

HOW TO FILE A PROTECTIVE ORDER

WHAT IS A PROTECTIVE ORDER?

A protective order is a civil court order issued to prevent continuing acts of family violence.

WHAT IS FAMILY VIOLENCE?

Under Chapter 5 of the 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.

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

Dating violence is defined as any act by an individual intended to physically harm another individual with whom that person has or has had a dating relationship, or a serious threat of physical harm. A dating relationship is defined as a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature.

The existence of such relationship shall be determined by considering the length of the relationship, the nature of the relationship, and the frequency and type of interaction between the persons involved in the relationship. A casual relationship

or ordinary fraternization in a business or social context does not constitute a dating relationship.

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).

HOW CAN A PROTECTIVE ORDER HELP?

A protective order may prohibit a person from:

- Committing further acts of family violence;
- Harassing or threatening the victim directly or communicating the threat indirectly through another person;
- Going to or near a school or day-care center attended by a child protected under the order; or
- Possessing a firearm.

In some situations, a protective order may also prohibit transfer or disposal of property, establish possession and visitation of a child, order payment of child or spousal support for a period not to exceed one year, require mandatory counseling, or require a person to 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.



ATTORNEY GENERAL OF TEXAS
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WHO IS ELIGIBLE FOR A PROTECTIVE ORDER?

A protective order may be issued to:

- a victim of family violence or dating violence as defined by the Texas Family Code; or
- a sexual assault victim who has been threatened with further harm.

Protective orders may be issued in a wide range of situations. The victim and alleged offender may be married, divorced, live or formerly lived together in the same household, have or used to have a dating relationship, or have a child together. These charges then appear on your phone bill.

An adult member of a family or household may apply for a protective order on behalf of another family member, and any adult may apply for an order to protect a child from family violence. In addition, a prosecuting attorney may apply for an order to protect an alleged victim of family violence or sexual assault, and the Department of Protective and Regulatory Services may request an order on behalf of a family violence victim.

HOW CAN I GET A PROTECTIVE ORDER?

You can apply for a protective order in person, with the help of a private attorney or legal aid service program, or through a district or county attorney. The application must be filed in the county in which you or the alleged offender live (in a case involving a pending divorce, the application may be filed in the county where you live or in the county where the divorce is pending.)

WHAT INFORMATION DO I NEED TO PROVIDE?

When you apply for a protective order, you must give the following information:

- (1) the name of each applicant (victim) and the county where each applicant (victim) resides;
- (2) the name and county of residence of each individual who has committed family violence;
- (3) the relationship between the victim(s) and the alleged offender; (4) a request for one or more protective orders.

The victim should file for the order as soon as possible after the incident has occurred. If past incidents of family

violence have occurred, the victim needs to provide this information to the attorney who files the protective order application.

HOW MUCH 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 or entering or for any other service. This includes 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 alleged offender to pay the fees incurred in connection with the protective order unless that person shows good cause or is indigent.

HOW LONG DOES IT TAKE TO RECEIVE AND HOW LONG WILL IT REMAIN IN EFFECT?

Unless a later date is requested by the applicant, the court shall set a hearing date no later than 14 days after the application is filed. If after a hearing the court finds that family violence has occurred and is likely to occur again, the court shall issue a protective order. However, if the court finds, based on 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.

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 a person violates the order and law enforcement is notified, officials will act to arrest the person and seek to have charges filed. If a person violates

the protective order in the presence of law enforcement, he or she must be arrested immediately. A person who violates an *ex parte* protective order may be punished for contempt of court by a fine of up to \$500 or up to six months in jail, or both. In cases involving violation of a regular protective order, the offender may be punished by a fine of up to \$4,000, jail for up to one year, or both.

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 OTHER OPTIONS ARE AVAILABLE?

A Magistrate's Order for Emergency Protection may be issued when a defendant appears before a magistrate after arrest for an offense involving family violence or a sexual assault. The order may be issued on the magistrate's own motion or at the request of the victim, the victim's guardian, a peace officer or the attorney representing the State.

A Magistrate's Order for Emergency Protection may prohibit the alleged offender from committing any further acts of family violence; communicating with you, with a member of your family or household, or with the person named in the order; or making any threats or going near your place of employment, household or business. The alleged perpetrator 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 up to \$4,000, 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. Even if you are ineligible for a protective order, you may be able to have the person arrested for assault, criminal trespass or stalking.

CONTACT INFORMATION

CRIME VICTIM SERVICES DIVISION

The Crime Victim Services Division consists of four sections: the Sexual Assault Prevention and Crisis Services Program, the Grant and Contract Management Section, the Statewide Automated Victim Notification Program and the Crime Victims' Compensation Program.

CRIME VICTIMS' COMPENSATION

If you are a victim of family violence, you may be eligible for reimbursement of certain out-of-pocket expenses related to the crime. Please check our Web site or call for information and an application form.

BY US MAIL

Office of the Attorney General
P.O. Box 12198
Austin, Texas 78711-2198

BY TELEPHONE

Statewide.....(800) 983-9933
Austin.....(512) 936-1200
Fax.....(512) 936-1800

ON THE INTERNET

Web site: www.texasattorneygeneral.gov

Texas Council on Family Violence National Domestic Violence Hotline

(800) 799-SAFE (7233)

Women's Advocacy Project Family Violence Hotline

(800) 374-HOPE (4673)