

Introduction

The Texas Department of Public Safety reports that in 2006, there were 186,868 incidents of documented family violence statewide¹. However, Texas Health and Human Services Commission estimates that as many as 982,916 Texas women were actually battered that year². In Texas, more than 800 women have been killed by their domestic partners from 1998-2005. These statistics indicate that although family violence is an inexcusable crime, it is unfortunately prevalent in today's society. If you or someone you know is a victim of family violence, you are not alone.

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 fearful and confused. Hopefully, in reading this pamphlet, victims of family violence will 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?

A Protective Order is a civil court order that is designed to stop an abuser from continuing acts of violence, threatening, harassing, or 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 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.

A judge can create various conditions of a Protective Order. For example, a judge may order a respondent to 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, "family violence" means 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.

A court shall render a Protective Order if the court finds that family violence has occurred and is likely to occur in the future. Thus, even after you have left the abusive situation and have gone to a safe place, if family violence might occur again in the future 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.

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).

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 Protective and Regulatory 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 can not 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 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 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 fourteen 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 may be effective for up to two years.

If a person subject to the Protective Order is imprisoned on the date the Protective Order would expire, the period for which the order is effective can be extended and the order will expire one year after the person is released from confinement. A new Protective Order can also be requested after an earlier Protective Order has

¹ <http://www.tcfv.org>

² <http://www.hhsc.state.tx.us/>

expired or while one is still in effect, so long as the earlier Protective Order is set to expire within thirty (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. Some violations, but not all, can result in the police taking the abuser to jail if he or she violates the order.

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.

In November of 2007, Texas voters approved Proposition 13, more commonly known as the "Family Violence Amendment". This amendment to the Texas Constitution provides that any person in Texas accused of family violence can be taken into custody and have their bail denied pending trial – regardless of whether the offense is a felony or misdemeanor – if they violate an order for emergency protection or an active Protective Order.

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.

Important Phone Numbers

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 telephone numbers for groups that can provide more information on Protective Orders and can furnish assistance to help end domestic abuse.

Police/Sheriff - 911

Crime Victims' Compensation - 800-983-9933

**National Domestic Violence Hotline
800-799-7233 or TDD 800-787-3224**

**Texas Women's Advocacy Project - Family Violence
Hotline 800-777-3247**

**Texas Department of Human Services Abuse Hotline
- 800-252-5400**

Texas Legal Services Center – 800-622-2520

Family Violence Legal Line – 800-374-4673

Check your local yellow pages for crisis intervention services available in your area.

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