

# **PROTECTIVE ORDERS FOR VICTIMS OF FAMILY VIOLENCE, SEXUAL ASSAULT AND STALKING**

# OVERVIEW

## Different Types of Protective Orders

- Emergency POs
- Temporary Ex Parte POs
- Family Violence POs
- Sexual Assault POs
- Stalking POs

## Enforcement of POs

## Using Bond Conditions as a Safety Tool

# MAGISTRATE'S ORDER FOR EMERGENCY PROTECTION (EPO)

- Can be requested at the arrest of an individual for an offense involving family violence, stalking sexual assault, or trafficking
- Must be served on Defendant at magistration
- Required when serious bodily injury or if defendant displays or uses a weapon
- Law enforcement, victim or Judge can request
- 31-61 days in length, unless the defendant uses or displays a weapon, then the order shall be 61-91 days
- Criminally enforceable
- New this session! Can now order the defendant not to communicate with the victim in any manner

CCP 17.292

# **FAMILY VIOLENCE PROTECTIVE ORDERS**

# WHAT IS FAMILY VIOLENCE?

1. Violence against family or household members;
2. Dating violence; or
3. Child abuse.

TFC 71.004

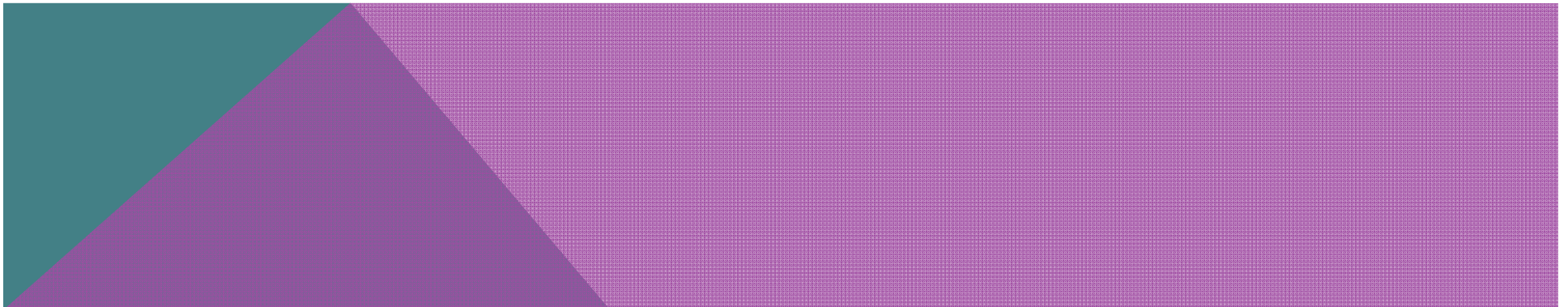
# HOUSEHOLD MEMBERS

- Includes current or former household members
- Unit composed of people living together in same dwelling, without regard to whether they are related to each other.

TFC 71.005

# 3<sup>RD</sup> PARTY POS

- Definition of Family amended to allow a person to apply for a PO against their current or former partner's current or former partner.
- What does this mean, you ask?
- Still have to prove FV occurred and likely in future between App and 3<sup>rd</sup> party
- Baby Mama drama



# CHILD ABUSE

Abuse by a member of the family or household toward a child of the family or household including sexual assault, physical violence or threats of physical violence.

See TFC 71.004(2) and TFC 261.001(1)(C), (E), and (G).



# WHO MAY FILE APPLICATION FOR PROTECTIVE ORDER

- An adult member of the family or household;
- An adult or minor child member of a dating relationship
- Any adult for the protection of a child against a non-dating partner
- Prosecuting attorney
- DFPS

TFC 82.002



# CONFIDENTIALITY OF CERTAIN INFORMATION NEW THIS SESSION, EFFECTIVE SEPT 1, 2017

On request by the Applicant, the court may protect the Applicant's mailing address by rendering an order:

- requiring the applicant to:
  - Disclose the applicant's mailing address to the court;
  - Designate a person to receive on behalf of the applicant any notice or documents filed with the court related to the application; and
  - Disclose the designated person's mailing address to the court;
- Requiring the clerk to:
  - Strike the applicant's mailing address from the public records of the court, and
  - Maintain a confidential record of the applicant's mailing address for use only by the court, and
- Prohibiting the release of information to the respondent.

TFC 82.011, see also TFC 82.041

# WHERE CAN A PERSON FILE FOR A PROTECTIVE ORDER?

An application may be filed in:

- the county in which the Applicant resides,
- the county in which the Respondent resides, or
- any county in which the family violence occurred

TFC 82.003

# COST FOR APPLYING

- No court costs related to filing of protective order can be assessed to applicant pursuant to Texas Family Code § 81.002
- Costs can be assessed to respondent through the protective order including court costs and attorney fees

# TIME SET FOR HEARING

On the filing of an application for protective order, the court shall set a date and time for a hearing no later than the 14th day after the date the application is filed.

**TFC 84.001**

# TEMPORARY EX PARTE PROTECTIVE ORDERS

- An affidavit must be attached to the Application for PO
- If asking for a kickout, the affidavit must also show that there has been violence in the past 30 days and the parties lived together in the past 30 days
- Court must find that there is a *clear and present danger* of family violence
- Can be entered without notice to and without the presence of the party alleged to have committed family violence
- Court may order the Respondent to do or refrain from doing certain things

TFC 83.001

# FAMILY VIOLENCE PROTECTIVE ORDERS

At the close of a hearing, the Court must find:

- family violence has occurred, AND
- family violence is likely to occur in the future TFC 85.001, OR

The court can also issue a PO if the court finds that the respondent violated a previous PO while it was in effect TFC 85.002, without the necessity of the FV findings

TFC 85.001

# ORDERS UNDER TFC 85.021

- Can set a schedule for visitation with the children
- Can order the respondent to pay child support
- Can order the respondent to pay spousal support
- Property orders (exclusive use, no damaging or encumbering)



# PETS

TFC 85.021 allows for pets and other companion animals to be included in the PO

- Respondent cannot remove or harm pets or companion animals
- Criminally enforceable



# ADDITIONAL ORDERS, TFC 85.022

Upon a finding that family violence has occurred, the Court may prohibit the Respondent from:

- going near the protected parties' residence, place of work, child care or school;
- communicating directly with the protected party in a threatening or harassing manner or upon a showing of good cause in any manner except through attorneys;
- engaging in conduct that is intended to harass, annoy, alarm, abuse, torment or embarrass the applicant;
- possessing firearms or ammunition

# FURTHER ORDERS UNDER TFC 85.022. . .

Upon a finding that family violence has occurred, the Court may order the Respondent to:

- attend counseling
- can order respondent to perform acts specified by the court to be necessary or appropriate to prevent or reduce the likelihood of family violence
  - Stay away from the protected party's person;
  - Psych evaluation;
  - Parenting classes
  - Return passports, social security cards
  - Surrender firearms, etc.

# AGREED ORDERS

- The parties may agree to the terms of a FVPO, *subject to* the approval of the Court.
- The Court cannot approve an agreement that requires the Applicant to do or refrain from certain acts.
- Agreed orders are enforceable civilly or criminally.

TFC 85.005

# DURATION

For the period stated in the order not to exceed 2 years.

**BUT**, if Respondent is incarcerated on the date of expiration, or if the PO will expire within one year after the Respondent's release from incarceration, the PO automatically extends for:

- 1 year if the Respondent was sentenced to confinement or imprisonment for more than 5 years, or
- 2 years if the Respondent was sentenced to confinement or imprisonment for 5 years or less

Note: See Article I wrote with Brooke Ellison in the Texas Prosecutor for automatic extension forms

TCF 85.025

# UP TO LIFETIME DURATION

The Court has the authority to grant orders exceeding 2 years upon a finding that Respondent:

- Caused serious bodily injury to the Applicant or a member of the Applicant's family or household; or
- Was the subject of 2 or more previous protective orders with the same Applicant.
- **New this session:** If Respondent committed acts that constitute felony FV against the Applicant. Effective Sept 1, 2017.

TFC 85.025

# **SEXUAL ASSAULT PROTECTIVE ORDERS (SAPO)**

# WHAT IS A SEXUAL ASSAULT PROTECTIVE ORDER?

- Civil Order
- Civil and Criminal Consequences
- Broad Statute
- No Police Report Requirement for SAPO



# WHO MAY SEEK SAPO?

## Victim of

- TPC 21.02 (continuous SA of child),
- TPC 21.11 (indecenty with a child),
- TPC 22.011 (sexual assault), or
- TPC 22.021 (aggravated sexual assault)
- TPC 20A.02 (trafficking)
- New: TPC 20A.03 (continuous trafficking)
- TPC 43.05 (compelling prostitution)

## Parent or guardian of minor victim

## Prosecuting attorney

CCP 7A.01

# FINDINGS FOR SAPO

- The Court must find reasonable grounds exist to believe the applicant is a victim of a sexual assault (or one of the other eligible offenses)
- **Only required finding**

# WHAT KIND OF ORDERS CAN THE COURT INCLUDE IN THE SAPO?

Under Texas Code of Criminal Procedure 7A, a court may...

- Prohibit Respondent from communicating directly or indirectly with applicant or family or household in a threatening or harassing manner
- Prohibit Respondent from going to or near the home, job, child care or school of the applicant or any member of family or household (must specify location and minimum distance to maintain unless victim requests confidentiality)
- Prohibit Respondent from engaging in conduct directed specifically toward the applicant or any family or household member that is reasonably likely to harass, annoy, alarm, abuse, torment or embarrass the person
- Prohibit Respondent from possessing a firearm (can also suspend license to carry a concealed handgun)

# ADDITIONAL ORDERS: CATCH-ALL

Order the Respondent to take action that the court determines is necessary or appropriate to prevent or reduce the likelihood of future harm to applicant or a member of her family or household

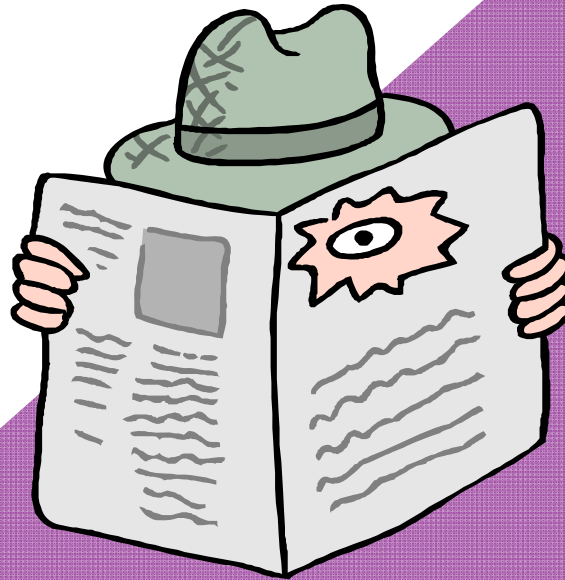
CCP 7A.05

# DURATION OF SAPO

- 2 years = default if not specified in order
- Up to the duration of the lives of the offender and victim
- Automatic 1 yr. extension if Respondent is incarcerated on date of expiration (if not a lifetime order)

CCP 7A.07

# STALKING PROTECTIVE ORDERS



# STALKING PROTECTIVE ORDERS

- CCP Article 7A allows for a victim to file a Protective Order based on stalking
- Court must find that there are *reasonable grounds* to believe that the Applicant is the victim of stalking.
- Possible lifetime duration
- Same orders as SAPO

# **ENFORCEMENT OF POS: CRIMINAL AND CIVIL**





# ENFORCEMENT OF PROTECTIVE ORDERS

## Criminally

- Up to 10 years, depending on the violation
- Fine up to \$10,000, or
- both
- federally if firearm violation

## Civilly

- contempt of court
- up to 180 days for each violation
- fine up to \$500, or
- both

# CIVIL V. CRIMINAL VIOLATIONS

## Criminal Violations

- committing family violence
- communicating with the protected party in a manner prohibited by the order
- going to or near protected locations
- behavior intended to harass, annoy, alarm, abuse, torment or embarrass
- possessing firearms or ammunition
- Harming or removing companion animals or pets

Texas Penal Code 25.07

## Civil Violations

- going to or near protected parties
- failure to complete counseling
- failure to pay child support
- failure to return children at the end of scheduled visitation
- filed by County/District, private attorney, or pro se

# VIOLATION OF PROTECTIVE ORDER

Effective September 1, 2015:

ALL Violation of Protective Order charges will fall under TPC 25.07 (VPO) and 25.072 (Continuous VPO)

This is good because now Chapter 7A POs can be enforced in the same way as FVPOs, including Respondents in Chapter 7A POs can now be charged with Continuous Violation of PO and charges can be enhanced if they have previously been convicted of violating a PO.



# BOND CONDITIONS

- Per 25.07 TPC, violations of certain bond conditions in family violence cases are criminally enforceable
- A bill passed two sessions ago that requires DPS to create an entry field for bond conditions. However, this hasn't been done.
- The bill also covered bond conditions in sexual assault and stalking cases.

**Caution:** Until an entry field is created, it is not likely that bond conditions are being enforced by immediate arrest which makes this an ineffective tool for safety

# **VIOLATION OF PROTECTIVE ORDER (VPO), TPC 25.07**

**It is a Class A Misdemeanor for Respondent to violate a PO by:**

- communicating with the Applicant in the manner prohibited by the court
- going within 200 yards of protected locations
- harming, threatening or interfering with the care, custody or control of a pet or companion animal, or
- possessing firearms or ammunition

**It is a third degree felony for Respondent to violate by committing family violence, sexual assault or stalking, or if Defendant has been convicted of two or more previous VPOs**

# REPEATED VPO, TPC 25.072

If during a 12 month period, Respondent commits two or more violations of the Protective Order

An offense under this section is a third degree felony

# USEFUL WEBSITES

[www.taasa.org](http://www.taasa.org) Texas Association Against Sexual Assault

[www.tcfv.org](http://www.tcfv.org) Texas Council on Family Violence

[www.fvpf.org](http://www.fvpf.org) Family Violence Prevention Fund

[www.ojp.usdoj.gov/vawo](http://www.ojp.usdoj.gov/vawo) Dept. of Justice VAWA

[www.usdoj.gov/ovw](http://www.usdoj.gov/ovw) same

[www.law.sc.edu/ncda](http://www.law.sc.edu/ncda) Nat'l. College of District Attorneys

[www.ndaa.org](http://www.ndaa.org) Nat'l. District Attorneys' Assoc./APRI

[www.safetynet.org](http://www.safetynet.org) Technology Assistance

[www.ncvc.org](http://www.ncvc.org) National Stalking Resource Center

[www.ncdsv.org](http://www.ncdsv.org) Center for Domestic and Sexual Violence

National Domestic Violence Hotline **1-800-799-SAFE**