



ENDING THE VIOLENCE:

How to Obtain a Texas Protective Order

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Texas Young Lawyers Association

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Introduction

The Texas Department of Public Safety reported that in 2022, there were 226,7855 incidents of documented family violence statewide. Recent research on domestic violence in the 50 states has found that one in three women in the United States experiences domestic violence in their lifetime. About one in four men experience it as well.

Domestic violence can, unfortunately, take many shapes and forms. For instance, all of the following can constitute domestic violence and should be considered serious offenses:

- **Physical violence:** Conflicts in the home can often get heated and lead to violence. Any type of threat of harm, actual harm, or bodily injury, whether intentional or unintentional, is a form of domestic violence.
- **Sexual abuse:** It is a crime for one person to engage in non-consensual sexual activity with another person. If this happens in the home or between intimate partners, it is considered a form of domestic violence.
- **Emotional abuse:** If one person uses verbal threats or manipulative actions to control or intimidate another person in their home, this is a form of emotional abuse that constitutes domestic violence.
- **Stalking:** If you receive repeated unwanted attention from the same person or any harassment or monitoring that causes fear, this is a form of domestic violence. If you are experiencing stalking, you can consider filing a restraining order against the perpetrating family or household member to put an end to the behavior.

Although the legal system is unfamiliar territory for most people, it can offer some protection from family violence through the use of a legal document known as a Protective Order. When family violence occurs, victims are usually afraid and confused. It can happen anywhere and to anyone, so it is important to know what to do if you encounter it. If you are experiencing any form of domestic violence, it is critical that you get to a safe space. This pamphlet is designed to help victims of family violence to become familiar with the legal steps that need to be taken to end the violence and eliminate some of their fear and confusion.

What is a protective order?

In Texas, as in other states, protective orders are intended to protect individuals from abusive partners or others who may try to cause harm. A protective order is a court order that is designed to stop an abuser from continuing acts of violence, including actions that are threatening, harassing, or that constitute stalking. The person who requests the order is known as the “applicant” or “petitioner.” The person restricted by the order is known as the “respondent.”

Protective orders are used to try to prevent family violence. Protective orders are important in ending family violence. The purpose of a protective order is to:

- prevent future violence;
- identify appropriate and inappropriate behavior; and
- reinforce beliefs that family violence is wrong and needs to be stopped.

What does a protective order do?

A judge can put various conditions in a protective order. For example, if granted by a district court judge, a protective order can:

- Order the person you filed against not to commit any violence against you and/or members of your family.
- Order the person you filed against not to come within a certain distance of where you live, work, and attend school.
- Order the person you filed against not to communicate with you in any manner that is threatening or harassing, whether by phone, mail, or any electronic/online communication.
- Order the person not follow you (for stalking protective orders only);
- Order the person you filed against to refrain from any harassing, threatening, annoying, alarming, abusing, tormenting or embarrassing behavior towards you.
- Order that the person you filed against not commit any of the above acts towards you or your household members.
- Order that the person you filed against vacate a residence, pay child support, attend counseling, and/or not possess a firearm.

Abusers who violate a protective order can be fined, arrested, or both.

Who is eligible for a protective order?

Victims of family violence are eligible for a protective order. In Texas, the Texas Family Code, Chapter 71.004, “defines “Family Violence” as "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, assault, or sexual assault, but does not include defensive measures to protect oneself." The law includes abuse, defined as physical injury that results in substantial harm or genuine threat; sexual contact, intercourse, or conduct; or compelling or encouraging the child to engage in sexual conduct. The law excludes the reasonable discipline of a child. For Family Violence Reporting, the law defines "family" to include individuals related by consanguinity (blood) or affinity, marriage or former marriage, biological parents of the same child, foster children, foster parents, and members or former members of the same household (including roommates regardless of gender).

A court shall render a protective order if the court finds that family violence has occurred. Thus, even after you have left the abusive situation and have gone to a safe place, if you may be entitled to a protective order. A victim's testimony about past family violence may be enough to obtain a protective order, even if there is no police report. If you are seeking a stalking protective order, the law requires that you prove that there are reasonable grounds that you are the victim of stalking. If you are seeking a sexual protective order, the law requires that you prove that there are reasonable grounds that you are the victim of sexual assault. If you are seeking a trafficking protective order, the law requires that you prove that there are reasonable grounds that you are the victim of trafficking.

In Texas, "family" has a very broad definition. Family can include relatives by blood or marriage, former spouses, parents of the same child (even if not married), foster parents or foster children, or any member or former member of a household (whether or not related by blood or marriage). In the context of dating violence, protective orders may be issued where the parties have an ongoing romantic relationship. It can also be someone you currently live with or have lived with in the past.

If you know someone who is being victimized by family violence, there is something you can do. Any adult member of the family or household may file an application for a protective order to protect himself or herself or any other member of the applicant's family or household. An application for a protective order may be filed by an adult member of the dating relationship or any adult may apply for a protective order to protect a child from family violence. In addition, an application may be filed for the protection of any person alleged to be a victim of family violence by: (1) a prosecuting attorney; or (2) the Department of Family and Protective Services.

Please contact your local law enforcement or domestic violence prevention agency immediately if you or someone you care about is a victim of family violence. Even if you are not eligible for a protective order, there may be other options available.

How do you obtain a protective order?

The first step in applying for a protective order is to complete an application. The application may be obtained through the office of the county or district attorney, a private attorney, or a legal aid program. In some communities, domestic violence advocacy groups also provide assistance in obtaining protective orders. The application for a protective order must be filed in either the county where the victim lives or the county where the offender lives and the applicant's address can be kept confidential. There are no minimum time limits to establish residency, so even if you have not lived in the same county for very long, you may still file an application for a protective order in that county. Protective orders are available in every county in Texas.

Protective orders are also available for people going through a divorce. However, in this case, the protective order must be filed in the same court where the divorce is pending and the pleadings in both matters must state that the other matter is also pending. It is important to remember that a protective

order is not a custody determination and cannot be used by one party to gain an advantage in a divorce proceeding.

How much does a protective order cost?

Applying for a protective order is free. An applicant for a protective order may not be charged a fee by the county or district attorney's office or by a sheriff or constable in connection with the filing, serving, modifying, or withdrawing a protective order. There is also no cost for certifying copies, court reporter fees, or any other service related to a protective order. If the respondent is found to have committed family violence, the court order generally must require the respondent to pay all court costs, fees, charges, or expenses incurred in connection with the order. However, if the applicant chooses to use a private attorney for assistance, the applicant may still have to pay for the attorney's time in assisting with the protective order. In this case, the court can order a respondent who has committed family violence to pay the private attorney's fees.

How long does a protective order last?

If the court reviewing the application determines that there is a real threat of immediate family

violence, the court may issue a temporary ex parte order which is valid for up to 20 days. An ex parte protective order is a short-term protective order that can include a kick-out order, which is a way to force an abuser out of the home. An ex parte order simply means that the court hears from only one party, without notice to or argument from the other party. The court will then set a hearing date for a final protective order, usually no more than 14 days after the application is submitted. At this hearing, the court will decide whether or not to grant a final protective order. If granted, the final protective order will vary depending on the circumstances. The protective order may be effective for up to two years. In some cases, upon specific findings by a court,

the order may be extended beyond two years. In sexual assault and stalking cases, protective orders can last for life.

If a person subject to the protective order is imprisoned on the date the protective order would expire, the judge could extend the order based on the abuser's term of imprisonment. If the abuser is imprisoned for more than five years, the final protective order will expire a year from when the abuser is released. If the abuser was imprisoned for less than five years, the final protective order could expire two years from when the abuser was released. A new protective order can also be requested after an earlier protective order has expired or while one is still in effect, so long as the earlier protective order is set to expire within 30 days of the date the new application for protective order is filed.

What does a protective order actually do?

No piece of paper can protect you from all incidents of violence; however, a protective order provides a good deterrent in most situations. A protective order can require the abuser to stay away from the victim's home, workplace, and children's schools (if the children are protected persons in the order). It can order the abuser to stop communicating in a harassing manner with or threatening the victim. Protective orders can require the abuser to attend counseling, to pay child support, and to pay spousal support. All of the provisions in the order can be enforced in court.

Arrests for not obeying a protective order

A Respondent who violates a temporary ex parte protective order may be arrested under §25.07 Texas Penal Code. An arrest concerning violation of protection can sometimes occur if police actually catch the abuser acting in an inappropriate manner. Some violations, but not all, can result in the police taking the abuser to jail if he or she violates the order, and they could be

charged with a crime. For example, trespassing, threatening someone else's life and harassment are all behaviors that could land the abuser who violates a protective order behind bars. Most of the time, however, arrests for disobeying restraining orders come after an individual makes a report concerning unwanted behavior to the police. This can sometimes be backed by "eyewitness" testimony that may or may not be factual in nature.

Local law enforcement agencies are notified of protective orders in their area. If an offender violates an order, law enforcement personnel will seek to arrest the offender and have criminal charges filed against him or her. The offender may also be punished by the judge who issued the order by being fined, jailed, or both. If a violation occurs in an officer's presence, the violator will be arrested if he or she can be readily located. Other violations might require an officer to obtain a warrant prior to making an arrest.

Conclusion

This pamphlet is published as a public service project of the Texas Young Lawyer's Association. It provides you with a brief overview of the legal system as it pertains to protective orders and is not intended to replace legal advice from an attorney. If you have specific legal questions, you should seek counsel from an attorney in your area.

Texas Victim Resources

Remember, if you or someone you know is a victim of domestic violence, there is something you can do. Obtaining a protective order is only one tool available to victims. In conjunction with counseling and support from advocacy groups, the violence can be stopped. Below is a list of contact information for groups that can provide more information on protective orders and can furnish assistance to help end domestic abuse.

Important Contact Information

Police/Sheriff

911

Texas Department of Criminal Justice Victim Services Division

800-848-4284

<https://www.tdcj.texas.gov/divisions/vs/>

National Domestic Violence Hotline

800-799-7233 (SAFE) or TDD 800-787-3224

<https://www.thehotline.org/>

Texas Department of Human Services Abuse Hotline

800-252-5400

Texas Advocacy Project – Family Violence Legal Line

800-374-4673 (HOPE)

Texas Legal Service Center Crime Victim's Program

844-303-7233 (SAFE)

Crime Victims' Compensation

800-983-9933

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