

1 Did the person who filed have the right to do so?

If the PO is for Family or Dating Violence—

- Any adult for him/herself or any member of the household or prior members of the same household
- Parents of the same child
- A member of a dating relationship without regard to age
- A person who is married to a person with whom the Respondent was in a dating relationship [i.e. Respondent is threatening the current boyfriend/girlfriend/spouse]
- Any adult on behalf of a child
- A prosecutor or TDFPS

If the PO is for Bias or Prejudice Arson, Criminal Mischief, Graffiti, Stalking, Sexual Assault, Harassment or Trafficking

- The victim
- The prosecuting attorney **MUST** file if there is no other application on file in cases of continuous sexual assault of a child, indecency with a child, sexual assault, indecent sexual assault, aggravated sexual assault, stalking, harassment or trafficking unless the victim is an adult and request that no such filing be made.

All protective orders must follow the Texas Family Code requirements for the contents of the application [See Chapter 82]

2 Is the Act Violence?

- Family or dating violence may be an act intended to result in harm, **OR A THREAT** that reasonably places the Applicant in fear
- It can also include abuse as defined in the child abuse statutes

3 Did they file it correctly?

- Name and county of residence of each applicant and each individual alleged to have committed an act covered by the PO must be identified
- Must state what the relationship between Applicant and Respondent is, if any
- Must state whether the Attorney General is/has provided services to the applicant under Title IV-D
- Family Violence applications must have **ALL PRIOR SAPCR ORDERS** if any.
- If there is a prior protective order between the same parties, it must be attached to the Application or provided before the hearing.
- Failure to attach the orders is not fatal if they are tendered to the court prior to the hearing. **DO NOT START A HEARING** if you have not received the prior orders.

4 Is it filed in the right place? In family or dating violence, or sexual assault, indecent assault, stalking and trafficking, the applicant can choose:

- Where the Applicant resides
- Where the Respondent resides
- Where the violence or any element of the criminal offense is alleged to have occurred
- Where the suit for dissolution is pending unless the Applicant lives elsewhere and if so, see above

BUT..... Bias or Prejudice protective orders are requested at a proceeding in which the defendant is appearing on the criminal case so these will be requested in the criminal court. Other than the reference to the Family Code, there are no specific requirements regarding filing these.

5 Has the Burden of Proof been met?

- These are all **CIVIL ORDERS**. Burden of Proof is **PREPONDERANCE OF THE EVIDENCE**.
- For family and dating violence [Family Code], bias or prejudice or stalking protective orders [Code of Criminal Procedure], the applicant must establish the act as well as the likelihood that the behavior will continue [see specific statutes for language]

6 SET THE HEARING TIMELY. These **MUST BE HEARD** within 20 days from the date they are filed. Respondent is entitled to 48 HOURS notice. The hearing is your **FINAL TRIAL** and result in a final appealable order.

- Applicant/Prosecutor can request a reset
- Respondent can request a reset if less than 48 hours' notice but you still **MUST HAVE THE HEARING BEFORE THE 20TH** day.
- You are specifically prohibited from resetting the hearing beyond the 20 days for convenience, expediency, or any other reason, even if you are having an evidentiary hearing that will cover the same or similar issues at a later time.

7 Ex parte relief is okay:

- Family Code filings with affidavit signed by **EACH** applicant [children can sign these] that contains facts that support the request for immediate protection **AND** establish clear and present danger of family violence
- No Bond required
- Good for 20 days and can be extended for additional 20 day periods on the request of the applicant **OR ON THE COURT'S OWN MOTION**.
- Kick out ex parte requires affidavit **ACCOMPANIED BY LIVE TESTIMONY**; Applicant must still be living at the residence or have lived there within the previous 30 days and the family violence was committed during that 30 day period
- Code of Criminal Procedure allows ex parte orders for those offenses covered by the Penal Code and Code of Criminal Procedure but **NO** affidavit is required.
- Code of Criminal Procedure puts no time limits on the ex parte order, but there are frequent references to "as provided by Title 4 of the Family Code"

8 Defaults are okay

- No answer required
- No "Monday after 20 days" requirement
- Only requirement is proof of service in the court file before you start the hearing
- Respondent can file an answer but is **NOT** entitled to the full time to do so as otherwise provided by the TRCP

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11

Mutual orders are specifically prohibited. If there is mutual combat, the Respondent must seek his/her own PO.

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Code of Criminal Procedure simply states that PO's may be rendered under Title 4, Family Code and the stalking provisions even specifically say "in the same manner as an application for protective order under Title 4, Family Code."

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Hearsay statements of children are specifically admissible in all proceedings [12 or under in Family Code and 14 or under in the Code of Criminal Procedure].

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MAKE FINDINGS—The grant of a Protective Order is REQUIRED if:

- Family Code—violence has occurred and is likely to recur
- Bias or Prejudice—arson, criminal mischief or graffiti occurred because of bias or prejudice and the defendant is likely engage in the prohibited conduct in the future
- Stalking, sexual assault or abuse, indecent assault, or trafficking—the behavior has occurred and is likely to recur

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How Long do they Last?

- Family Code—for a period of time not to exceed 2 years unless you make specific findings that the act of violence constituted a felony, even if there have been no charges or conviction; or the act caused serious bodily injury; or the Respondent was the subject of 2 or more prior protective orders rendered to protect the same applicant
- Bias or prejudice—the only reference is to track the Family Code
- Sexual Assault, indecent assault, stalking or trafficking—any duration INCLUDING for the life of the offender and the victim. Default is 2 years if the Judge did not include a duration in the order, however, if the offender under this provision is convicted or gets deferred and is required to register as a sex offender, the lifetime protective order is mandatory.

Be sure the order has all the warnings, including gun surrender. The prohibition against possession a firearm or ammunition once the court has made findings is a federal statute—don't get cross-ways with it. Harris County now has a surrender program to make your life easier on this. The federal statute is actually quite broad and would, under our laws, include injunctions as well as protective orders.

Fees—You MUST assess properly requested attorney fees for an applicant in a protective order proceeding.

WHERE DO YOU FIND THE REAL ANSWERS?

18 USC section 922 contains the prohibitions against possession of firearms and weapons.

Family Code Chapters 71 and 82-86

Texas Code of Criminal Procedure 7A and 7B

Texas Penal Code Section 42.07