

TEXAS DISTRICT &
 COUNTY ATTORNEYS
 ASSOCIATION

**FAMILY VIOLENCE:
EPO AND PROTECTIVE
ORDERS**

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Duties of Prosecuting Attorneys and Courts

Art. 5.06 Code of Criminal Procedure

A prosecuting attorney’s decision to file an application for a protective order under Chapter 71, Family Code, should be made without regard to whether a criminal complaint has been filed by the applicant. A prosecuting attorney may require the applicant to provide information for an offense report, relating to the facts alleged in the application, with a local law enforcement agency.

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Who May Apply?

Family Code §§ 71.0021-71.006, CCP Art. 7B.001

Eligible Applicants:

- Spouses or ex-spouses
- Current or ex-boyfriend/girlfriend
- Member of the same household or former
- Biological or foster parents of the same child
- Persons related by blood or marriage
- Dating relationship/romantic or intimate involvement
- Sexual Assault Victims
- Stalking
- Trafficking
- Third Party Protective Order

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What, When?

Family Code §§ 82.003, 71.0021, 71.004; CCP Art. 7B.001

Venue:

County where applicant or respondent resides, or where family violence or element of alleged offense occurred

Covered Acts:

Physical acts of violence or threats of imminent bodily injury

- Most recent incident within past 90-day period
- Past incidents

Stalking, Sex Assault, Trafficking

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And Why?

Family Code § 71.004

Definition of Family Violence:

An act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, sexual assault, but does not include defensive measures to protect oneself.

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And Why?

Family Code §§ 71.004(2), 261.001

Section 71.004(2)

Expands FV definition to include the following types of abuse under 261.001 by a family or household member against a child of the family or household:

- Causing or allowing the photographing, filming, or depicting of the child in obscene or pornographic material
- Use of a controlled substance that results in physical, mental, or emotional injury to a child
- Causing, permitting, or encouraging a child to use a controlled substance
- Causing or allowing a sexual performance by a child

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And Why?

Family Code § 71.0021

Definition of Dating Violence:

An act, other than a defensive measure to protect oneself, by an actor that:

- (1) is committed against a victim or applicant for a protective order:
 - (A) with whom the actor has or has had a dating relationship; or
 - (B) because of the victim's or applicant's marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and
- (2) is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the victim or applicant in fear of imminent physical harm, bodily injury, assault, or sexual assault.

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Categories of Protective Orders

- FAMILY VIOLENCE
- STALKING
- SEX ASSAULT
- THIRD PARTY
- ON BEHALF OF (OBO)-for a child
- CHILD ABUSE

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Applicant Qualifies... What's Next?

- Advocate completes P.O. Application with the Applicant
- Victim Advocate completes affidavit/declaration: statement of violence
- Applicant reviews affidavit and has it notarized, or Applicant reviews Declaration and signs electronically via Docusign
- Victim Advocate explains the court process/schedule
- Safety plan/provide resources

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Reasons for Ineligibility

- Potentially pending family violence offense or other pending cases
- And/or Applicants who generally do not meet the statutory or internal filing qualifications

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Moving On

Family Code § 83.006

Exclusion qualifications:

- Applicant resided at residence during last 30 days
- Respondent committed actual physical violence within the 30 days
- Clear and present danger that alleged respondent is likely to commit family violence against a member of the household
- Name must be on lease or deed (unless there is a duty to support)

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Temporary Ex-Parte

Family Code §§ 83.001, 83.002

- Clear and present danger of family violence, sexual assault or abuse, stalking, trafficking, or other harm
- Valid for period not to exceed 20 days
(*Can be extended for additional 20-day periods*)
- Police Enforceable
 - Texas Penal Code, Sec. 25.07 (a)
 - By arrest
 - Respondent must be served prior to enforcement

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Respondent is Prohibited From: (temporary ex parte order)

- Committing family violence against Applicant
- Communicating directly with Applicant or a member of the family or household in a threatening or harassing manner
- Communicating a threat through any person to Applicant or ...
- Going to or within 500 feet of the residence of Applicant or ...
- Going to or within 500 feet of the place of employment or business or school of Applicant or ...
- Engaging in conduct directed specifically toward Applicant or a member of the family or household, including following, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass
- Possessing a firearm, unless the person 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
- Harming, threatening, or interfering with the care, custody, or control of a pet, companion animal, or assistance animal possessed by protected person

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Protective Order Outcomes

- **AGREED**
- **DEFAULT**
- **CONTESTED HEARING**
- **DENIED**

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The Hearing (Required Findings)

Family Code § 85.001(a)

- Family violence has occurred in the past
- After H.B. 1432, we no longer have to prove that family violence is likely to occur in the future

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Roper v. Jolliffe, 493 S.W.3d 624 (Tex. App.—

Dallas 2015, pet. denied)

- **Respondent does not have a right to a jury trial**
- **Courts can use a preponderance of evidence standard for hearings under the Family Code**

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Final P.O.

Respondent Prohibited From:

- **Committing Family Violence against Applicant**
- **Communicating directly with Applicant in a threatening or harassing manner**
- **Communicating a threat through any person to Applicant**
- **Going to or within 500 feet of the residence of Applicant**
- **Going to or within 500 feet of the place of employment or business of Applicant**

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FINAL P.O.

RESPONDENT IS PROHIBITED FROM:

- **Engaging in conduct directed specifically toward Applicant or member of the family or household, including following, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass**
- **Possessing a firearm, unless the person 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**
- **Harming, threatening, or interfering with the care, custody, or control of a pet, companion animal, or assistance animal possessed by protected person**

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How Long?

Family Code § 85.025

Duration

Period stated in the Order, not to exceed 2 years and/or up to lifetime.

Can exceed two years in specific cases if Respondent is alleged to have:

- a. Two or more prior P.O.'s
- b. Serious bodily injury or conduct constituting a felony
- c. Sexual assault
- d. Stalking
- e. Trafficking

Extension of P.O. (Family Code § 85.025(c))

(Respondent incarcerated at time P.O. expires)

1 Year Extension: If incarceration was for more than 5 years, P.O. remains in effect for 1 year after respondent is released.

2 Year Extension: If incarceration was for 5 years or less, P.O. remains in effect for 2 years after respondent is released.

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CHAPTER 85.025. DURATION OF PROTECTIVE ORDER

(a-1) Court may render P.O. for period that exceeds 2 years with finding that respondent:

- (1) committed act constituting a felony offense involving F.V.;
- (2) caused S.B.I. to applicant or member of family or household; or
- (3) was the subject of 2 or more previous P.O.'s rendered:
 - (A) to protect the current applicant; and
 - (B) after a finding by court that respondent
 - (i) has committed F.V.

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CCP Chapter 7B. PROTECTIVE ORDERS FOR VICTIMS OF SEXUAL ASSAULT OR ABUSE, STALKING OR TRAFFICKING (Alternative P.O.'s)

ART. 7B.001. APPLICATION FOR PROTECTIVE ORDER

Allows P.O.'s for victims of sexual assault, stalking, or human trafficking (sex trafficking or compelling prostitution) without regard to the relationship between applicant and alleged offender. *(Victim must be the victim of one or more specific offenses under the penal code)*

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

Reasonable grounds to believe that the applicant is the victim of:

- a. Sexual Assault
- b. Stalking
- c. Trafficking

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The Hearing:

Code of Criminal Procedure Chapter 7B

- Art. 7B.003. Required Findings for Issuance of Final Protective Order:

The court must find reasonable grounds to believe applicant is the victim of a sexual assault or abuse, stalking, or trafficking.

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How Long?

CCP Art. 7B.007

- Art. 7B.007 Duration of Protective Order

(a) Can be in effect for the duration of the lives of the offender and victim or for any shorter period stated in order

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

1. A victim who is 18 years or older; or
2. A parent or guardian acting on behalf of a victim who is younger than 18 years of age

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Third-Party Protective Order

FAMILY CODE §82.002

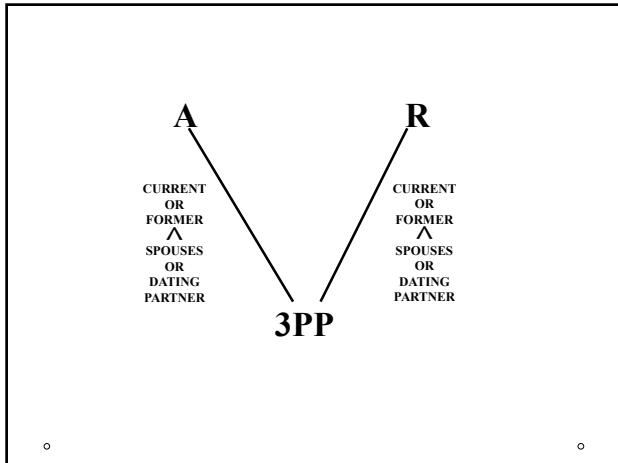
Allows an applicant who is NOT related to the respondent to file for P.O. if:

- a. A & R have a common love interest (paramour)
- b. A has dating relationship or marriage with the common love interest
- c. R is current or former dating partner or spouse to 3PP
- d. Current spouse or dating partner
- e. Ex-spouse or former dating partner

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Modification of Final Protective Order

- The applicant may drop the 500-foot restriction
- Respondent can return home, but applicant is still protected

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Violation of Protective Order - Criminal Case

- Class A Misdemeanor
- Third degree felony when respondent has two or more prior convictions of violations of protective order with jail time, or commits an assault or stalking while under protective order against the protected person
- Continuous Violation of Protective Order: Two or more unadjudicated violations within a single year chargeable as a third-degree felony.

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Can the Applicant Violate the Protective Order?

Applicant cannot violate the protective order

- Texas Penal Code, Sec. 25.07 (e)

A peace officer investigating conduct that may constitute an offense under this section for a violation of an order may NOT arrest a person protected by that order for a violation of that order.

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Magistrate's Order for Emergency Protection

Code of Criminal Procedure Art. 17.292

- If the alleged perpetrator is in JAIL for a family violence offense, sexual assault or stalking;
- Victim, State's Attorney, Police Officer or Magistrate can make request enforceable criminally
- Respondent can be brought before the Magistrate, giving required notice
- Valid for up to 91 days
- Mandatory if either serious bodily injury or deadly weapon

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MODIFICATION OF MAGISTRATE'S E.P.O.

Conflicts between EPO, Custody Orders, FPO, and temp Ex Parte order (CCP Art. 17.292)

1. EPO. v. Existing Custody Order (EPO)
2. EPO v. Subsequent FPO (FPO)
3. EPO v. Subsequent Temporary Ex Parte (EPO)
(unless Judge makes a finding to the contrary)

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MODIFICATION OF EMERGENCY P.O.

(continued)

Subsection (j). MODIFICATION OF EMERGENCY PROTECTIVE ORDER BY ISSUING COURT

After notice to each affected party AND a hearing,
the court can modify all or part of an order if the
court finds:

- 1.) The order is unworkable;
- 2.) The modification will not place the
victim at greater risk than did the
original order

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PROTECTIVE ORDERS FROM A DIFFERENT JURISDICTION

TEXAS FAM. CODE 86.005

To ensure that law enforcement officers responding to calls
are aware of the existence and terms of a protective order
from another jurisdiction, each law enforcement agency shall
establish procedures in the agency to provide adequate
information or access to information for law enforcement
officers regarding the name of each person protected by an
order rendered in another jurisdiction and of each person
against whom the protective order is directed.

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PRACTICAL EFFECTS

Policies may differ in jurisdictions

**Look at wording of each
protective order**

NCIC; TCIC

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Protective Order vs. Restraining Order

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| <ul style="list-style-type: none"> • Filed as a separate lawsuit or as a part of a suit for dissolution of a marriage • Filed by: any member of a family or household, Criminal District Attorney, Dept. of Protective and Regulatory Services, or a Civil Attorney | <ul style="list-style-type: none"> • Filed as part of a petition for divorce, annulment or to declare a marriage void, or as a separate lawsuit • Filed by: either party to a marriage or Civil Attorney |
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Protective Order vs. Restraining Order

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| <ul style="list-style-type: none"> • Application, Affidavit filed with CA or DA's Office or Civil Family Law Court • Hearing set within 14 to 21 days; Temporary Ex-Parte Order issued, enforceable by Police | <ul style="list-style-type: none"> • Filed with a Petition for Divorce with Civil Family Law Court, Affidavit not necessary • Hearing set within 14 days; Temporary Restraining Order can be issued, is enforceable in Civil Court |
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Protective Order vs. Restraining Order

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| <ul style="list-style-type: none"> • If finding of Family Violence, respondent is prohibited from: • Committing Family Violence • Threatening or harassing victim • Going within a certain distance (500 ft.) of victim's residence or place of employment | <ul style="list-style-type: none"> • Party can be prohibited from various actions from a list of 29 acts including: • Causing bodily injury • Threatening bodily injury • Harassing phone calls • Running up credit card debts • Emptying bank accounts and/or safe deposit boxes |
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Protective Order vs. Restraining Order

- If granted, the Protective Order is valid for two (2) years or longer from the date signed by Judge
- **CRIMINAL:** Violation can result in immediate arrest; Violation of Protective Order is a separate case tried in court
- If granted, Temporary Injunction is valid during pendent divorce
- Permanent Injunction can be included in Final Divorce Decree
- **CIVIL:** Violation results in Motion for Contempt/ Enforcement filed in Civil Court, can result in jail or fine

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Strategic Considerations

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QUESTIONS

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