

PRELIMINARY DRAFT

TEXAS LEGISLATIVE COUNCIL
Code of Criminal Procedure
Chapter 5A
7/22/24

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5 TITLE 1. CODE OF CRIMINAL PROCEDURE
6 CHAPTER 5A. PREVENTING, INVESTIGATING, AND PROSECUTING FAMILY
7 VIOLENCE

8 Revised Law

9 Art. 5A.001. LEGISLATIVE STATEMENT. (a) Family violence
10 is a serious danger and threat to society and its members. Victims
11 of family violence are entitled to the maximum protection as
12 permitted by law from harm or abuse or the threat of harm or abuse.

13 (b) In any law enforcement, prosecutorial, or judicial
14 response to an allegation of family violence, the responding peace
15 or judicial officer shall protect the victim without regard to the
16 relationship between the alleged offender and victim. (Code Crim.
17 Proc., Art. 5.01.)

18 Source Law

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

24 (b) In any law enforcement, prosecutorial, or
25 judicial response to allegations of family violence,
26 the responding law enforcement or judicial officers
27 shall protect the victim, without regard to the
28 relationship between the alleged offender and victim.

29 Revisor's Note

30 Article 5.01(b), Code of Criminal Procedure,
31 refers to "law enforcement . . . officers."
32 Throughout this chapter, the revised law substitutes
33 "peace officers" for a reference to law enforcement
34 officers to provide consistency in phrasing and
35 because throughout Chapter 5, Code of Criminal
36 Procedure, law enforcement's duties to investigate or
37 respond to family violence allegations are imposed on
38 "peace officers." See, e.g., Article 5.04, Code of

1 Criminal Procedure.

2 Revised Law

3 Art. 5A.002. DEFINITIONS. In this chapter, "family,"
4 "family violence," "household," and "member of a household" have
5 the meanings assigned by Chapter 71, Family Code. (Code Crim.
6 Proc., Art. 5.02.)

7 Source Law

8 Art. 5.02. DEFINITIONS. In this chapter,
9 "family violence," "family," "household," and "member
10 of a household" have the meanings assigned by Chapter
11 71, Family Code.

12 Revised Law

13 Art. 5A.003. PRIMARY DUTIES OF PEACE OFFICER INVESTIGATING
14 FAMILY VIOLENCE. The primary duties of a peace officer who
15 investigates a family violence allegation or who responds to a
16 disturbance call that may involve family violence are to:

- 17 (1) protect any potential victim of family violence;
18 (2) enforce the law of this state;
19 (3) enforce a protective order from another
20 jurisdiction as provided by Chapter 88, Family Code; and
21 (4) make lawful arrests of violators. (Code Crim.
22 Proc., Art. 5.04(a).)

23 Source Law

24 Art. 5.04. DUTIES OF PEACE OFFICERS. (a) The
25 primary duties of a peace officer who investigates a
26 family violence allegation or who responds to a
27 disturbance call that may involve family violence are
28 to protect any potential victim of family violence,
29 enforce the law of this state, enforce a protective
30 order from another jurisdiction as provided by Chapter
31 88, Family Code, and make lawful arrests of violators.

32 Revised Law

33 Art. 5A.004. NO WAIVER OR EXCEPTION CREATED BY FAMILY OR
34 HOUSEHOLD RELATIONSHIP. (a) A general duty prescribed for an
35 officer by Chapter 2A is not waived or excepted in any family
36 violence case or investigation because of a family or household
37 relationship between an alleged violator and a victim of family
38 violence.

39 (b) A peace officer's or magistrate's duty to prevent the

1 commission of a criminal offense, including an act of family
2 violence, is not waived or excepted because of a family or household
3 relationship between a potential violator and victim. (Code Crim.
4 Proc., Art. 5.03.)

5 Source Law

6 Art. 5.03. FAMILY OR HOUSEHOLD RELATIONSHIP
7 DOES NOT CREATE AN EXCEPTION TO OFFICIAL DUTIES. A
8 general duty prescribed for an officer by Chapter 2A is
9 not waived or excepted in any family violence case or
10 investigation because of a family or household
11 relationship between an alleged violator and the
12 victim of family violence. A peace officer's or a
13 magistrate's duty to prevent the commission of
14 criminal offenses, including acts of family violence,
15 is not waived or excepted because of a family or
16 household relationship between the potential violator
17 and victim.

18 Revised Law

19 Art. 5A.005. FOSTER HOME ADDRESS INQUIRY. A peace officer
20 who investigates a family violence allegation or who responds to a
21 disturbance call that may involve family violence shall determine
22 whether the address of a person involved in the allegation or call
23 matches the address of a licensed foster home or verified agency
24 foster home listed in the Texas Crime Information Center. (Code
25 Crim. Proc., Art. 5.04(a-1).)

26 Source Law

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

34 Revisor's Note

35 Article 5.04(a-1), Code of Criminal Procedure,
36 refers to a "current" licensed foster home. The
37 revised law omits "current" as unnecessary because the
38 word does not add to the clear meaning of the law. A
39 foster home is not licensed if the home's license has
40 expired.

41 Revised Law

42 Art. 5A.006. REQUIRED NOTICE FOR ADULT VICTIM. (a) A peace

1 officer who investigates a family violence allegation or who
2 responds to a disturbance call that may involve family violence
3 shall advise any possible adult victim of all reasonable means to
4 prevent further family violence, including by providing the written
5 notice adopted by the Health and Human Services Commission under
6 Section 51A.003, Human Resources Code.

7 (b) In addition to the required notice under Subsection (a),
8 a peace officer may provide to the possible victim any available
9 written information regarding local resources for victims of family
10 violence. (Code Crim. Proc., Art. 5.04(b).)

11 Source Law

12 (b) A peace officer who investigates a family
13 violence allegation or who responds to a disturbance
14 call that may involve family violence shall advise any
15 possible adult victim of all reasonable means to
16 prevent further family violence, including by
17 providing the written notice adopted by the Health and
18 Human Services Commission under Section 51A.003, Human
19 Resources Code. In addition to the required notice
20 under this subsection, a peace officer may provide to
21 the possible victim any available written information
22 regarding local resources for victims of family
23 violence.

24 Revised Law

25 Art. 5A.007. PEACE OFFICER ACCESS TO AND ACCEPTANCE OF
26 PROTECTIVE ORDERS. (a) To ensure that a peace officer responding
27 to a disturbance call is aware of the existence and terms of any
28 protective order, each municipal police department and sheriff
29 shall establish procedures within the department or sheriff's
30 office to provide peace officers adequate information or access to
31 information regarding the names of:

- 32 (1) persons protected by a protective order; and
33 (2) persons to whom protective orders are directed.

34 (b) Each peace officer shall accept a certified copy of an
35 original or modified protective order as proof of the validity of
36 the order, and the order is presumed valid unless:

- 37 (1) the order contains a termination date that has
38 passed;
39 (2) more than one year has elapsed after the date the

1 order was issued; or

2 (3) the peace officer has been notified by the clerk of
3 the court vacating the order that the order has been vacated. (Code
4 Crim. Proc., Arts. 5.05(c), (d).)

5 Source Law

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

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

18 (1) the order contains a termination date
19 that has passed;

20 (2) it is more than one year after the date
21 the order was issued; or

22 (3) the law enforcement officer has been
23 notified by the clerk of the court vacating the order
24 that the order has been vacated.

25 Revisor's Note

26 Article 5.05(c), Code of Criminal Procedure,
27 refers to officers "responding to calls." The revised
28 law adds "disturbance" for consistency in terminology
29 used throughout this chapter and because it is clear
30 from the context of the provisions that the "calls" are
31 disturbance calls. See Articles 5.04(a), (a-1), and
32 (b) and Articles 5.05(a), (a-1), and (a-2), Code of
33 Criminal Procedure.

34 Revised Law

35 Art. 5A.008. STANDBY ASSISTANCE; LIABILITY. (a) In a peace
36 officer's discretion, the officer may stay with a victim of family
37 violence to protect the victim and allow the victim to take the
38 personal property of the victim or of a child in the care of the
39 victim to a place of safety in an orderly manner.

40 (b) A peace officer who provides assistance under
41 Subsection (a) is not:

42 (1) civilly liable for an act or omission of the
43 officer that arises in connection with providing the assistance or

1 determining whether to provide the assistance; or

2 (2) civilly or criminally liable for the wrongful
3 appropriation of any personal property by the victim. (Code Crim.
4 Proc., Art. 5.045.)

5 Source Law

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

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

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

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

21 Revised Law

22 Art. 5A.009. REQUIRED REPORTS. (a) A peace officer who
23 investigates a family violence incident or who responds to a
24 disturbance call that may involve family violence shall make a
25 written report that includes:

26 (1) the names of the suspect and complainant;

27 (2) the date, time, and location of the incident;

28 (3) any visible or reported injuries;

29 (4) a description of the incident and a statement of
30 its disposition; and

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

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

41 (c) In addition to the written report required under

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

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

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

15 (d) A peace officer who makes a report under Subsection (a)
16 shall provide information concerning the incident or disturbance to
17 the bureau of identification and records of the Department of
18 Public Safety for its recordkeeping function under Section 411.042,
19 Government Code. The bureau shall prescribe the form and nature of
20 the information required to be reported to the bureau by this
21 subsection. (Code Crim. Proc., Arts. 5.05(a), (a-1), (a-2), (e).)

22 Source Law

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

28 (1) the names of the suspect and
29 complainant;

30 (2) the date, time, and location of the
31 incident;

32 (3) any visible or reported injuries;

33 (4) a description of the incident and a
34 statement of its disposition; and

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

38 (a-1) In addition to the written report required
39 under Subsection (a), a peace officer who investigates
40 a family violence incident or who responds to a
41 disturbance call that may involve family violence
42 shall make a report to the Department of Family and
43 Protective Services if the location of the incident or
44 call, or the known address of a person involved in the
45 incident or call, matches the address of a current

1 licensed foster home or a verified agency foster home
2 as listed in the Texas Crime Information Center. The
3 report under this subsection may be made orally or
4 electronically and must:

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

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

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

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

28 Revisor's Note

29 (1) Article 5.05(a), Code of Criminal
30 Procedure, refers to a report "including but not
31 limited to" several elements that a peace officer must
32 include in the report. The revised law omits "but not
33 limited to" because Section 311.005(13), Government
34 Code (Code Construction Act), applicable to the
35 revised law, provides that "includes" and "including"
36 are terms of enlargement and not of limitation and do
37 not create a presumption that components not expressed
38 are excluded. The Code Construction Act is applicable
39 to the revised law and any other provision of the Code
40 of Criminal Procedure enacted under Section 43,
41 Article III, Texas Constitution (authorizing the
42 continuing statutory revision program), except as
43 otherwise expressly provided by the Code of Criminal
44 Procedure. See Section 4.002(a), Chapter 765 (H.B.
45 4504), Acts of the 88th Legislature, Regular Session,
46 2023.

47 (2) Article 5.05(a-1), Code of Criminal

1 Procedure, refers to a "current" license. The revised
2 law omits "current" as unnecessary for the reason
3 provided by the revisor's note to Article 5A.005.

4 (3) Article 5.05(e), Code of Criminal
5 Procedure, provides that the bureau of identification
6 and records of the Department of Public Safety shall
7 prescribe the form and nature of the information
8 required to be reported to the bureau by "this
9 article." The revised law substitutes "this
10 subsection" for the quoted language because the only
11 provision of Article 5.05 that requires information to
12 be reported to the bureau is Subsection (e), revised as
13 Article 5A.009(d).

14 Revised Law

15 Art. 5A.010. ACCESS TO RECORDS. (a) Each local law
16 enforcement agency shall establish a departmental code for
17 identifying and retrieving a written report made under Article
18 5A.009(a).

19 (b) A district or county attorney with jurisdiction in the
20 county where the law enforcement agency maintains records under
21 this article or Article 5A.009(a) is entitled to access to the
22 records.

23 (c) The Department of Family and Protective Services is
24 entitled to access to the records described by Subsection (b)
25 relating to any person who is 14 years of age or older and who
26 resides in a licensed foster home or a verified agency foster home.

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

31 (1) described by Article 5A.009(a)(1) or (2); and

32 (2) not exempt from disclosure under Chapter 552,
33 Government Code, or other law. (Code Crim. Proc., Arts. 5.05(b),
34 (f).)

1 Source Law

2 (b) Each local law enforcement agency shall
3 establish a departmental code for identifying and
4 retrieving family violence reports as outlined in
5 Subsection (a) of this section. A district or county
6 attorney or an assistant district or county attorney
7 exercising authority in the county where the law
8 enforcement agency maintains records under this
9 section is entitled to access to the records. The
10 Department of Family and Protective Services is
11 entitled to access the records relating to any person
12 who is 14 years of age or older and who resides in a
13 licensed foster home or a verified agency foster home.

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

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

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

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

25 Revisor's Note

26 (1) Article 5.05(b), Code of Criminal
27 Procedure, requires local law enforcement agencies to
28 establish codes for identifying and retrieving "family
29 violence reports." For consistency in phrasing, the
30 revised law substitutes "written report" for "family
31 violence report" because it is clear from the context
32 that the law is referring to a written report made
33 under Article 5.05(a), Code of Criminal Procedure,
34 revised as Article 5A.009(a).

35 (2) Article 5.05(b), Code of Criminal
36 Procedure, refers to "Subsection (a) of this section"
37 and to maintaining records under this "section." The
38 use of "section" in those instances are drafting
39 errors because Chapter 5, Code of Criminal Procedure,
40 is organized in articles rather than sections. In the
41 first instance, the reference to "Subsection (a) of
42 this section" means Article 5.05(a), Code of Criminal
43 Procedure, revised as Article 5A.009(a), and the
44 revised law substitutes a cross-reference to that

1 subsection. In the second instance, the revised law
2 substitutes "article" for "section" to address the
3 drafting error.

4 (3) Article 5.05(b), Code of Criminal
5 Procedure, entitles a "district or county attorney or
6 an assistant district or county attorney exercising
7 authority in the county where the law enforcement
8 agency maintains records" to access to those records.
9 The revised law omits the reference to "an assistant
10 district or county attorney" as unnecessary because
11 the reference to the district or county attorney is a
12 reference to the office of the district or county
13 attorney and necessarily includes an assistant
14 district or county attorney employed by the office.
15 See also Sections 41.102 and 41.103, Government Code.
16 The revised law also substitutes "with jurisdiction"
17 for "exercising authority" because the phrases are
18 synonymous in this context and "with jurisdiction" is
19 more commonly used in the Code of Criminal Procedure.

20 Revised Law

21 Art. 5A.011. PROSECUTOR'S NOTICE OF RESPONSIBILITY FOR
22 FILING APPLICATIONS FOR PROTECTIVE ORDERS. The prosecuting
23 attorney who has responsibility under Section 81.007, Family Code,
24 for filing an application for a protective order under Title 4,
25 Family Code, shall provide notice of that responsibility to all law
26 enforcement agencies within the jurisdiction of the prosecuting
27 attorney. (Code Crim. Proc., Art. 5.06(c).)

28 Source Law

29 (c) The prosecuting attorney having
30 responsibility under Section 71.04(c), Family Code,
31 for filing applications for protective orders under
32 Chapter 71, Family Code, shall provide notice of that
33 responsibility to all law enforcement agencies within
34 the jurisdiction of the prosecuting attorney for the
35 prosecuting attorney.

36 Revisor's Note

37 (1) Article 5.06(c), Code of Criminal

1 Procedure, refers to Section 71.04(c), Family Code,
2 and to Chapter 71, Family Code. Section 1, Chapter 34,
3 Acts of the 75th Legislature, Regular Session, 1997,
4 reenacted Title 4, Family Code, and substantially
5 recodified Chapter 71 as several new chapters in that
6 title. The revised law substitutes a reference to
7 Title 4, Family Code, for the reference to Chapter 71
8 and a reference to Section 81.007 for the reference to
9 Section 71.04(c) to accurately reflect the current
10 citations for those provisions.

11 (2) Article 5.06(c), Code of Criminal
12 Procedure, requires a prosecuting attorney to provide
13 notice of the attorney's responsibility to file for
14 certain protective orders to law enforcement agencies
15 within the jurisdiction of the prosecuting attorney
16 "for the prosecuting attorney." The revised law omits
17 the quoted language as unnecessary in this context
18 because it does not add to the clear meaning of the
19 law.

20 Revised Law

21 Art. 5A.012. PROSECUTOR'S FILING OF PROTECTIVE ORDER:
22 PROHIBITED CONSIDERATION; AUTHORITY TO REQUIRE INFORMATION. A
23 prosecuting attorney's decision to file an application for a
24 protective order under Title 4, Family Code, should be made without
25 regard to whether a criminal complaint has been filed by the
26 applicant. A prosecuting attorney may require the applicant to
27 provide to a local law enforcement agency information relating to
28 the facts alleged in the application for an offense report. (Code
29 Crim. Proc., Art. 5.06(b).)

30 Source Law

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

1 enforcement agency.

2 Revisor's Note

3 Article 5.06(b), Code of Criminal Procedure,
4 refers to Chapter 71, Family Code. The revised law
5 substitutes a reference to Title 4, Family Code, for
6 the reference to Chapter 71 for the reason stated in
7 Revisor's Note (1) to Article 5A.011.

8 Revised Law

9 Art. 5A.013. DELAY OR DISMISSAL OF PROSECUTION BASED ON
10 STATUS OF CERTAIN CIVIL PROCEEDINGS PROHIBITED. A prosecuting
11 attorney or a court may not:

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

15 (2) require proof that a complaining witness, victim,
16 or defendant is a party to a suit for the dissolution of a marriage
17 or a suit affecting the parent-child relationship before presenting
18 a criminal allegation to a grand jury, filing an information, or
19 otherwise proceeding with the prosecution of a criminal case.
20 (Code Crim. Proc., Art. 5.06(a).)

21 Source Law

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

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

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

36 Revised Law

37 Art. 5A.014. REFERRAL TO MEDIATION, ARBITRATION, DISPUTE
38 RESOLUTION, OR SIMILAR PROCEDURE PROHIBITED IN CRIMINAL
39 PROSECUTION. Notwithstanding Article 26.13(g) or 42A.301(b)(14),
40 in a criminal prosecution arising from family violence a court may
41 not refer or order the victim or the defendant involved to

1 mediation, arbitration, dispute resolution, or another similar
2 procedure. (Code Crim. Proc., Art. 5.08.)

3 Source Law

4 Art. 5.08. MEDIATION IN FAMILY VIOLENCE CASES.
5 Notwithstanding Article 26.13(g) or 42A.301(b)(15),
6 in a criminal prosecution arising from family
7 violence, as that term is defined by Section 71.004,
8 Family Code, a court shall not refer or order the
9 victim or the defendant involved to mediation, dispute
10 resolution, arbitration, or other similar procedures.

11 Revisor's Note

12 (1) Article 5.08, Code of Criminal Procedure,
13 refers to Article 42A.301(b)(15), Code of Criminal
14 Procedure. Article 42A.301(b)(15) was updated and
15 redesignated as Article 42A.301(b)(14) in Section 2,
16 Chapter 790, Acts of the 87th Legislature, Regular
17 Session, 2021, and the revised law is updated
18 accordingly.

19 (2) Article 5.08, Code of Criminal Procedure,
20 refers to family violence "as that term is defined by
21 Section 71.004, Family Code." The revised law omits
22 the quoted language as unnecessary because it
23 duplicates the definition of that term in Article
24 5.02, Code of Criminal Procedure, revised as Article
25 5A.002, which applies throughout this chapter.