

CODE OF CRIMINAL PROCEDURE

CHAPTER 7B. PROTECTIVE ORDERS

Subchapter A. Protective Order for Victims of Sexual Assault or Abuse, Stalking, or Trafficking

ART. 7B.001. APPLICATION FOR PROTECTIVE ORDER

(a) The following persons may file an application for a protective order under this subchapter without regard to the relationship between the applicant and the alleged offender:

- (1) a person who is the victim of an offense under Section 21.02, 21.11, 22.011, 22.021, or 42.072, Penal Code;
- (2) a person who is the victim of an offense under Section 20A.02, 20A.03, or 43.05, Penal Code;
- (3) a parent or guardian acting on behalf of a person younger than 17 years of age who is the victim of an offense listed in Subdivision (1);
- (4) a parent or guardian acting on behalf of a person younger than 18 years of age who is the victim of an offense listed in Subdivision (2); or
- (5) a prosecuting attorney acting on behalf of a person described by Subdivision (1), (2), (3), or (4).

(b) An application for a protective order under this subchapter may be filed in:

- (1) a district court, juvenile court having the jurisdiction of a district court, statutory county court, or constitutional county court in:
 - (A) the county in which the applicant resides;
 - (B) the county in which the alleged offender resides; or
 - (C) any county in which an element of the alleged offense occurred; or
- (2) any court with jurisdiction over a protective order under Title 4, Family Code, involving the same parties named in the application.

Chapter 7B enacted as a recodification of Chapter 7A and Articles 6.08 & 6.09, effective Jan. 1, 2021 (HB 4173, §1.02). Section 3.01 of HB 4173 repeals former Chapter 7A and Articles 6.08 & 6.09. Section 4.01 of HB 4173 provides: "This Act is enacted under Section 43, Article III, Texas Constitution. This Act is intended as a codification only, and no substantive change in the law is intended by this Act."

Section 4.02 of HB 4173 provides: "(a) Chapter 311, Government Code (Code Construction Act), applies to the construction of each provision in the Code of Criminal Procedure that is enacted under Section 43, Article III, Texas Constitution (authorizing the continuing statutory revision program), in the same manner as to a code enacted under the continuing statutory revision program, except as otherwise expressly provided by the Code of Criminal Procedure. (b) A reference in a law to a statute or a part of a statute in the Code of Criminal Procedure enacted under Section 43, Article III, Texas Constitution (authorizing the continuing statutory revision program), is considered to be a reference to the part of that code that revises that statute or part of that statute."

2019 LEGISLATIVE NOTE

As of January 1, 2021, the Texas Legislature abolished former Chapter 7A and Arts. 6.08 & 6.09 and re-codified them as Chapter 7B. However, that same body also passed stand-alone bills that amended Chapter 7A as it existed. Those amended provisions survive the purported repeal by HB 4173 and therefore remain effective outside the re-codified new chapter. See these amended provisions at the end of Chapter 7B, and see a source and disposition chart at the end of Chapter 7B, showing how former Chapter 7A and Arts. 6.08 & 6.09 match up with new Chapter 7B. Presumably, the Texas Legislature will incorporate the 2019 Chapter 7A amendments into new Chapter 7B in its 2021 session.

ART. 7B.002. TEMPORARY EX PARTE ORDER

If the court finds from the information contained in an application for

a protective order that there is a clear and present danger of sexual assault or abuse, stalking, trafficking, or other harm to the applicant, the court, without further notice to the alleged offender and without a hearing, may issue a temporary ex parte order for the protection of the applicant or any other member of the applicant's family or household.

ART. 7B.003. REQUIRED FINDINGS; ISSUANCE OF PROTECTIVE ORDER

(a) At the close of a hearing on an application for a protective order under this subchapter, the court shall find whether there are reasonable grounds to believe that the applicant is the victim of sexual assault or abuse, stalking, or trafficking.

(b) If the court finds that there are reasonable grounds to believe that the applicant is the victim of sexual assault or abuse, stalking, or trafficking, the court shall issue a protective order that includes a statement of the required findings.

ART. 7B.004. HEARSAY STATEMENT OF CHILD VICTIM

In a hearing on an application for a protective order under this subchapter, a statement that is made by a child younger than 14 years of age who is the victim of an offense under Section 21.02, 21.11, 22.011, or 22.021, Penal Code, and that describes the offense committed against the child is admissible as evidence in the same manner that a child's statement regarding alleged abuse against the child is admissible under Section 104.006, Family Code, in a suit affecting the parent-child relationship.

ART. 7B.005. CONDITIONS SPECIFIED BY PROTECTIVE ORDER

(a) In a protective order issued under this subchapter, the court may:

- (1) order the alleged offender to take action as specified by the court that the court determines is necessary or appropriate to prevent or reduce the likelihood of future harm to the applicant or a member of the applicant's family or household; or
- (2) prohibit the alleged offender from:

(A) communicating:

(i) directly or indirectly with the applicant or any member of the applicant's family or household in a threatening or harassing manner; or

(ii) in any manner with the applicant or any member of the applicant's family or household except through the applicant's attorney or a person appointed by the court, if the court finds good cause for the prohibition;

(B) going to or near the residence, place of employment or business, or child-care facility or school of the applicant or any member of the applicant's family or household;

(C) engaging in conduct directed specifically toward the applicant or any member of the applicant's family or household, including following the person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the person; and

(D) possessing a firearm, unless the alleged offender is a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

(b) In a protective order that includes a condition described by Subsection (a)(2)(B), the court shall specifically describe each prohibited location and the minimum distance from the location, if any, that the alleged offender must maintain. This subsection does not apply to a protective order with respect to which the court has received a request to maintain confidentiality of information revealing the locations.

(c) In a protective order, the court may suspend a license to carry a handgun issued under Section 411.177, Government Code, that is held by the alleged offender.

ART. 7B.006. WARNING ON PROTECTIVE ORDER

(a) Each protective order issued under this subchapter, including a temporary ex parte order, must contain the following prominently displayed statements in boldfaced type, in capital letters, or underlined:

“A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF AS MUCH AS \$500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH.”

“NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER.”

“IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A FIREARM OR AMMUNITION.”

(b) Each protective order issued under this subchapter, except for a temporary ex parte order, must contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

“A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT RESULTS IN A SEPARATE OFFENSE MAY BE PROSECUTED AS A SEPARATE OFFENSE IN ADDITION TO A VIOLATION OF THIS ORDER.”

ART. 7B.007. DURATION OF PROTECTIVE ORDER; RESCISSION

(a) A protective order issued under Article 7B.003 may be effective for the duration of the lives of the offender and victim or for any shorter period stated in the order. If a period is not stated in the order, the order is effective until the second anniversary of the date the order was issued.

(b) The following persons may file at any time an application with the court to rescind the protective order:

(1) a victim of an offense listed in Article 7B.001(a)(1) who is 17 years of age or older or a parent or guardian acting on behalf of a victim who is younger than 17 years of age; or

(2) a victim of an offense listed in Article 7B.001(a)(2) or a parent or guardian acting on behalf of a victim who is younger than 18 years of age.

(c) To the extent of any conflict with Section 85.025, Family Code, this article prevails.

ART. 7B.008. APPLICATION OF OTHER LAW

To the extent applicable, except as otherwise provided by this subchapter, Title 4, Family Code, applies to a protective order issued under this subchapter.

Subchapter B. Stalking Protective Order

ART. 7B.051. REQUEST FOR PROTECTIVE ORDER

(a) At any proceeding related to an offense under Section 42.072, Penal Code, in which the defendant appears before the court, a person may request the court to issue a protective order under Title 4, Family Code, for the protection of the person.

(b) The request under Subsection (a) is made by filing an application for a protective order in the same manner as an application for a protective order under Title 4, Family Code.

ART. 7B.052. REQUIRED FINDINGS; ISSUANCE OF PROTECTIVE ORDER

The court shall issue a protective order in the manner provided by Title 4, Family Code, if, in lieu of the finding that family violence occurred

and is likely to occur in the future as required by Section 85.001, Family Code, the court finds that:

(1) probable cause exists to believe that an offense under Section 42.072, Penal Code, was committed; and

(2) the nature of the scheme or course of conduct engaged in by the defendant in committing the offense indicates the defendant is likely in the future to engage in conduct prohibited by Section 42.072(a)(1), (2), or (3), Penal Code.

ART. 7B.053. ENFORCEMENT

The procedure for the enforcement of a protective order under Title 4, Family Code, applies to the fullest extent practicable to the enforcement of a protective order under this subchapter, including provisions relating to findings, contents, duration, warning, delivery, law enforcement duties, and modification.

Subchapter C. Protective Order Prohibiting Offense Motivated by Bias or Prejudice

ART. 7B.101. REQUEST FOR PROTECTIVE ORDER

A person may request the court to issue a protective order under Title 4, Family Code, for the protection of the person at any proceeding:

(1) in which the defendant appears in constitutional county court, statutory county court, or district court;

(2) that is related to an offense under Title 5, Penal Code, or Section 28.02, 28.03, or 28.08, Penal Code; and

(3) in which it is alleged that the defendant committed the offense because of bias or prejudice as described by Article 42.014.

ART. 7B.102. REQUIRED FINDINGS; ISSUANCE OF PROTECTIVE ORDER

The court shall issue a protective order in the manner provided by Title 4, Family Code, if, in lieu of the finding that family violence occurred and is likely to occur in the future as required by Section 85.001, Family Code, the court finds that:

(1) probable cause exists to believe that an offense under Title 5, Penal Code, or Section 28.02, 28.03, or 28.08, Penal Code, was committed;

(2) the defendant committed the offense because of bias or prejudice; and

(3) the nature of the scheme or course of conduct engaged in by the defendant in committing the offense indicates the defendant is likely in the future to:

(A) engage in conduct prohibited by Title 5, Penal Code, or Section 28.02, 28.03, or 28.08, Penal Code; and

(B) engage in that conduct described by Paragraph (A) because of bias or prejudice.

ART. 7B.103. ENFORCEMENT

The procedure for the enforcement of a protective order under Title 4, Family Code, applies to the fullest extent practicable to the enforcement of a protective order under this subchapter, including provisions relating to findings, contents, duration, warning, delivery, law enforcement duties, and modification, except that:

(1) the printed statement on the warning must refer to the prosecution of subsequent offenses committed because of bias or prejudice;

(2) the court shall require a constable to serve a protective order issued under this subchapter; and

(3) the clerk of the court shall forward a copy of a protective order issued under this subchapter to the Department of Public Safety with a designation indicating that the order was issued to prevent offenses committed because of bias or prejudice.

ART. 7B.104. REPORTING

For an original or modified protective order issued under this subchapter, on receipt of the order from the clerk of the court, a law enforcement agency shall immediately, but not later than the 10th day after the date the order is received, enter the information required by Section 411.042(b)(6), Government Code, into the statewide law enforcement information system maintained by the Department of Public Safety.

CHAPTER 7A. PROTECTIVE ORDER FOR VICTIMS OF SEXUAL ASSAULT OR ABUSE, INDECENT ASSAULT, STALKING, OR TRAFFICKING

ART. 7A.01. APPLICATION FOR PROTECTIVE ORDER

(a) The following persons may file an application for a protective order under this chapter without regard to the relationship between the applicant and the alleged offender:

(1) a person who is the victim of an offense under Section 21.02, 21.11, 22.011, 22.012, 22.021, or 42.072, Penal Code;

(a-1) Except as provided by Subsection (a-2), if an application has not yet been filed in the case under Subsection (a), the attorney representing the state shall promptly file an application for a protective order with respect to each victim of an offense listed in Subdivision (1) or (2) of that subsection following the offender's conviction of or placement on deferred adjudication community supervision for the offense.

(a-2) The attorney representing the state may not file an application under Subsection (a-1) with respect to a victim who is at least 18 years of age if the victim requests that the attorney representing the state not file the application.

Addition of (a-1) & (a-2) effective Sept. 1, 2019 (HB 1343, §1). Section 6 of HB 1343 provides: "The changes in law made by this Act to Chapter 7A, Code of Criminal Procedure, apply only to a judgment of conviction entered on or after the effective date of this Act or a grant of deferred adjudication community supervision made on or after the effective date of this Act."

Amendment to chapter heading and (a)(1) effective Sept. 1, 2019 (SB 194, §§2 & 3). Section 14 of SB 194 provides: "Chapter 7A, Code of Criminal Procedure, as amended by this Act, and Article 17.292, Code of Criminal Procedure, as amended by this Act, apply only to a protective order or magistrate's order for emergency protection that is issued on or after the effective date of this Act. An order issued before the effective date of this Act is governed by the law in effect on the date the order is issued, and the former law is continued in effect for that purpose."

Chapter 7A also repealed effective Jan. 1, 2021 (HB 4173, §3.01(2)). Now see Code of Criminal Procedure Chapter 7B.

2019 LEGISLATIVE NOTE

As of January 1, 2021, the Texas Legislature abolished former Chapter 7A and Arts. 6.08 & 6.09 and re-codified them as Chapter 7B. However, that same body also passed stand-alone bills that amended Chapter 7A as it existed. Those amended provisions survive the purported repeal by HB 4173 and therefore remain effective outside the re-codified new chapter. See these amended provisions at the end of Chapter 7B, and see a source and disposition chart at the end of Chapter 7B, showing how former Chapter 7A and Arts. 6.08 & 6.09 match up with new Chapter 7B. Presumably, the Texas Legislature will incorporate the 2019 Chapter 7A amendments into new Chapter 7B in its 2021 session.

ART. 7A.02. TEMPORARY EX PARTE ORDER

If the court finds from the information contained in an application for a protective order that there is a clear and present danger of sexual assault or abuse, indecent assault, stalking, trafficking, or other harm to the applicant, the court, without further notice to the alleged offender and without a hearing, may enter a temporary ex parte order for the protection of the applicant or any other member of the applicant's family or household.

Addition of "indecent assault" effective Sept. 1, 2019 (SB 194, §4). See effective note following Art. 7A.01.

ART. 7A.03. REQUIRED FINDINGS; ISSUANCE OF PROTECTIVE ORDER

(a) At the close of a hearing on an application for a protective order under this chapter, the court shall find whether there are reasonable grounds to believe that the applicant is the victim of sexual assault or abuse, indecent assault, stalking, or trafficking.

(c) An offender's conviction of or placement on deferred adjudication community supervision for an offense listed in Article 7A.01(a)(1) or (2) constitutes reasonable grounds under Subsection (a).

Addition of "indecent assault" in (a) effective Sept. 1, 2019 (SB 194, §5). See effective note following Art. 7A.01.

Addition of (c) effective Sept. 1, 2019 (HB 1343, §2). See effective note following Art. 7A.01.

ART. 7A.035. HEARSAY STATEMENT OF CHILD VICTIM

In a hearing on an application for a protective order under this chapter, a statement that is made by a child younger than 14 years of age who is the victim of an offense under Section 21.02, 21.11, 22.011, 22.012, or 22.021, Penal Code, and that describes the offense committed against the child is admissible as evidence in the same manner that a child's statement regarding alleged abuse against the child is admissible under Section 104.006, Family Code, in a suit affecting the parent-child relationship.

Addition of 22.012 effective Sept. 1, 2019 (SB 194, §6). See effective note following Art. 7A.01.

ART. 7A.07. DURATION OF PROTECTIVE ORDER

(a-1) The court shall issue a protective order effective for the duration of the lives of the offender and victim if the offender is:

(1) convicted of or placed on deferred adjudication community supervision for an offense listed in Article 7A.01(a)(1) or (2); and

(2) required under Chapter 62 to register for life as a sex offender.

Addition of (a-1) effective Sept. 1, 2019 (HB 1343, §3). See effective note following Art. 7A.01.

CCP ARTS. 6.08-.09 & CH. 7A DISPOSITION CHART TO CCP CH. 7B

<u>Ch. 6 Reference</u>	<u>New number</u>	<u>Ch. 7A Reference</u>	<u>New number</u>	
6.08		7A.01*	7B.001	[*Also note that the Texas Legislature made amendments to Chapter 7A in 2019 through SB 194 and HB 1343 that remain effective after 1/1/21, even though they were not incorporated into HB 4173's nonsubstantive re-write. Affected provisions are marked with an asterisk.]
(a)	7B.101	7A.02*	7B.002	
(b)	7B.102	7A.03*	7B.003	
(c)	7B.103	7A.035*	7B.004	
(d)	7B.104	7A.04	7B.008	
6.09		7A.05	7B.005	
(a) S1	7B.051(a)	7A.06	7B.006	
(a) S2	7B.051(b)	7A.07*	7B.007	
(b) S1 Cl 1-2	7B.052			
(b) S1 Cl 3	7B.052(1)			
(b) S1 Cl 4	7B.052(2)			
(c)	7B.053			

CCP CH. 7B SOURCE CHART FROM CCP ARTS. 6.08-.09 & CH. 7A

<u>New Art.</u>	<u>Ch. 6-7 reference</u>	<u>New Art.</u>	<u>Ch. 6-7 reference</u>
7B.001	7A.01	7B.051	
7B.002	7A.02	(a)	6.09(a) S1
7B.003	7A.03	(b)	6.09(a) S2
7B.004	7A.035	7B.052	6.09(b)
7B.005	7A.05	7B.053	6.09(c)
7B.006	7A.06	7B.101	6.08(a)
7B.007	7A.07	7B.102	6.08(b)
7B.008	7A.04	7B.103	6.08(c)
		7B.104	6.08(d)