rules 15, 696, 699, & 700a*

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## Requirements Of The Writ (Continued)

- ▶ Describe the property to be sequestered with such certainty that it may be identified and distinguished from similar property of like kind.
- ▶ State the value of each article of property.
- ▶ State the county in which each article of property is located.
- ▶ Specify the plaintiff's bond amount.
- ▶ Command sequestered property be kept subject to further court orders.
- ▶ Advise the defendant of their right to replevy (statutory notice).
- ▶ State the amount of defendant's replevy bond.
- ▶ Identify which court the writ is returnable to.
- ▶ Signed by court clerk or judge and contains official court seal.

*TRCP Rules 15, 696, 699, & 700aa*

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## Statutory Notice To The Defendant

The following statement must be included in the writ in 10-point type:

**"You are hereby notified that certain properties alleged to be claimed by you have been sequestered. If you claim any rights in such property, you are advised:**

**YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."**

*CPRC § 62.023, TRCP Rules 699 & 700a*

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## Sample Form Available on [www.tjctc.org](http://www.tjctc.org)

EXHIBIT NO. _____		OFFICER'S RETURN	
PLAINTIFF _____		I received the attached Writ of Sequestration on _____ at _____	
" _____		_____m. and executed the writ on _____ at _____	
" _____		_____m. as detailed below:	
DEFENDANT _____		_____	
COUNTY, TEXAS _____		_____	
WRIT OF SEQUESTRATION			
THE STATE OF TEXAS			
TO ANY SHERIFF OR CONSTABLE WITHIN THE STATE OF TEXAS			
Plaintiff has filed an Application for a Writ of Sequestration and a Bond in the amount of \$ _____ This court issued an order on _____ at _____ granting the Application as required by Rule 699.			
As the officer executing this writ, you are <b>COMMANDED</b> to take into your possession the described personal property valued at \$ _____ If it is found in your custody.			
Description of personal property: _____			
_____			
_____			
You are <b>ORDERED</b> to keep the property in your custody unless it is improved. You are further <b>ORDERED</b> to file a return to this court stating how you have executed this writ.			
<b>NOTICE TO DEFENDANT:</b>			
You are hereby notified that certain properties alleged to be claimed by you have been sequestered. If you claim any rights in such property, you are advised:			
<b>"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT." AMOUNT OF REPLEVY BOND: \$ _____</b>			
<b>SIGNED AND SIGNED BY: _____</b>			
_____			
JUDGE OF THE PEACE, PRECINCT _____			
COUNTY, TEXAS _____			
FEES:		I further certify that I delivered to _____ a copy of this Writ of Sequestration.	
Issuing & returning writ \$ _____		_____	
Care of property \$ _____		_____	
Other \$ _____		_____	
Total \$ _____		_____	
CONSTABLE/THEWIFT, PRECINCT _____		_____	
COUNTY, TEXAS _____		_____	
BY: _____		Deputy	

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## Dates & Times For Service

- ▶ Service / execution is allowed:
  - ▶ Any day of the week, including Sunday.
  - ▶ Any time of day.
  - ▶ *Note: If accompanied by a citation, only the Writ may be served on Sunday.*

*TRCP Rule 6*

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## Expiration For Service

- ▶ No expiration for purposes of serving / executing.
- ▶ The writ should be executed as quickly as possible and without delay. \*\*\*A Rush paper.

*TRCP Rule 105*

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## Methods Of Service

- ▶ Sequestering is conducted wherever in the county the property is located.
  - ▶ Service on the defendant can be done at a separate time / location.
- ▶ The defendant, or their authorized agent or attorney, may be served by:
  - ▶ Personal service.
  - ▶ U.S. mail.
  - ▶ Commercial delivery service.
  - ▶ Fax.
  - ▶ Email.
  - ▶ Any other manner the court directs.

*TRCP Rules 21a, & 700a*

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## Service Duties & Requirements

When the writ is received, the officer must:

- ▶ Enter the writ into their record keeping system.
- ▶ Note the date and time received on it.
- ▶ Proceed without delay.
- ▶ Execute as directed within the body of the writ.
- ▶ Take possession of the property.
- ▶ Hold or dispose of the property as ordered by the court.
- ▶ Care for and manage the property in a prudent manner.
- ▶ Serve the defendant.
- ▶ Keep copies of all documents in accordance with established record retention schedules.

*TRCP Rules 17, 126, 706, 710, & CPRC § 62.061*

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## Return Requirements

- ▶ Include a description of the property that was sequestered.
- ▶ Include a description of how and where the property was stored or disposed.
- ▶ If the property was sold, return the order of sale within 5 days.

*TRCP Rules 706 & 712*

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## Plaintiff's Right to Replevy

- ▶ Note: Plaintiff can also replevy if the defendant doesn't exercise their right to replevy within 10 days after the levy of the writ and service of notice on the defendant.
- ▶ In order to do this, they have to file their own replevy bond unless:
  - ▶ They included the TRCP 708 bond condition requirements in their initial bond when they filed their petition, **and**
  - ▶ The court has not ordered them to post an additional replevy bond.

TRCP 698, 708

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## Sequestration Poll Question

A writ of sequestration is granted after a final judgment has been entered in a case and allows for the permanent seizure of the defendant's property.

- A. True
- B. False

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## Writ Of Attachment

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### **What Is A Writ Of Attachment For Property?**

- ▶ A pre-judgment writ issued while a case is pending that allows seizure of property in defendant's possession, because the plaintiff will probably lose their debt unless issued.
- ▶ Defendant will probably dispose of assets to avoid having to turnover property or pay the plaintiff.

*Civil Practice and Remedies Code §§61.001 & 61.041.*

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### **What Is A Writ Of Attachment For A Person?**

- ▶ It is a writ commanding a peace officer to take a person immediately, or on a date specified in the writ, before the court that issued the writ or to some other stated place.

*TRCP Rule 692.*

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## **Who Can Issue A Writ Of Attachment**

- ▶ Both types of writs of attachment can be issued by:
  - ▶ District court.
  - ▶ County court.
  - ▶ Justice court.

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## **Writ Of Attachment For Property**

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## Requirements Of The Writ

- ▶ Styled "The State of Texas."
- ▶ Directed to the sheriff or any constable in Texas.
- ▶ Includes:
  - ▶ Name of the person to be served.
  - ▶ Name and county of the issuing court.
  - ▶ Cause number.
  - ▶ Names of all parties in the case.
  - ▶ Date of issuance of the writ.
  - ▶ Facts to support that grounds exist for issuance.
  - ▶ Maximum value of property to be attached.

*TRCP Rules 15 & 592*

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## Requirements Of The Writ (Continued)

- ▶ Specifies the plaintiff's bond amount.
- ▶ Commands that the attached property be kept safe and preserved subject to further orders of the court.
- ▶ Advises the defendant of their right to replevy.
- ▶ States the amount of replevy bond.
- ▶ Contains statutory notice to the defendant.
- ▶ Identifies which court the citation is returnable to.
- ▶ Is signed by the court clerk or judge.
- ▶ Contains the court's official seal.

*TRCP Rules 15 & 592*

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## Statutory Notice To The Defendant

The following statement must be included in the writ in 10-point type:

**"You are hereby notified that certain properties alleged to be claimed by you have been attached. If you claim any rights in such property, you are advised:**

**YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT."**

TRCP Rule 592

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**Sample Form  
Available on  
[www.tjctc.org](http://www.tjctc.org)**

**Available on  
www.tjctc.org**

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CASE NO. \_\_\_\_\_ IN THE JUSTICE COURT

PLAINTIFF \_\_\_\_\_ vs. \_\_\_\_\_ DEFENDANT \_\_\_\_\_

COUNTY, TEXAS

**WRIT OF ATTACHMENT (PERSONAL PROPERTY)**

THE STATE OF TEXAS  
TO ANY SHERIFF OR CONSTABLE WITHIN THE STATE OF TEXAS

Plaintiff has filed an Application for a Writ of Attachment and a bond in the amount of \$ \_\_\_\_\_ in the office filing this writ, and is **ORDERED** to take into your possession the described personal property valued at \$ \_\_\_\_\_ if it is found in your county.

Description of personal property: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

You are further **ORDERED** to have such property in your custody unless it is released according to law. You are further **ORDERED** to file your completed return detailing how you have executed this writ with this court.

**NOTICE TO THE DEFENDANT**

You are hereby notified that certain properties alleged to be owned by you have been attached, if you claim any rights in such property, you are advised:

**"YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A REPLY BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT. AMOUNT OF REPLY BOND \$ \_\_\_\_\_"**

ISSUED AND SIGNED on \_\_\_\_\_ 20\_\_\_\_ at \_\_\_\_\_

JUDGE OF THE PEACE, PRECINCT \_\_\_\_\_  
COUNTY, TEXAS

OFFICER'S RETURN

I received the attached Writ of Attachment on \_\_\_\_\_ 20\_\_\_\_ at \_\_\_\_\_, and executed Writ of Attachment on \_\_\_\_\_ 20\_\_\_\_ at \_\_\_\_\_, as attached below:

\_\_\_\_\_

I further certify that I delivered to \_\_\_\_\_ 20\_\_\_\_ at \_\_\_\_\_, a copy of this Writ of Attachment.

FEES:

Laying & returning writ	\$ _____
Care of property	\$ _____
Other	\$ _____
<b>Total</b>	<b>\$ _____</b>

CONSTABLE/SHERIFF, PRECINCT \_\_\_\_\_  
COUNTY, TEXAS

By: \_\_\_\_\_ Deputy

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## Methods Of Service

- ▶ Attachment of property is carried out where the property is located.
  - ▶ Service upon defendant does not have to happen at the same time as attachment.
  - ▶ Allowed on Sundays.
- ▶ The defendant, or their duly authorized agent or attorney may be served by:
  - ▶ Personal service.
  - ▶ Mail.
  - ▶ Commercial delivery service.
  - ▶ **What other three ways?**

*TRCP Rules 21a, & 598a*

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## What other three ways can you serve the defendant (or their agent/attorney)?

- ▶ Fax.
- ▶ Email.
- ▶ Any other manner the court directs.

*TRCP Rules 21a, & 598a*

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## Service Duties & Requirements

When receiving the writ, the officer must:

- ▶ Enter it into their record keeping system.
- ▶ Note the date and time received on it.
- ▶ Proceed without delay.
- ▶ Execute as directed in the writ.
- ▶ Levy on:
  - ▶ Specific property as designated and described in the writ, or
  - ▶ On non-exempt property in a quantity to cover the amount stated in the writ.
- ▶ Retain the property until final judgment, unless property is replevied, sold, or claimed by a third party after a trial to right of property.

*TRCP Rules 17, 126, 600, 606, & CPRC §§61.042, 61.043*

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## Service Duties & Requirements (Continued)

The officer must:

- ▶ Keep property safe and in the same condition as when it was seized.
  - ▶ To attach *real* property, the officer must immediately file a copy of the writ and the applicable part of the return with the county clerk where the property is located.
- ▶ Notify court immediately if seized property is perishable so it can be sold.
- ▶ Serve the defendant.
- ▶ If property is replevied, deliver the replevy bond to the court clerk.
- ▶ Keep copies of all documents in accordance with established record retention schedules.

*TRCP Rules 17, 126, 600, 606, & CPRC §§ 61.042, 61.043*

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## Keeping Property Safe

- ▶ Document seized property by video or photo to prove the property was kept in the same condition as when it was seized.
  - ▶ Video/photo the item(s) when are were taken **and** when they are returned.
  - ▶ If visual documentation is not possible, write a description of the property so you at least have some type of documentation.
- ▶ This protects:
  - ▶ The property.
  - ▶ All parties.
  - ▶ Especially **you!**

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## Exempt Property

- ▶ A writ of attachment for property can **only** be for property that is subject to levy under a writ of execution:
  - ▶ Must be non-exempt property.
    - ▶ If there is a question as to whether property is exempt, issue should be handled in a court hearing.
  - ▶ Please see the TJCTC Exempt Property Benchcard:
    - ▶ <https://www.tjctc.org/tjctc-resources/Charts-and-Checklists.html>
    - ▶ Under the "Civil Procedure" section

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## **Writ Of Attachment For A Person**

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## **Adult Attachment**

- ▶ Orders an officer to take an individual into custody and take them before the court or somewhere else.
- ▶ It can order that the person be held in jail until court is in session.
- ▶ Examples:
  - ▶ Issued to bring in a party who has failed to appear for a contempt hearing.
  - ▶ Issued for or a witness who has been summoned for court and who failed to appear.

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## Child Attachment:

- ▶ Orders an officer to take a child from a parent or guardian and deliver the child to a person named by the court.
- ▶ Can be issued either pre- or post-judgment.
- ▶ Can be issued at the request of CPS

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## Requirements Of The Writ

- ▶ Styled "The State of Texas."
- ▶ Directed to any peace officer.
- ▶ Identifies the person who is to receive service of process.
- ▶ Includes the name and county of the court where the case is filed.
- ▶ Includes the cause number.
- ▶ Identifies all parties in the case.
- ▶ Includes the date of issuance of the writ.

*TRCP Rules 15, 692, & Code of Criminal Procedure Art. 24.11*

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## Requirements Of The Writ (Continued)

- ▶ Names the person who is to be taken by the officer, or if unknown, describes the person.
- ▶ Identifies where the person is to be taken.
- ▶ Identifies when the person is to be taken there.
- ▶ Identifies which court the writ is returnable to.
- ▶ Is signed by the court clerk or judge.
- ▶ Contains the court's official seal.

*TRCP Rules 15, 692, & Code of Criminal Procedure Art. 24.11*

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## Methods Of Service

- ▶ Attachment of a person is carried out wherever the person is found.
- ▶ Allowed on Sundays.

*TRCP Rule 692 & CCP Art. 24.11*

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## **Service Duties & Requirements**

The officer must:

- ▶ Enter the writ into their record keeping system.
- ▶ Note the date and time received on it.
- ▶ Proceed without delay.
- ▶ Execute as directed in the writ.
- ▶ Detain the person identified in the writ.
- ▶ Deliver the person immediately as stated in the writ.
- ▶ Serve the person a copy of the writ.
- ▶ Keep copies of all documents in accordance with established record retention schedules.

*TRCP Rules 17, 126, 692*

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## **Return Requirements For Writs Of Attachment (for Property & for a Person)**

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## Return Duties & Requirements Of Officer

- ▶ Complete a return of service.
  - ▶ The return can be attached to the writ **or** be a separate document.
- ▶ Sign the return and file it with the clerk of the court.
  - ▶ Return may be made in person, electronically, or by fax.
  - ▶ **For a person:** Unless otherwise stated, the return is to be filed by 10:00 AM on the Monday after the expiration of 20 days from the date of **service**. (Writ only expires if it is recalled by the issuing Court, unless the writ states otherwise).
  - ▶ **For property:** The return is to be filed by 10:00 AM on the Monday after the expiration of 15 days from the date of **issuance**.

*TRCP Rules 15, 16, 107, & 501.3*

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## Requirements Of The Return

- ▶ Case name and number.
- ▶ Court name and county where case was filed.
- ▶ Note the date & time the writ was received.
- ▶ Person or entity served.
- ▶ Address where executed.

*TRCP Rules 15, 16, 107, & 501.3*

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## Requirements Of The Return (Continued)

- ▶ Date and time executed.
- ▶ Signature of the \_\_\_\_\_.
- ▶ Any other information required by rule or law.
- ▶ Any additional information specific to the execution that should be noted in the file.

*TRCP Rules 15, 16, 107, & 501.3*

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## Additional Return Requirements For Writ Of Attachment For Property

- ▶ Detailed, specific property description.
- ▶ Date & time the property was attached.
- ▶ State whether the officer still has possession of the property, and if not, how the property was disposed of.
- ▶ If the property was replevied, state when it was released, to whom, and the condition of the property when it was replevied.
  - ▶ If replevy occurs after the original return is filed, file amended return.
- ▶ As previously stated, the return is to be filed by 10:00 AM on the Monday after the expiration of 15 days from the date of issuance.

*TRCP Rule 606*

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## To Summarize Attachments

- ▶ A Writ of Attachment for property is pre-judgment and authorizes the officer to seize property and dispose as directed by the Court.
- ▶ A Writ of Attachment for an Adult Person commands the officer to arrest and bring the subject before the Court (and may order them to be placed in jail if the court is unavailable).
- ▶ A Writ of attachment for a Child commands the officer to take possession of the Child and deliver the child as directed by the Court.

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## Poll 2

On Friday, you receive a writ of attachment that directs you to seize Otis and take him to court or to place him in jail if he is detained when the court is unavailable. On Saturday, you see Otis Smith at the grocery store. What do you do?

- A. Detain Otis on Saturday, place him in jail, and take him to court on Monday.
- B. Do nothing on Saturday. During court business hours, you find Otis and take him to court.
- C. Walk up to Otis in the grocery store and tell him that if he isn't in court on Monday you're going to come arrest him and throw him in jail.

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## Discussion 1

- What is the most unusual writ of attachment of person/child situation you have seen?
- Did you take any special steps to deal with it?
- Any general tips for writs of attachment of for a person/child?

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## Discussion 2

- What is the difference between a writ of attachment for property and a writ of sequestration?

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# Protective Order

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## What Is A Protective Order?

- ▶ An order directing a person to do or refrain from doing specified acts related to family violence, trafficking, sexual assault, stalking, etc.
  - ▶ Prohibits the person from coming near a victim and potentially a victim's children.
  - ▶ Creates safety zones at homes, workplaces, schools & daycares.
  - ▶ May restrict the person from access to firearms and suspends any license to carry a handgun.
- ▶ A respondent who violates any protective order can be arrested and jailed immediately.\*

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## **\*\*New Legislative Changes**

- ▶ You will notice some \*\* on the following slides – these indicate a legislative change that recently went into effect.
- ▶ Changes related to protective orders include:
  - ▶ A broader definition of "victim" to include individuals affected by offenses such as family violence, sexual assault, stalking, and violations of protective orders or bond conditions.
  - ▶ Longer durations for some protective orders
  - ▶ Close family of deceased victims are added to some protective orders
  - ▶ More notifications to victims if a defendant is released on parole or has violations of parole
  - ▶ Updates to protective orders related to divorce cases

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## **Four Types of Process**

- ▶ CCP Art. 17.292:
  1. Magistrate's Emergency Protective Order
- ▶ Family Code Ch. 82-85, CCP Ch. 7B:
  2. Notice of Application for Protective Order
  3. Temporary Ex Parte Protective Order
  4. Final Protective Order

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## General Requirements

- ▶ State court and cause number.
- ▶ State the prohibited acts.
- ▶ Identify the protected parties and locations.
- ▶ Contain applicable statutory warnings in bold-faced type, capital letters, or underlined that violation of the order is a criminal offense.
- ▶ Signed by the judge or court clerk as applicable.

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## General Requirements (Continued)

- ▶ A protected person can request that the address and phone number of their residence, place of employment, or a childcare facility or school be private.
- ▶ An applicant may not be assessed a fee, cost, charge, or expense by a district or county clerk of the court or a sheriff, constable, or other public official in connection with filing, serving, or entering a protective order.

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## Magistrates Order Of Emergency Protection (MOEP)

- ▶ Most common in Texas.
- ▶ Special type of protective order issued by a magistrate **after** an arrest is made in a criminal case for certain offenses (during magistration).
- ▶ Mandatory in some situations, discretionary in others.
- ▶ Officer, prosecutor, or victim may request.
- ▶ Lasts 61-121 days depending on severity of crime.\*\*
- ▶ See Chapter 2 of TJCTC's Magistration Deskbook for more information.

CCP Art. 17.292

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## **\*\*New Arresting Officer Must Provide Information to Magistrate**

A person making an arrest/having custody of a defendant for an offense where an EPO is an option shall provide the following to the magistrate:

- ▶ Information regarding the arrested person that is necessary for/will aid in the issuance of the EPO.
- ▶ To the extent available, information regarding the victim to aid in the issuance of the EPO.
- ▶ At a minimum, any available information that is described by Government Code Sec. 411.042(b)(6) (and they may use a form adopted by OCA under Section 72.039, Government Code, for this purpose).

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## Service Of MOEP

- ▶ The defendant shall be served a copy of the order by the magistrate or the magistrate's designee in person or electronically.
  - ▶ Usually, it will just be given to them when they are magistrates.
- ▶ 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.
- ▶ Can be done any day/time, including on Sundays

CCP Art. 17.292

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## Temporary Ex Parte Protective Order

- ▶ Civil order issued by district or county court.
- ▶ Meant to keep applicant safe **after** they have applied for a final protective order (more info on this on next slide!) but before the hearing – includes the same provisions that a final order could include.
- ▶ States the date and time of the final hearing.
- ▶ Contains a finding by the judge that there is a clear and present danger of family violence, sexual assault, trafficking, stalking, burglary, etc.
- ▶ Contains the applicant's affidavit stating the grounds for the order.
- ▶ Valid for specified period not to exceed 20 days but can be extended for additional 20-day periods.

TFC Ch. 83 & CCP Ch. 7B

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## Final Protective Order

- ▶ Civil order issued by district or county court.
- ▶ Contains the applicable finding by the judge depending on if it is family violence, trafficking, sexual assault, stalking, burglary etc.
- ▶ Contains expiration date:
  - ▶ Most common is 2 years but could be up to the lifetime of the parties depending on the reason for the protective order.
- ▶ May grant child support and visitation.
- ▶ Protects pets.
- ▶ May order abuser to take battering prevention/ anger management classes.

*TFC Ch. 85 & CCP Ch. 7B*

73

## Service Of Notice Of Application For Protective Order

- ▶ Served by anyone authorized to serve process in the same manner as a citation, except that service by publication is not authorized.
  - ▶ **Not** allowed on Sundays.
- ▶ The notice must meet all requirements in Section 82.041 of the Family Code.
  - ▶ For non-family-violence protective orders, the notice may be modified to make it applicable.

*TFC 82.041, 82.043*

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## Service Of Ex Parte Protective Order And Final Protective Order

- ▶ May be served by anyone authorized to serve process.
- ▶ Possible methods:
  - ▶ Delivered to the respondent as provided by TRCP Rule 21a.
  - ▶ Served in the same manner as a writ of injunction and so **may** be done on a Sunday. See *TRCP 689*.
  - ▶ Served in open court at the close of the hearing.

*TFC Ch. 85 & CCP Ch. 7B*

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## Exclusion Of Residence

- ▶ A protective order may sometimes include an exclusion of residence (order to vacate) and stay away from a particular premises.
- ▶ **How do you handle this?**

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## To Summarize Protective Orders

- ▶ Application for a protective order under Fam. Code Ch. 82 is served in the same manner as a citation. Not enforceable by the officer.
- ▶ Temporary ex parte and final protective orders may be served in the same manner as an injunction.
- ▶ MOEPs may be issued after arrest in a criminal case.
- ▶ Temporary ex parte, final, and emergency protective orders may include an exclusion of residence, are enforceable by an officer, and are entered into TCIC/NCIC.
- ▶ Duration
  - ▶ Temporary ex parte: specified time up to 20 days, may be extended
  - ▶ Final: 2 years or more
  - ▶ MOEP: 31-91 days

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## Poll 3

Cindy and John have a lover's quarrel resulting in shoving and slapping. Cindy gets a final protective order. Cindy sees John at a local bar and invites him over for a "make-up get together." Cindy's best friend sees John going into Cindy's apartment and calls the police. What happens when the police come?

- A. John gets arrested.
- B. Cindy gets arrested.
- C. Both get arrested.
- D. Neither get arrested.

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# Writ of Habeas Corpus

79

## What Is A Writ Of Habeas Corpus?

- ▶ There are multiple kinds.
- ▶ We will be discussing the Habeas Corpus under Ch. 157.371-376 of the Family Code.
- ▶ When executing child attachments, if you can't find the child, the court may issue a writ of habeas corpus.
- ▶ Orders the person who has possession of the child to either bring the child to the court or to return the child to the other party.
- ▶ Issued by county or district courts.

80



## Requirements

- ▶ "State of Texas."
- ▶ Addressed to the person having possession of the child.
- ▶ Identify the child and that the person is being ordered to return the child to the other party or is being ordered to bring the child to court at a set time.
- ▶ Include the name and county of the court where the case is filed.
- ▶ Include the cause number.
- ▶ Identify all parties in the case.
- ▶ Include the date of issuance of the writ.
- ▶ Identify which court the writ is returnable to.
- ▶ Signed by the clerk or judge.
- ▶ Contain the court's seal.

*Rules 15, 99, 501.1(b), FC Ch. 157.372*

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## Service

- ▶ May be served by anyone authorized to serve process.
- ▶ Served in person.
- ▶ **Not** allowed to be served on Sunday.

82

### **Poll 4**

The service of a Writ of Habeas Corpus only requires the officer to deliver the Writ without any officer enforcement.

- A. True
- B. False

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# **Capias**

84

## What Is A Capias?

- ▶ Generally, a writ issued after commitment or bail and before trial, commanding any peace officer to arrest a person accused of an offense and take them to that court immediately, or on a day stated in the writ.
- ▶ The term sometimes gets used interchangeably with "arrest warrant."

CCP Art. 23.01

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## Requirements:

- ▶ "State of Texas"
- ▶ Directed to **any** peace officer.
- ▶ Name the person whose arrest is ordered, or if unknown, describe him/her.
- ▶ Name the court to which it is returnable; and
- ▶ Dated and signed by issuing authority.

CCP Art. 23.02

86

## Issuance & Service

- ▶ Service is allowed on Sundays.
- ▶ The capias does not expire unless recalled by the issuing court.

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## Additional Service Requirements

- ▶ Arrest Defendant.
- ▶ Take defendant immediately before the court that issued the capias.
- ▶ If the judge that issued the capias is unavailable or the court date stated in the capias is on a date the defendant is arrested, place the defendant in county jail.

*CCP Art. 23.01*

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## Capias Under Family Code Ch. 157

- ▶ Issued as part of an enforcement action related to Suits Affecting the Parent Child Relationship (Custody, possession, child support, etc.)
- ▶ Law enforcement officials shall treat this in the same manner as an arrest warrant for a criminal offense and shall enter the capias in the computer records for outstanding warrants maintained by the local police, sheriff, and Department of Public Safety.
- ▶ Shall be entered into the TCIC/NCIC.

*FC § 157.066, 157.102*

89

## Poll 5

Only a sheriff or constable can execute a capias.

- ▶ True
- ▶ False

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### Quiz Question 1

What entity is responsible for setting fees for serving each type of writ, how much field time is covered by that fee, and the additional fee that can be charged per hour?

- A. The administrative judge or judges of each county.
- B. The Texas Constitution.
- C. The commissioners court of each county.
- D. The Justices of the Peace and Constables Association.

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### Quiz Question 2

Wife files for protective order against husband citing family violence and gets a temporary ex parte protective order with an exclusion of residence. What happens next?

- A. Husband will be removed from the residence.
- B. Husband will be served, and then removed from the residence and arrested if he refuses to vacate.
- C. Husband is not required to leave the residence until after service and a hearing.
- D. Husband is not required to leave the residence because it is his separate property home.

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### Quiz Question 3

When does a writ of attachment for a person expire?

- A. 90 days
- B. At 10:00 AM on the Monday following the expiration of 15 days from the date of issuance.
- C. If recalled by the issuing Court, unless otherwise stated in the writ.

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### Quiz Question 4

Which of the following **can** be served on a Sunday?

- A. Notice of Application for a Protective Order
- B. Writ of Attachment
- C. Habeas Corpus
- D. A citation that is served at the same time as a writ of sequestration

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