

# Family Violence Protective Orders



HARRIS COUNTY DISTRICT ATTORNEY'S OFFICE  
FAMILY CRIMINAL LAW DIVISION

# Distinguishing Orders



- Injunctions
- Restraining Orders
- Temporary Family Violence Protective Order
- Family Violence Protective Order
- Magistrate's Order for Emergency Protection
- Bond Condition: No Contact Order

# Enforcement: Protective Orders Restraining Orders and Injunctions



- **Contempt:**

Restraining Orders and Injunctions

- **Criminal:**

Temporary Protective Orders (if served),  
Protective Orders, MOEPs, and Bond No  
Contact Orders

# Family Violence Protective Orders



## *Where is it filed?*

- A civil lawsuit filed in District Court

## *Who can file?*

- Licensed Attorney
- Pro Se Party

# Qualifying Relationships



## Family Members

- Related by Blood
- Related by Marriage
- Former Spouses (Divorced)
- Parents of the Same Child

## Household Members

- Includes those who *previously* lived in the same household

## Dating Relationships

- Previously dated.

## Due to Previous Relationship

- The violence occurred because of the family relationship the parties each had with a third person.

# Dating Relationship



- A relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature.
- The existence of such a relationship shall be determined based on consideration of:
  1. the length of the relationship;
  2. the nature of the relationship; and
  3. the frequency and type of interaction between the persons involved in the relationship.

# Venue



- One of the parties must be a *resident* of the county in which the lawsuit is filed.
- *Family Violence* occurred in the county in which the lawsuit is filed.

# Duration



- Up to two years
- Up to Permanent if:
  - Serious Bodily Injury OR
  - 2 Previous POs
- Extension Due to Incarceration

# Protective orders Issued *Prior* to June 9, 2015



If the person who is the subject of a protective order is confined or imprisoned **on the date** the protective order would expire under Subsection (a) or (a-1), the period for which the order is effective is extended, and the order expires on the **first anniversary** of the date the person is released from confinement or imprisonment.

# Protective orders Issued *June 9, 2015 and After* (HB 388)



If Respondent is confined or imprisoned on the date the protective order would expire **OR** if the protective order would expire within a year of his/her release, the Order is **extended**, and the order **expires** on:

- the **first anniversary** of the date the person is released from confinement or imprisonment if Respondent had been sentenced for **more than 5 years**.
- the **second anniversary** of the date the person is released from confinement or imprisonment if Respondent had been sentenced to **5 years or less**.

# Types of Family Violence Protective Orders



- **No Contact Protective Order**

- Usually issued when no children are involved and/or there has been serious previous violence.
- Prohibits ANY contact except through the protected person's attorney of record or a person appointed by the court.

- **Restrictive Protective Order**

- Usually issued when there is a reason for contact, like when children are involved.
- Allows communication as long as it is not threatening or harassing.

# Must Prove



- Family violence has occurred.

*And*

- Family violence is likely to continue.

# Family Violence



- An act
- by member of family or household or dating relationship
- against a member of family or household or dating relationship
- intended to result in
  - physical harm, bodily injury, assault or sexual assault OR
  - A threat that reasonably places the victim in fear of imminent bodily injury.

# Legal Procedure – With no “kick-out” Order



- Application (with factual affidavit) filed.
- Temporary Exparte Protective Order and Show Cause Order **granted** and date set for hearing on Final Order. Or, Temporary Protective Order **denied** and court sets date for hearing on Final Order.
- Temporary Exparte Protective Order is good for 20 days.
  - May be extended if no service OR
  - For some reason the case is reset after service
- Application and Temporary Exparte Protective Order (or Notice of Hearing) are **personally** served on Respondent.

# Legal Procedure with “Kick-Out” Order



- Application (with factual affidavit) filed.
- Obtain hearing date.
- Applicant **MUST** testify at hearing that:
  - Family Violence has occurred in the previous 30 days.
  - Applicant has lived at the protected location within the last 30 days.
  - Court must find clear and present danger that FV will occur.
- If granted, the court will sign a Temporary Exparte Protective Order that orders the proper police agency (usually constables) to stand by while Applicant takes possession of the residence.

# Types of Hearings



- Agreed Order Hearing
- Contested Hearing
- Default Hearing

***Note:** HCDA usually requests attorney's fees at default and contested hearings, but agrees to waive fees on agreed orders.*

# Default Hearing



- Can be criminally charged with violating the PO even though the Respondent did not appear in court.
- Service papers are proof that Respondent was personally served and notified of upcoming court hearing and that a default order may be granted.

# Temporary (once served) and Final PO Prohibitions



## Immediately prohibited from:

- Committing family violence.
- Communicating directly with the protected person *in a threatening or harassing manner*. (Restrictive PO)
- Communicating *at all*. (No Contact PO)
- Communicating a threat through a 3<sup>rd</sup> person.
- Coming within (choose a distance i.e. 200 feet) of:
  - ✦ home or business (NOT the protected person).
  - ✦ child care facility or school.

# Temporary (once served) and Final PO Prohibitions



- Stalking.
- Possessing a firearm OR any ammunition.
- Harming, threatening , or interfering with the care, custody, or control of a pet, companion animal or assistance animal.

# Confidential Addresses



- Allowed by statute.
- Order states “Confidential.”
- Must state applicant residence county.

## **ENFORCEMENT**

- Must prove INTENT.

# MOEP: Magistrate's Orders for Emergency Protection



- At a defendant's appearance before a magistrate after arrest for an offense **involving** family violence or stalking.
- Requested by:
  - Magistrate's own motion
  - Peace Officer
  - Victim
  - Prosecutor
- MOEP supersedes any other order .
- Up to 61 days, not less than 31 days OR
- Up to 91 days, not less than 61 days if Deadly Weapon exhibited or used.
- No provision for extending.

# Magistrate's Order for Emergency Protection

## SHALL ISSUE



After arrest for an offense involving family violence, if the arrest is for an offense that also involves:

1. serious bodily injury to the victim; or
2. the use or exhibition of a deadly weapon during the commission of an assault.

# Bond Condition: No Contact Order



- As a Condition of Bond.
- Can last entire time case is pending.
- In a case involving Family Violence, Sexual Assault, or Stalking.
- No Contact at All.
- Can both have a MOEP and No Contact Condition of Bond.
- Bond Revocation AND  
Crime to Violate (same as MOEP and VPO).

# Victim Can't Violate or Change the Orders



- Court found violence likely to continue or reason to grant order.
- Society's interest in preventing family violence.
- Penal Code Section 25.07 (d).
- Reconciliation no defense.
- Inherent nature of family violence:
  - Manipulation by the abuser
  - Financial threat
  - Threat of further violence
  - Promises to stop the violence

# Contact Us



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