

## **Protective Orders**

### **According to Chapter 5, Code of Criminal Procedure:**

Family violence is a serious danger and threat to society and its members. Victims of family violence are entitled to the maximum protection from harm or abuse or the threat of harm or abuse as is permitted by law.

In any law enforcement, prosecutorial, or judicial response to allegations of family violence, the responding law enforcement or judicial officers shall protect the victim, without regard to the relationship between the alleged offender and victim.

### **What is a Protective Order?**

A protective order is a civil court order issued to prevent continuing acts of family violence, sexual assault or stalking.

Family violence is basically defined as any act by one member of a family or household intended to physically harm another member, a serious threat of physical harm, or the abuse of a child.

Family includes blood relatives or relatives by marriage, former spouses, parents (married or not) of the same child, foster parents and foster children, or any member or former member of a household (people living in the same house, related or not). Family also includes those who have or have had a dating relationship.

### **How Can a Protective Order Help?**

A protective order may prohibit the offender from:

- Committing further acts of family violence
- Harassing or threatening the victim, either directly or indirectly by communicating the threat through another person
- Going to or near a resident, place of employment, school or day-care center that a child protected under the order attends

In some situations, a protective order may also include orders to: prohibit transfer or disposal of property, establish possession and visitation of a child, pay child or spousal support for a period not to exceed one year, attend mandatory counseling, and vacate the residence or other specified property, if certain conditions are met.

These additional provisions are not criminally enforceable. A person who violates them is not immediately arrested, but may be taken to civil court, found in contempt, fined and jailed.

### **Who is Eligible for a Protective Order?**

If the court finds that family violence has occurred and is likely to occur again, a court shall render a protective order. To obtain a protective order, the victim and

the offender must be (1) related by blood or marriage, (2) living together, or previously lived together, or (3) have a child together or they must have had a dating relationship.

A person who has a divorce pending is eligible for a protective order. The protective order must be filed in the court in which the divorce is pending.

### **How Can I Get a Protective Order?**

You may apply for a protective order through the district or county attorney, a private attorney, or through a legal aid service program. The application must be filed in the county in which you or the offender lives. There are no minimum time limits to establish residency, and protective orders are available in every county in Texas.

### **Who May File for a Protective Order?**

- An adult member of the family or household; or
- any adult for the protection of a child; or
- a prosecuting attorney; or
- the Department of Human and Regulatory Services.

The person who is the alleged victim of family violence is considered to be the "applicant."

### **What Information Do I Need to Provide?**

When you apply for a protective order, you must supply the following information: The name of each applicant (victim) and the county where each applicant (victim) resides

- the name, address, and county of residence of each individual who has committed family violence
- the relationship between the victim(s) and the offender
- a request for one or more protective orders

The victim should file for the order as soon after the incident has occurred as possible. Additionally, if other incidents of family violence have occurred, the victim needs to provide this information to the attorney who files the protective order application.

### **What does it Cost?**

The applicant (victim) or an attorney representing the applicant may not be assessed a fee, cost, charge, or expense by a district or county clerk or by a sheriff, constable or other public official or employee in connection with the filing, serving, entering or for any other service including any fees for dismissing, modifying, or withdrawing a protective order, certifying copies, comparing copies to originals, court reporter fees, judicial fund fees, transferring a protective order or for any other service related to a protective order.

The court shall require the offender to pay the fees incurred in connection with the protective order unless the offender shows good cause or is indigent.

**How Long Does it Take to Receive and How Long Does it Remain in Effect?** Unless the applicant requests a later date, the court shall set a hearing date no later than 14 days after the application is filed. If, however, the court finds from the information contained in the application that there is a clear and present danger of family violence, the court may immediately issue a temporary ex parte order. The temporary order is valid for up to 20 days. Final protective orders are effective for up to two years or longer at the discretion of the court.

**What Happens if the Protective Order is Violated?**

Call the police immediately!! Remember, protective orders do not offer complete protection. No piece of paper can protect you from all instances of violence. Law enforcement agencies are notified of all protective orders issued in their area and they are required to maintain a list of those orders. If an offender violates the order and law enforcement is notified, officials will act to arrest the offender and seek to have charges filed. If a person violates the protective order in the presence of law enforcement, the offender must be arrested immediately. In cases involving the violation of an ex parte order, the offender may be punished for contempt of court by a fine of as much as \$500 or up to six months in jail or both. In cases of violation of a protective order, the offender may be punished by a fine of as much as \$4,000 or jail for up to one year or both.

**What Other Options are Available?**

A Magistrate's Order for Emergency Protection may be issued at the time of a defendant's appearance before a magistrate after arrest for an offense involving family violence or a sexual assault. The order for emergency protection may be issued on the magistrate's own motion or on the request of:

- the victim
- guardian of the victim
- a peace officer; or
- the attorney representing the State

A Magistrate's Order for Emergency Protection may prohibit the arrested offender from committing any further acts of family violence, communicating with a member of the family or household or the person named in the order, or making any threats or going near the place of employment, household or business of a member of the household or of the person named. The offender may also be restricted from going near a school or day care facility. The victim does not have to be present in court when the order is issued.

A violation of this order may be punishable by a fine of as much as \$4,000 or by confinement in jail for up to one year or both.

Remember, if someone has physically assaulted or threatened you; contact your local police department or sheriff's office to press charges against that person. Even if you are ineligible for a protective order, you may be able to have the person arrested for assault, criminal trespass, or stalking.