

# **Pro Bono Protective Order Manual:**

**A Step by Step Guide to Providing  
Trauma-informed Representation  
to Victims of Domestic Violence,  
Sexual Assault and Stalking in  
Protective Orders**

*This manual was made possible by a grant from the City of San Antonio for the Bexar County Protective Order Project. Manual produced by Texas RioGrande Legal Aid and authored by Erin Martinson.*



Dear Volunteer,

Texas RioGrande Legal Aid would like to thank you for volunteering to help ensure victims of domestic violence, sexual assault and stalking have access to protective orders. As you know, domestic violence is an epidemic and we cannot combat the problem without the help of skilled community volunteers. We are grateful for your dedication to helping victims find safety in the aftermath of abuse. We recognize the difficulty of this work and also want you to know that, for some clients, your efforts will be life-saving.

This Protective Order Manual is the culmination of lessons learned through a 20-year career of litigating and training on protective orders. It is intended to be a step-by-step guide to understanding abuse and how trauma impacts victims and their demeanor, providing trauma-informed representation and support to victims and filing and litigating protective orders in Texas. We have provided resources and forms, pleadings and orders as tools to help you prepare for interacting with your client and representing them in court. This manual should be used in conjunction with the trainings, which are both live and recorded, to prepare you for this important pro-bono work.

It is our hope that volunteering with the Pro Bono Protective Order Project will be a rewarding experience for you and your clients. To that end, we have built in support for the project through our partnership with the San Antonio Legal Services Association and will remain a ready resource as you navigate your work with this vulnerable population and the court system.

We wish you the best of luck and encourage you to reach out at any time with questions or suggestions: [poproject@sa-lsa.org](mailto:poproject@sa-lsa.org).

Thank you,  
Texas RioGrande Legal Aid, Inc.

Erin Martinson  
Manager, Pro Bono Protective Order Project

## SECTION I

### Types of Abuse

As attorneys, it is likely you will come into contact with someone who is a victim of domestic violence at some point in your career. While we tend to think of physical abuse when we think of intimate partner violence, in reality, individuals who abuse their partners use a broad range of tactics to control and intimidate their partners. It is important to screen for all of these behaviors when interviewing clients in order to accurately assess the client's legal options and lethality.

Physical abuse is when the abuser seeks to cause physical harm to their partner using either violence or restrictive control. This can include scratching, biting, grabbing, yanking, throwing, shoving/pushing, and restraining the victim. Physical abuse can also include hitting, punching, slapping, hair-pulling, strangling, attacking with weapons, burning the victim, and/or killing the victim, or attempting to kill a victim or her family members. Physical abuse can involve throwing objects at the victim, subjecting the victim to reckless driving, and locking the victim in or out of the home. Controlling a victim by withholding food, medication, medical assistance, or causing sleep deprivation through ongoing abuse are also forms of physical abuse.

Sexual abuse involves sexual acts or manipulation to control or harm the victim. At times, abusers will be exceptionally jealous and make accusations of infidelity or sexual promiscuity against the victim. Often, abusers will use insults like, "whore" or "slut" to make this point. Other times, an abuser might withhold sex or physical affection as a means to punish or control the victim. Abusers will also use threats of violence or other means of coercing a victim into engaging in sexual acts that the victim does not want to do. Abusers may demand sex after physically assaulting the victim by directly or indirectly threatening further violence. Engaging the victim in sexual acts after consent has been denied whether through physical force or not, is also sexual abuse. Denying the victim contraception or protection against sexually transmitted infections whether directly or without the victim's knowledge is another way that sexual abuse is perpetrated. Causing injury, pain, or discomfort that is unwelcome and is sexually specific is another way victims are sexually abused.

Emotional or psychological abuse involve intimidation and manipulation tactics of control. Many times, abusers will use the history of physical and sexual violence to control the victim. In these situations, the victim's fear of further violence makes it easier for the abuser to maintain control. Other times, psychological abuse can degrade the victim's self-esteem to a level that makes the victim easy to control and less likely to leave the abusive relationship. This is done through, among other things, insults, humiliation, degradation, and criticism. Gaslighting is a term that refers to a pervasive pattern of psychological abuse where the abuser will manipulate the victim into questioning their own mental stability and sanity. This can be done through convincing the victim that the abuse is not as bad, blaming the victim for the abuse, and convincing others outside the relationship that the victim is mentally unstable. An abuser might harass or even stalk a victim with the goal of getting the victim to submit to being in or remaining in an abusive relationship. Abusers often threaten to cause legal trouble for the victim by threatening to make false reports of criminal activity or child abuse against the victim. For immigrant victims, abusers may threaten to report undocumented victims to immigration or refuse to assist in the immigration process for the victim. Other abusive tactics include systematic isolation of the victim by controlling access to family, friends, and other support and discrediting the victim's relationships with others (employers, clergy, friends, etc.) by spreading negative rumors about the victim. This makes the victim less likely to report violence or abuse and less likely to leave the relationship.

Abusers frequently use children in their abuse of the victim. An abuser might harm or threaten children to control the victim. An abuser might also force the children to watch acts of abuse or engage in violence against the victim when the children are present. On the other hand, an abuser may purposely hide the abuse from the children in an effort to manipulate the children against the victim. This is important because courts often falsely believe that abuse will end when a relationship is over, but the reality is, abusers often use the children to continue their pattern of control. It is important that we listen to victims and advocate for the safest visitation arrangement possible within the protective order.

Economic abuse is another way abusers control victims by demanding paychecks or maintaining control over bank accounts, refusing to share information about the abuser's earnings. Sometimes abusers will outright forbid the victim from earning a separate income and will thwart attempts by the victim to work. As a result, victims are often unable to escape their abusers due to a lack of resources.

Other forms of abuse can involve harming or threatening to harm pets and service animals to manipulate the victim and maintain control.

### **What does a victim look like?**

There is no victim profile. Domestic violence cuts across race, ethnicity, sexual orientation, status and socio-economic backgrounds. While the overwhelming majority of victims are female, it must be noted that males and gender nonconforming individuals are also victimized by intimate partner violence, sexual assault, and stalking.

Each person's story is unique, so will be the way that they present themselves. At times, victims might appear to have a flat affect and show little to no emotion when talking about the abuse they have suffered. Victims might also do just the opposite and be very emotional throughout the interview process. The victim might exhibit sadness, anger, disappointment, resentment, sorrow, or regret. There are victims who might even laugh or make jokes about the abuse. Victims may shift swiftly in mood and end up exhibiting all of these emotions and more in a single sitting. A lot of how a victim presents depends on the neurobiological response to trauma. For this reason, it is important that you understand the very basics of neurobiology of trauma so that you can understand, empathize with and prepare to explain victims' behaviors in court. Often a victim may seem to present in ways that are counter intuitive to how we imagine victims will act. However, with a basic understanding of neurobiology and trauma, you will learn that these "counter-intuitive" responses actually help corroborate that abuse has occurred.

While every victim is different and unique, there are definitely patterns that we see over and over again with a majority of cases involving intimate partner violence. Many experience guilt and regret. Victims will blame themselves for the abuse and often use their choice to stay in the abusive relationship as justification for self-blame. Victims might also have very diminished self-esteem and use language that is self-deprecating. Victims are often hyper-vigilant and remain in a constant state of arousal with fear of the abuser finding them and hurting or killing them or someone they care for. It is important to listen to victims. If they believe their partner will kill them or seriously harm them or a family member, we must take this as fact and do everything we can to minimize danger for that victim. Working in the field of domestic violence is homicide prevention and every action we take on behalf of the victims we represent should be treated as potentially life-saving. Simple mistakes (like leaving a confidential address on an order) or a failure to take victims seriously (minimizing their experiences) may cost them their lives. We do not say this to scare you, but rather to illustrate how important this work is.

# POWER AND CONTROL WHEEL

Physical and sexual assaults, or threats to commit them, are the most apparent forms of domestic violence and are usually the actions that allow others to become aware of the problem. However, regular use of other abusive behaviors by the batterer, when reinforced by one or more acts of physical violence, make up a larger system of abuse. Although physical assaults may occur only once or occasionally, they instill threat of future violent attacks and allow the abuser to take control of the woman's life and circumstances.

The Power & Control diagram is a particularly helpful tool in understanding the overall pattern of abusive and violent behaviors, which are used by a batterer to establish and maintain control over his partner. Very often, one or more violent incidents are accompanied by an array of these other types of abuse. They are less easily identified, yet firmly establish a pattern of intimidation and control in the relationship.



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## Trauma Informed Advocacy

The best approach when interacting with victims of abuse is one that is trauma informed. This is defined by two simple ideals. First, it is important that service providers know what effect trauma can have on victims. Second, there should be a commitment to not re-traumatizing the victim through the screening process.

Trauma affects how the brain takes in and processes memory and information. A very simplified explanation is that when a person is in danger or has been hurt, the more primitive part of the brain activates in an effort to protect the person. Hormones are released that mitigate pain and make it so the victim can have the physical resources to escape the situation. During a traumatic event, the conscious part of the brain is not in charge of the victim's responses and further, higher order function (memory storage) is restricted. This leads to memories being stored as part of a survival warning system to protect from future harm. However, we can access memories the way these warnings were always intended to be accessed: through the senses and feelings. (For more info on how trauma affects the brain see Trauma and the Brain – The Full Video from NHS Lanarkshire <https://www.youtube.com/watch?v=4-tcKYx24aA>).

The first thing to do with a victim is to “meet them where they are.” This simply means that the victim should guide the process. The Stages of Change says that people will move through various stages when considering or partaking in change and the same can be said of abuse victims. In the first stage, Pre-contemplation, the victim is not aware of, or minimizing the problem and may not have a desire to leave the abusive relationship. In the next stage, Contemplation a victim begins acknowledging the problem and considering possible changes. This leads to the next stage, Preparation. In the preparation stage, the victim begins making plans and doing things to leave. After preparation comes the Action stage where the victims follow through with their plans to leave. For victims of abuse, the preparation and action stages are the most dangerous. Many times when the abuser is made aware of the victim's intent to leave, they will escalate their abuse and sometimes the worst violence happens during this time. The final stage is Maintenance where the victim continues the practice of staying away.

Knowing the various stages of change can help service providers maintain positive working relationships with the victims we are trying to help. If the victim is not ready to leave (pre-contemplation), affirm their decision rather than trying to convince them otherwise. Express that the abuse was wrong and no one deserves that sort of treatment and encourage them to reach out in the future if they need to. This maintains rapport so the victim feels empowered and supported. It will be important to adjust personal expectations so that this exchange is genuine.

When a victim is in the contemplation stage, they may continue to minimize the violence that occurred and could even defend or protect the abuser. Again, resisting the urge to convince them they are wrong will be key. It is important to listen to what is motivating them. Is the abuser the sole financial provider? Is the abuser a good parent and the victim is concerned with taking the children from them? Is the victim afraid to ruin the abuser's life? It is important to validate these concerns so the victim feels heard. This is a good time to talk about options and help them find solutions to these concerns. A strong statement that can go a long way in with victims in this stage is, “This is not your fault.” This can help the client feel less like they are responsible for any consequences that the abuser might face.

Regardless of what stage the victim comes to you in, it is important to let them maintain self-determination throughout the process.

## Trauma Informed Screening for a Protective Order

A screening for a protective order should always begin the same. First, let the victim know what to expect during the screening so they are not caught off guard. Be sure to give them a chance to find a safe and private space to talk if they are on the phone with you. Finally, don't forget to include statements about confidentiality and mandatory reporting. A good introduction sounds like this:

“So to begin with, I just want you to know what this will be like. I'm going to ask you a series of questions about Jack and others in your household. We will talk about abuse that you have been through. I must tell you that I am legally mandated to break confidentiality to make a report should you say anything that makes me believe abuse to children, the elderly, or someone who is disabled has occurred or if I believe you are a danger to yourself or someone else. I will be asking you details about the violence including sexual violence so it is important that you have a fair amount of privacy to talk. Should we get started?”

Start with questions that they know the answers to and that matter (names, dates of birth, addresses, etc). These questions ground the victim and can help prepare them for what is to come. Doing this can also build rapport by allowing the victim to get used to the interaction so they are more comfortable when the more troubling parts of the conversation come up. From there, you move on to broad, general questions: “Do you remember the most recent time there was violence? Can you tell me about that?” At this point, it is important to listen for clues in what the victim is saying to get the most detailed account possible. The victim might minimize what happened:

<u>Question</u>	<u>Response</u>
Did he hit you?	“Not really”
Did you feel pain?	“Not much”
Do you have any injuries?	“Not hardly”
Could you breathe?	“Sort of”

Also, fragmented memory retrieval will create jumps from one moment to another. Catch these by catching changes in physical location at the scene:

### **Example:**

“He was shaking me and I banged into the refrigerator. I fell by the couch and hit my head.”

### **Follow up questions:**

“How did you feel when you went from the kitchen to the living room?”

“What were you thinking when you went from the kitchen to the living room?”

### **Gathering more information:**

“What were you thinking when you went from the kitchen to the living room?”

Response: “I know it sounds crazy but I was worried about my extensions.”

“Hmm. Tell me about that.”

Response: “Yeah he had them wrapped around his hand and was telling me that he was going to set them on fire if I didn't shut up.”

**Victims may use the passive voice or “I” to take responsibility away from the batterer:**

**Example:**

“I lost my balance and fell into the table”

Follow up question: “Do you remember what was happening when you lost your balance?”

Response: “He’d had his hand under my chin and when he let go, I had a hard time standing so I fell.”

**Victims might skip what they perceive to be the worst part of an incident and end up missing entire chunks of time.**

**Example:**

“That morning Taylor thought I’d been cheating. Taylor wouldn’t let me go to work. There was just all this yelling and yelling and name calling. I was scared. At some point, I was just begging him to let me pick up the kids from school – that’s when it finally ended.”

**Bring them back around to the lapsed time by asking them general grounding questions like:**

“Did you and Taylor stay home the whole day?”

“What was going on with Taylor while the kids were at school?”

“What about Taylor scared you that day?”

**Here are some practical examples of using better language for a trauma informed approach:**

DON'T	DO
Ask “Why...”	Ask open questions/statements: “Tell me about that.” “How did you feel then?”
Use labeling language: “Batterer” “Abuser” “Victim” “Survivor”	Use neutral language: “Jack” “Spouse” “Ex” “Son’s father”

DON'T ASK	DO ASK
“Did he strangle you?”	“Did he put his hands on your neck?” Follow this with, “Could you catch your breath?”
“Has he ever raped you?”	“Did he ever have sex with you even after you said ‘No’ or that you didn’t want to?”
“Has he ever beaten you?”	“Can you tell me about a time that he hurt you or made you feel scared?”
“Did you call the police?”	“Were the police called?”

When conducting a screening for a protective order, it will be important to assess the lethality of the situation. This simply means making a determination of how likely it is that this victim might be killed by their abuser. Using a [risk assessment](#) like the one provided can be really helpful for this. Further,



weaving the questions in a risk assessment into the [screening template](#) can accomplish the same goal. Once you know how dangerous the case is, you can prioritize how quickly it needs to move.

If the victim talks about the abuser harassing or stalking her, you should have her fill out a [stalking log](#) to determine whether there could be a case for a stalking protective order. A simple template can be used so the victim does not become overwhelmed by creating this log.

## Additional Considerations

Throughout the screening it is important to remember who is the applicant or client. In some cases, this can be difficult. In cases where an adult is applying for a protective order for a minor child, the adult is still the applicant but the primary victim is the child. Further, many victims will have very complex stories involving various people besides the primary abuser. It is important to identify who the respondent or opposing party is.

There are some situations where it practically does not make sense to file a protective order and doing so might create a more dangerous situation for the victim. An example of this would be a case in which the victim has fled and the abuser has no knowledge of the victim or has not made contact in some time. These special cases often have legal remedies (like filing the protective order in the county the abuser is living in) and should be addressed with the victim so they can make an informed decision about what to do.

Sexual abuse is often the most sensitive subject to discuss with a client so it might help to wait until later in the interview to ask about it. Give the victim space to talk about it at their own pace to make it easier for them to provide necessary details (Did the victim verbally refuse intercourse? Was there penetration?).

If possible, an advocate should be assigned to escort the victim in court. Victims are often terrified by the thought of having to see their abuser or even just going in front of a judge. It can be a scary and confusing process and the attorney will not be able to stay near the victim throughout the process. An advocate can be present to make the victim feel safer and more supported. A great place to find advocates is local domestic violence and sexual assault programs. The National Domestic Violence Hotline maintains a list of programs in the United States. (<https://www.thehotline.org/>)

Finally, beware of the abuser masking as the victim. There are times that an abuser manipulates the situation to get the victim arrested or get a protective order against her. These kinds of “upside down” cases are tricky to spot but there are some tell-tale signs of an abuser to look out for. First, abusers tend to show little or no sympathy for the other person by saying things like, “She is really violent and I am going to make sure that she goes to jail for a long time.” They might also say, “I’m going to get full custody and she will never see the kids again.” An abuser might also make a point of trying to “warn” others about this person which more serves as a form of discrediting and isolating the true victim. An abuser might list all the people they have spoken to about the perceived violence from this person to try and sound more credible. Abusers tend to present as self-confident and in control. They may make a point of stating how well they handled an incident by remaining calm throughout. For example, they might say, “She was screaming and yelling. I tried to get her to calm down but she is just crazy.” Abusers also tend to be very presumptuous. They will have expectations and requests but when met with resistance, might become hostile or aggressive. Abusers tend to try and control the conversation with service providers. They may use your first name a lot throughout the conversation and will often want a direct phone or email address.

# RISK ASSESSMENT & STALKING LOG

[Click here for a printable risk assessment template.](#)

[Click here for a printable Stalking log.](#)

**Please refer to the Resources Section for more helpful resources.**

## Statistics

Texas DPS Uniform Crime Reporting Program for 2016  
(<http://www.dps.texas.gov/crimereports/16/citCh5.pdf>)

Total number of reported family violence incidents in Texas in 2016 was 196,564. These incidents involved 214,815 victims and 208,764 offenders. Of those cases where the sex of the offender was known, 73.7% were male and 26.3% were female. (it is important to note that these numbers only represent cases where there was an arrest for family violence. The vast majority of victims do not report their abuse and so the occurrence of intimate partner violence is actually much higher than these numbers.)

Texas Health and Human Services Commission Family Violence Program Statewide Report for 2016  
(<https://hhs.texas.gov/reports/2016/10/texas-family-violence-program-statewide-report-2016>)

In 2016, 146 women were killed by their intimate partners. This is a 7.6% decrease from the 2015 number of 158. In 2016, a male killed his current or former female intimate partner every 2.5 days in Texas.

TAASA Statistics Page (<http://taasa.org/resources/understanding-sexual-assault/>)

6.3 million Texans have experienced some form of sexual assault in their lifetime. 2 out of every 5 women and 1 in 5 men in Texas have been sexually assaulted. 91% of sexual assault victims did not report to law enforcement. Only 3% of sexual assault offenders spent time in jail for the assault(s) they committed.

Texas DPS Uniform Crime Reporting Program for 2016  
(<http://www.dps.texas.gov/crimereports/16/citCh7.pdf>)

18,349 sexual assault incidents were reported in Texas. Of the victims whose sex was known, 87.1% were female and 12.9% were male. The age group that had the highest number of victims was the 15-19 year-old group. There were 19,245 offenders involved in sexual assault incidents in 2016. Of those offenders whose sex was known, 95.6% were male and 4.4% were female.

Stalking Resource Center (<http://victimsofcrime.org/our-programs/stalking-resource-center/stalking-information#what>)

A 2014 CDC Study found that 7.5 million people are stalked in one year in the United States.

Of those, over 85% of stalking victims are stalked by someone they know. 61% of female victims and 44% of male victims of stalking are stalked by a current or former intimate partner. 25% of female victims and 32% of male victims of stalking are stalked by an acquaintance. About 1 in 5 of stalking victims are stalked by a stranger. Persons aged 18-24 experience the highest rate of stalking. 11% of

stalking victims have been stalked for 5 years or more. 46% of stalking victims experience at least one unwanted contact per week.

## **SECTION II**

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

#### **OVERVIEW**

As mentioned in previous chapters, victims of domestic violence, sexual assault and stalking often suffer a continuum of abusive behaviors, not just physical violence. It is important when evaluating whether to seek a protective order, that you conduct a thorough interview with your client. Your client is the best judge of her own safety and can tell you what she needs in order to be safe. It is also important to discuss pros and cons of going forward with a protective order as a loss in court could result in empowering the abuser and place the client victim in further danger. Finally, there are myriad reasons victims of intimate partner violence do not leave their abuser, or if they do leave, why they return to their abusers. Most victims of intimate partner violence who are killed by their partners are killed when attempting to leave their abuser. We mention this only because it is not our job to judge the client victim for her failure to leave her abuser, or for staying with her abuser, as that may have been the safest option for her.

#### **Different Types of Protective Orders**

In Texas, there are three different types of protective orders: Magistrate's Order of Emergency Protection, Temporary Ex Parte Protective Orders and Final Protective Orders. For purposes of this manual, we will focus on the Temporary Ex Parte and Final Protective Orders.

#### **Temporary Ex Parte (TXPO)**

When filing an Application for Protective Order, the applicant can request a Temporary Ex Parte Protective Order. It is important that you discuss this thoroughly with your client as filing a protective order can significantly increase your client's danger.

In order to qualify for a Temporary Ex Parte Protective Order you must be able to show the court that there is a clear and present danger that violence, sexual assault or stalking will occur without the TXPO in place. <https://statutes.capitol.texas.gov/Docs/FA/htm/FA.83.htm>.

Your application for Protective Order will also need to contain an affidavit or declaration detailing the incidents of violence and any other behavior that causes your client concern for her safety. See sample declaration. Your client's statement should be guided by you, as the granting of a TXPO hinges on the client's statement and must convince the court that there is a clear and present danger that violence will occur. Often, clients may include unnecessary details in their statement that could dilute the overall picture of the violence that has occurred. In general, you will include incidents or threats of physical or sexual violence and/or stalking behavior and include a summary of other behaviors that corroborate the dynamics of intimate partner violence (emotional, verbal and economic abuse, for example). In addition, be mindful of using your client's words so that the client can attest to the accuracy of the statement. We would encourage you not to consider whether there has been violence in the past 30 days or so, but to look at the totality of the circumstances and decide whether you can make a convincing argument that the client continues to be in danger.

You can also request a TXPO that directs law enforcement to remove the Respondent from the residence, or a Kickout TXPO. To qualify for a Kickout, the client must have lived with the Respondent in the past 30 days and there must have been violence, or a threat of violence, within the past 30 days. See TFC 83.006. **NOTE:** This is the only place in the Family Code that contains a requirement that violence occurred within a 30-day period before filing.

## **FAMILY VIOLENCE PROTECTIVE ORDERS (FVPO)**

### **WHAT IS FAMILY VIOLENCE?**

Violence against family: Violence against someone related by blood or marriage, or parents of a child, formerly married individuals, and foster child and foster parent.

Violence against current or former household members: Includes roommates and former roommates.

Dating violence: Violence committed by one member of a dating relationship against the other.

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

Third Parties: Abuse committed by the Applicant's current or former partner's current or former partner

<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.71.htm#71.0021>

### **Who Can File?**

An adult member of the family or household may apply on their own behalf or on behalf of an adult member of their 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

The Department of Family and Protective Services

<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.82.htm#82.002>

### **Confidentiality of Certain Information**

It is very important to find out from your Applicant whether any addresses they are requesting be protected are confidential. Including an address on an order that the abuser has no knowledge of could be a life or death situation. It could also be burdensome for an Applicant who has already received Crime Victims Compensation to relocate to her current address. Another move would be an out of pocket expense for your client. Finally, victims who have enrolled in the address confidentiality program are permitted to use their P.O. Box for any court documentation and do not have to provide a physical address. <https://texasattorneygeneral.gov/cvs/the-address-confidentiality-program-acp>

On request of 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, to designate a person to receive on behalf of the applicant (an attorney) any notice or documents filed with the court related to the application, and disclosure of the designated person's mailing address to the court. The statute also requires the clerk to: strike the applicant's mailing address from the public records of the court, maintain a

confidential record of the applicant's mailing address for use only by the court, and prohibit the release of information to the respondent.

<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.82.htm> (TFC 82.011, see also TFC 82.041)

## **Venue**

An application for protective order may be filed in:

The county in which the Applicant resides

The county in which the Respondent resides, or

Any county in which an incident of violence occurred

<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.82.htm#82.003>

## **Filing Fees**

No court costs related to filing of protective order can be assessed to applicant, including, but not limited to:

- fees to dismiss, modify, or withdraw a protective order

- fees for certifying copies

- fees for comparing copies to originals

- court reporter fees

- judicial fund fees

- fees for any other service related to a protective order

- fees to transfer a protective order

Fees may be assessed to the Respondent in the final PO.

<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.81.htm#00>

## **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.

<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.84.htm#84.001>

## **PO Hearing**

At the close of a hearing, the Court must enter a protective order if the Court finds:

- Family violence has occurred,

- Family violence is likely to occur in the future, or if the court finds that the respondent violated a previous PO while it was in effect

In the final protective order, the Court may order the Respondent to do or refrain from doing certain things such as order a stay away from specified locations, set visitation schedule, set child and/or spousal

support, and attend counseling. The Court can also order respondent to perform acts specified by the court to be necessary or appropriate to prevent or reduce the likelihood of family violence such as stay away from the protected party, return children's passports, submit to a psychological examination, or any other orders the Court believes are necessary.

The court can also include pets and other companion animals to be included in the PO by ordering Respondent not to harm or remove pets or companion animals.

<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.85.htm#85.021>

The parties may also agree to the terms of a PO, subject to the approval of the Court. However, the Court cannot approve an agreement that requires the Applicant to do or refrain from certain acts. While the statute is silent as to whether findings are required in agreed POs, it is advisable to always include findings. To facilitate an agreement, you may include a statement that the respondent agrees to the PO but makes no admissions as to any of the allegations or findings without impacting the enforceability of the order.

<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.85.htm#85.005>

The Court may grant a protective order for any amount of time. In general, FVPOs were limited to 2-year orders, however, several recent legislative changes have expanded protective orders to longer orders under certain circumstances. Applicants can request an order exceeding two years (and up to a lifetime) if:

the Respondent committed serious bodily injury against the Applicant or any member of her family or household,

the Applicant has had two or more previous POs against the Respondent, or

the Respondent committed a felony offense involving FV against the Applicant.

So, in most cases of FV, the Applicant will be eligible for a lifetime protective order. Some examples of felony crimes involving FV are: continuous FV (2 or more incidents in the preceding 12 months), Aggravated Assault, Strangulation, Stalking, Burglary of a Habitation, Continuous Violation of Protective Order (two or more violations in the preceding 12 month period), etc. The bottom line is that the title of the offense does not need to include the words "family violence" and the offense does not have to have been reported or charged to qualify. It is important to meet with your client and thoroughly discuss what kind of orders they need. If they want a lifetime protective order, it is a good idea to have the client articulate why an order for that long is necessary and be prepared to testify. It is also a good idea to have your client come up with a good amount of time that is less than a lifetime in case the court is not inclined to grant a lifetime PO. Finally, 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. It is important to get an order extending the protective order signed if your client notifies you that the Respondent was incarcerated on the date of expiration so that law enforcement will be aware that the order is still in place and will enforce. Getting an extension signed is an easy, uncontested process, since the statute does not give the court any discretion or contain any notice requirements for the Respondent.

<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.85.htm#85.025>

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

## **WHAT IS A SEXUAL ASSAULT OR STALKING PROTECTIVE ORDER?**

Sexual Assault POs are almost identical to FVPOs. They are civil orders with civil and criminal consequences. The SAPO statute, housed in Chapter 7A of the Code of Criminal Procedure is very broad and there is no requirement that the victim has reported the sexual assault or stalking to police.

### **WHO MAY SEEK A SEXUAL ASSAULT OR STALKING PO?**

Victims of the following offenses qualify for SAPOs:

Continuous SA of Child

Indecency with a Child

Sexual Assault

Aggravated Sexual Assault

Indecent Assault

Human Trafficking

Continuous Trafficking,

Compelling Prostitution, and

Stalking

Also, the parent or guardian of minor victims and prosecutors may apply on behalf of a victim of one of the above crimes. While the statute refers to the above penal code violations to define who qualifies, there is no requirement that criminal charges have been reported to police or prosecution.

<https://statutes.capitol.texas.gov/Docs/CR/htm/CR.7A.htm#7A.01>

### **FINDINGS FOR SEXUAL ASSAULT AND STALKING PROTECTIVE ORDERS**

The Court must only find reasonable grounds exist to believe the applicant has been a victim of a sexual assault (or one of the other eligible offenses) or stalking. Unlike FVPOs, there is no requirement that the court find there is likelihood of future dangerousness to grant a sexual assault or stalking PO.

<https://statutes.capitol.texas.gov/Docs/CR/htm/CR.7A.htm#7A.03>

### **WHAT KIND OF ORDERS CAN THE COURT INCLUDE IN THE SEXUAL ASSAULT OR STALKING PO?**

Under the Texas Code of Criminal Procedure 7A, a court may make all the same orders as in FVPOs. The Court may also make other orders that require 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.

<https://statutes.capitol.texas.gov/Docs/CR/htm/CR.7A.htm#7A.05>

The statute specifies that Chapter 7A POs can be granted for up to a lifetime.

## **CLIENT CONSULTATION**

The first thing to do in your consultation with the client is to verify what type of Protective Order the client wants by explaining each type to the client and examining the facts given by the client during intake:

- a. Family Violence Protective Order (FV PO)
- b. Sexual Assault Protective Order (SA PO)
- c. Stalking Protective Order
- d. FV & SA/Stalking PO
- e. FV & SA & Stalking PO

In general, it is a best practice to plead for all the grounds for which the Applicant qualifies. Because many victims experience intimate partner violence in conjunction with sexual assault and stalking, it is entirely possible that you can plead all three grounds. Pleading as many grounds as possible increases the likelihood that the Applicant will walk away with protection, and hopefully, protection longer than two years.

Ensure that the client knows that a protective order is a civil lawsuit and that the information is typically available to the public upon a court records search or inquiry. This may help a client decide what information they would like to include in their declaration/affidavit or testify to in court. Explain the Protective Order process to the client:

- f. Filing
- g. TXPOs
- h. Service on OP
- i. Hearing
  - i. Default
  - ii. Agreement
- j. Contested

Ensure that the client knows that they must show up in court for the final order hearing and in some cases may have to appear with the attorney and in the event that the client qualifies for and wants a Kickout TXPO, client will need to accompany you to the uncontested docket. COVID NOTE: Have client available by zoom or facetime in case the Court has questions related to the Kickout.

Ensure that the client knows that OP is also ordered to show up in court. However, the hearing can proceed without OP if he/she is properly served with notice of the hearing (Default).

Once the client has decided on the type of Protective Order they would like, verify that the information gathered in the declaration is true and correct.

Explain to the client that the declaration is the client's statement of the incidents that occurred and a necessary part of the Protective Order application.

Go through each incident with the client and ensure that you have the right incident matched with the right estimated dates of occurrence and locations.

Ensure that the language used in the declaration is very descriptive and that it is as close to the client's own words as possible.

Ask about possible evidence like photos, medical records, text or voice messages, etc.

Ask about possible witnesses to the incidents and the likelihood of such witnesses showing up to testify on behalf of the client.

Ask the client if the witness would be willing to talk to the attorney before the hearing to verify the witness' testimony, to verify that the witness will show up for the hearing, and to verify the witness' credibility. Be sure and get the witness' contact information.

Ask the client about parties they want to be protected. Per the statute, client is entitled to ask that an family or household members be protected. However, explain that it is within the Judge's discretion to approve extra parties to be protected.

If the client wants children protected, be sure and ask about any threats or incidents of violence against children or in front of the children, if such incidents were not spelled out in the declaration.

**If protected parties are minor children of the client and the offender, discuss the following with the client:**

Visitation

Child support (see the child support guidelines in the family code)

Spousal support

Whether there is a SAPCR. Ask the client if they have plans to follow up with a SAPCR for situations where the Judge may refuse to decide or approve visitation and support.

Re-visit lethality assessment and safety plan with client to prepare client for OP's behavior after OP is served.

Discuss court preparations with client and decide whether a phone prep would be sufficient or whether it is important to meet in person with client to prepare client for hearing.

## **SECTION III**

### **CLIENT CONSULTATION**

1. The first thing to do in your consultation with the client is to verify what type of Protective Order the client wants by explaining each type to the client and examining the facts given by the client during intake:
  - a. Family Violence Protective Order (FV PO)
  - b. Sexual Assault Protective Order (SA PO)
  - c. Stalking Protective Order
  - d. FV & SA PO
  - e. FV & SA & Stalking PO
2. Ensure that the client knows that a protective order is a civil lawsuit and that the information is typically available to the public upon a court records search or inquiry.
  - a. This may help a client decide what information they would like to include in their declaration/affidavit or testify to in court.
3. Explain the Protective Order process to the client:
  - a. Filing
  - b. TXPOs
  - c. Service on OP
  - d. Hearing
    - i. Default
    - ii. Agreement
  - e. Contested
4. Ensure that the client knows that he/she must show up in court for the final order hearing and in some cases to walk the TXPO where it cannot be signed by submission (contact the court for their specific filing rules).
5. Ensure that the client knows that OP is also required to show up in court so that the client can be mentally prepared to see OP in the courtroom. However, the hearing can proceed without OP if he/she is properly served with notice of the hearing (Default).
6. Once the client has decided on the type of Protective Order he/she would like, verify that the information gathered in the declaration is true and correct.
  - a. Explain to the client that the declaration is the client's statement of the incidents that occurred and a necessary part of the Protective Order application.
  - b. Go through each incident with the client and ensure that you have the right incident matched with the right estimated dates of occurrence and locations.
  - c. Ensure that the language used in the declaration is very descriptive and that the client is comfortable using those words.
  - d. Ask about possible witnesses to the incidents and the likelihood of such witnesses showing up to testify on behalf of the client.
  - e. Ask the client if the witness would be willing to talk to the attorney before the hearing
    - iii. To verify the witness' testimony
    - iv. To verify that the witness will show up for the hearing
    - v. vi. To verify the witness' credibility
  - f. Get the witness' contact information
7. Ask the client about parties they want to be protected.

- a. Explain that it is within the Judge's discretion to approve extra parties to be protected.
  - b. If the client wants children protected, ensure to ask about any incidents of violence against children if such incidents were not spelled out in the declaration. Note: Client is entitled to ask that family and household members (including children) be protected but should be prepared to articulate to the Court why each person should be protected.
8. If protected parties are minor children of the client and the offender, discuss the following with the client:
- a. Whether there is a SAPCR
  - b. Visitation
  - c. Child support
  - d. Spousal support

## **What to File, Pleadings, & Grounds**

Grounds for applying for a Protective order include:

- Family Violence

<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.71.htm#71.004>

- Sexual Assault or Abuse
- Stalking
- Trafficking

<https://statutes.capitol.texas.gov/Docs/CR/htm/CR.7A.htm>

## **Pleading Alternatives**

### *Grounds*

Some clients will be eligible for a protective order under more than one ground. It is often the best practice to plead all the viable grounds for a protective order. Of course, you should always consult with your client as to whether she wants to file on any particular ground. For example, a client might be okay with applying for a family violence protective order, but not want to apply for a sexual assault protective order.

### *Length of Protective Order Requested*

Section 85.025 of the Family Code provides for *up to a lifetime* protective order to be issued if the court finds that the respondent:

- committed an act constituting a felony offense involving family violence against the applicant or member of the applicant's family, regardless of whether the respondent has been charged with or convicted of the offense.
- caused serious bodily injury to the applicant or a member of the applicant's family  
<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.85.htm#85.025>
- any protective order issued under Article 7A.03 may be for the duration of the lives of the offender and victim, or for any shorter period stated in the order.  
<https://statutes.capitol.texas.gov/Docs/CR/htm/CR.7A.htm#7A.07>

Therefore, it is recommended that you request a lifetime protective order in the application and make sure

you are pleading any grounds that would qualify your client for a lifetime order. In the end, your client can always agree to a lesser length of protection, or a judge may order a lesser length.

### **Conditions/Requirements**

Sec. 85.021 of the family code allows the court to set the following requirements on Respondent. In a protective order, the court *may*:

- Prohibit a party from:
  - Removing a child who is a member of the family or household from:
    - the possession of a person named in the order; or
    - the jurisdiction of the court;
  - Removing a pet, companion animal, or assistance animal, as defined by Section 121.002, Human Resources Code, from the possession or actual or constructive care of a person named in the order;
- Provide for the possession of and access to a child of a party if the person receiving possession of or access to the child is a parent of the child;
- Require the payment of support for a party or for a child of a party if the person required to make the payment has an obligation to support the other party or the child.

Therefore, it is important to consider your client's needs and goals in deciding what to plead for in your application. While there is no guarantee that a judge will grant what you request, if you do not ask for it in your pleadings, you will not get it.

**For a complete list of possible requirements that may be placed on a Respondent, see:**

<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.85.htm#85.021>

Also see Articles 7A.04 and 7A.05, CCP:

<https://statutes.capitol.texas.gov/Docs/CR/htm/CR.7A.htm#7A.04>

<https://statutes.capitol.texas.gov/Docs/CR/htm/CR.7A.htm#7A.05>

**See Resources section of the handbook for sample application pleadings.**

### **Temporary Ex Parte Protective Order (TXPO) walk through to uncontested docket**

Prepare the Application and proposed TXPO. If Client has requested her address be confidential confirm that the order does not include the addresses. Leave the hearing date on the Temporary Ex Parte Protective Order blank so the court can fill it in. Include this language: "This order expires at 11:59 pm on the date of the hearing."

E-file the Application. Make sure you write Urgent Protective Order in the comments section in order to flag the case for the clerk's office. If the case has not been accepted within 24 hours, call the District Clerk's office and ask them to review the filing. Once the case has been accepted by the District Clerk, take a printed copy of the file-marked Application (with the Applicant's statement attached) and the TXPO with you to the Presiding Judge (Room 1.09 of the Courthouse). You can take uncontested items to the Presiding Judge after 8:30 a.m., or after 1:30. Tip: the best time to appear is at 1:30 as you will likely not be competing with large dockets. However, do not take a TXPO to be signed after 4:00 p.m., because there is a process that takes time after the Judge signs your order. COVID NOTE: The bailiff may try and

keep you from entering the courtroom. Be sure you inform the bailiff that you are there on an essential matter and you should be able to enter.

If you are asking for a Kickout TXPO, take your Applicant to court with you, in case the Judge has questions. COVID NOTE: have client on standby so they can answer questions via telephone or zoom, if the Judge wants to speak to them.

Once the Court has signed your TXPO, set the case with the presiding clerk. Make sure the court date is entered on the TXPO. Let the court know you will set the case and walk it to Records.

Once you have set the case, you will walk the TXPO to Records. Do not give anyone but Records the Confidential TCIC Form. NOTE: The TCIC is a form used by law enforcement to tag addresses and persons as protected by a PO and so that they can enter those addresses into the law enforcement database. It also provides law enforcement with information about how to identify the Respondent and anticipate interactions with Respondent. This document will contain confidential addresses and should NEVER be shared with the Respondent or entered into a public record.

Be sure and get a couple copies of the file-marked TXPO from Records. Send one copy to your client and keep one for your file. They should be able to give you as many copies of the order as you need and cannot charge you for the copies. The clerk should mail copies to the schools and the client, but you can still ask for copies and it's probably a good idea for client to provide copies to employer and/or school or daycare providers right away rather than waiting for the clerk to mail copies.

<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.81.htm#81.002>

Once you have walked the TXPO through, you can e-file a request for service and precept with hearing or show cause. (Do not e-file before you go to uncontested). The clerk's office will route the paperwork to the Sheriff's Office for service on the Respondent so be sure and follow up with the Bexar County Sheriff's Office after a couple of days to ensure they have received the paperwork. If they have not, call the District Clerk's office to follow up and make sure they get the paperwork to the Sheriff's office. Tip: It is a good idea to check on service about a week before court. If no service, check again three days before the court date. If the Sheriff has not served the Respondent within 3 days of court, ask them to return the paperwork unserved so that you can ask for an extension of the TXPO and reset on the day of court. Follow the above procedures for processing an extension of the TXPO. If you are using a private process server, you will need to pick up the packet when it is ready and send to the process server. **COVID NOTE:** ask the clerk to send you the packet via email so you don't have to go into the office to pick the packet up.

**Pro Tips on Service:** If you believe the Respondent is evading service, you may want to use a private process server. In order to get alternative service (usually, posting on Respondent's door), you will need a Rule 106 affidavit detailing service attempts to attach to your Motion for Substituted Service and the Sheriff will not be persistent enough to prepare that affidavit.

## **SECTION IV**

### **CLIENT HEARING PREP**

1. Schedule a time to prepare the client for hearing. When possible, this meeting should be in person and you should set aside two hours to ensure client is not rushed and can ask all the questions they have.
2. Look up specific court rules before you prep the client
  - a. Check whether electronic devices are allowed in court for clients and attorneys
  - b. Check dress code
  - c. Check for conference room or waiting rooms for clients to wait before hearing
  - d. If OP is incarcerated, check with court to see if they will be teleconferenced or transported for the hearing and find out if you need to notify someone ahead of time.
3. Confirm that client has a means of getting to court.
4. Ask client to show up at least 30 minutes before docket call and prepare to be in court all day, although the hearing may be shorter.
5. Confirm that witness(es) are still willing to testify. Find out if witnesses want subpoenas and/or if they will come to court for docket call and wait all day or if they want to be placed on call and how much notice they need to be able to get down to court.
6. Use appropriate hearing scripts to do a mock examination of client.
7. Prepare client for possible cross examination by OP or OP's attorney.
8. Discuss duration of the Protective Order with client and confirm the lowest possible duration that client would be comfortable with.
  - a. In cases with minor child victims, consider a duration that expires after the child becomes an adult.
9. Ask client if they have had any contact with respondent since s/he was served.
  - b. This helps you document any violations of the TXPO.
10. Ask client to bring any other evidence they may have that has not been sent to the attorney.
11. Ask client to bring any SAPCR document they may have relating to minor children.

### **BEFORE COURT**

Check with TRLA to see if someone is available to accompany client to court. If not, check with Family Violence Prevention Services to see if they have an advocate available to attend to provide support and safety plan with client during court.

Check with clerk of court to see if there is a safe waiting room where client can wait to avoid interactions between client and respondent on the day of court.

### **AFTER HEARING**

1. You will get certified copies of the Protective Order at the clerk's office (see section IV **Post Signed Order**) for the client. Ask client how many copies they would like. Be sure and encourage the client to provide copies of the order for work, schools, client's vehicle and home, etc.. The court will mail certified copies to the client and kids' schools but it is a good idea to have client give copies right away and there will be a delay in the clerk mailing copies.

2. Tell the client to ensure that they report and document any violations of the final order (using the **stalking log** in the **resources section**).
3. Tell client to call attorney if they are ever unclear what constitutes a violation and/or if they call police for a violation.
4. Ensure that the bailiff and Judge hold the Respondent in Court for a certain period of time so Applicant can get to their car and leave safely, or in the alternative escorts the client out to their vehicle.
5. If a final order was not obtained for any reason immediately after the hearing, tell the client that you will email or mail a copy of the order to the client once signed and certified by the court.

## **File Preparation for Final PO**

Prepare the proposed final order. The goal is to have the final protective order signed by the judge and handed to the respondent in court so the order becomes immediately enforceable. This differs from other civil/family cases where judges frequently assign an attorney for one of the parties to prepare an order based on statements the judge makes on the record in court that is later approved by parties and submitted for a judge's signature. Preparing a proposed final order helps attorneys focus on what will provide the best path to safety for the client and meet their needs going forward. Many parts of the proposed order require additional indications to be made in court at the time the judge renders judgment. Here we track the Final Protective Order that is included as a form.

### **Proposed Final Order**

**Statutory authority** which authority used by court should connect with the findings the court will make. If there is a finding of sexual assault, stalking or trafficking, then check "Chapter 7A." If there is a finding of family violence, felony family violence, or child abuse, then check Chapter 85. If the court makes findings of family violence and sexual assault/stalking/trafficking, check both Chapter 7A and Chapter 85.

**Appearance** corresponds to how respondent appeared in court. If a default, be sure to offer the proof of service which must be 48 hours before the hearing and must be filed with court before the hearing.

**Findings** Which findings are available depend on the grounds asserted as the basis for the protective order in the Application. Be sure to request as many findings as applicable. Remember that the findings directly affect the duration that is available for the client.

**Communication** What modes of communication will work best for the client and provide the best path to safety? An order for no communication may be appropriate when client and respondent do not share children but would be unworkable if they do. Some variations of communication provisions may be: 1. communication only through family apps about the care and well-being of children; 2. Communication through email, text, social media, or telephone only; 3. Communication only during certain time frames like 8:00 a.m. – 5:00 pm; or 4. Only through third parties or attorneys. A protective order should always prohibit harassing or threatening communication.

**Visitation and Support** See "What to File?" in Section III. Be prepared to provide the current SAPCR order if it exists. Otherwise, make sure the order is clear and includes specific days/times for exchange of children and visitation. All child support payments should go through the State Disbursement Unit. See sample Protective Order for suggested language.

**Protected Persons** Prepare order with all of the people client wants to be protected. This must include the applicant and usually includes the minor children of the client and any family or household members of the client. While the family code specifically authorizes Applicants to request protection for any family or



household members, many judges will want some justification for including these other people. Be sure to prepare client ahead of time that the Court may not protect everyone they want protected and have client ready to articulate why they want others protected. The purpose of the inclusivity is to prevent the Respondent from using these other peripheral people to access the Applicant. Important: if their addresses are confidential then identify these as confidential. Note: prepare the TCIC form with all of these persons and their addresses. If the addresses are confidential in the order then identify the addresses as “confidential” in the TCIC form. In most jurisdictions, these forms are not made a part of the court’s file and so, are indeed, confidential. But it is important to ask ahead of time how the clerk handles these forms. If the county makes these a part of the clerk’s file, do not include confidential addresses on the form, but rather follow up with law enforcement afterwards to ensure they have the protected locations to enter into their system.

**Court Costs** Only the court can waive payment of court costs by the Respondent. Also, check with clerk for the amount before case is called so you can provide that information to the Court.

**Batterer Intervention Program (BIPP) and Drug and Alcohol Programs** See Resources section for how to locate the BIPP and Drug and Alcohol programs in your county. Note that if the Respondent is charged with this conduct as a crime and on bond, community supervision, or parole then they may already be required to use these services so best to align the orders. Also, for Respondents who are incarcerated, make sure the enroll by date is within a certain time frame or by a certain date after release from incarceration (example, within 30 days of Respondent’s release from incarceration).

**Firearms** Be sure your order is clear and specific so it can be enforced in the case that Respondent does not turn over his firearms.

**Flexibility** Keep the blank lines for flexibility in court. When negotiating an agreed order, many Respondents request that there be extra provisions.

**Respondent Served with final order?** Be sure that this section is filled out for the final order. If Respondent is in court, even represented by counsel, the Respondent should sign the order, especially if the order is agreed. This enhances the likelihood of criminal enforcement.

**Duration** The potential duration of the order relates directly to the basis for the order from the application and the findings made by the court. Remember to request the longest possible duration that client wants. If a lifetime order is granted, the language should state, “for the lifetime of the applicant and respondent.”

## **Prepare File for Hearing on Final Protective Order**

1. Bring three copies of the proposed final order.
2. Bring two copies of the file-stamped Application for PO with the declaration.
3. Bring two copies of file-stamped proof of service of the Application and TXPO.
4. Bring copy of current SAPCR order if applicable.
5. Prepare a citation request. If Respondent does not appear for final hearing be prepared to request service of the final order. Hand service of the final order is preferred to enhance enforceability of the order. For hand service use the “General Civil Process Request” form. Request issuance of a “Precept without hearing” for the type of citation. For “Service by” mark the following: if the Respondent resides in same county as application then mark “sheriff”, or if the Respondent resides out of county then mark “civil process server.”
6. TCIC – This is a form used by law enforcement to tag addresses and persons as protected by a PO. It also provides law enforcement with identification information for the respondent and potential for dangerous interactions with respondent. This document will contain confidential

addresses and should never be shared with the respondent or entered into a public record. Make sure the clerk's office does not make this form part of the public file.

After the Final Order is signed by judge:

1. If Respondent is present in court, request the court to order Respondent to remain in courtroom until released. This is important to allow client to exit the courthouse safely.
2. Speak with Client to explain the order and how to enforce it. If possible, provide a copy of the order to client. If not possible, send copies to client after court so that client may leave courthouse quickly.
3. Signed order to clerk. Remember that applicants for protective orders may not be charged fees for copies, filing or service. (See "free copies and the law")
4. Request at least two file-stamped copies of the Final, but you can ask for more if the client needs copies to provide to employers and/or schools.
5. If Respondent was not served with order in court, then request citation and process to be issued. You will provide a file-stamped copy of the Final Protective Order with a request for process of a precept without hearing.
6. After citation for process issued
  - a. Respondent resides in same county. The clerk will forward the order to the Sheriff's office to enter into the database. It is a good idea to follow up on this after a few days, so the order does not fall through the cracks. While orders are enforceable even if not entered into law enforcement database, patrol officers often won't enforce the order if they don't see it in their system.
  - b. Respondent resides out of county:
    - i. Provide a pre-paid envelope for clerk to send the issued process citations to your office or request that they email you a copy of the packet. Then, forward to the out of county process server. For Respondents incarcerated in TDCJ, see "Filing section." You want to receive a copy of the packet for your records.
    - ii. Pickup packet when ready unless you've made arrangements for the packet to be emailed. This form should only be provided to Records. It is imperative that the TCIC form is not included in packet that will be delivered to the Respondent and not made part of the public clerk's file.
7. Provide a copy of the signed Final Protective Order to client. Inform client of the limits on enforceability (while order may prohibit the Respondent from going within a certain distance of the Applicant at all times, only stay away orders for locations are criminally enforceable). The first six to eight weeks after a protective order is entered have the highest potential for physical violence. Be sure client is aware and has a safety plan in place. Client and all protected persons should always keep a copy of the order with them. A copy of the order should be provided to the protected locations like work and school. The clerk's office will send certified copies to the Applicant and protected schools but it is a good idea to give uncertified copies to schools ahead of time so they are immediately aware Respondent has been ordered to stay away.

## **Safety for Client in Court**

During preparation of client for the final protective order hearing, do not forget to discuss where to meet on the morning of court. Many clients are familiar with the courthouse and can choose where they want to meet. Some clients are very apprehensive about seeing or interacting with respondents in court. Clients may pause before entering elevators until they can confirm respondent is not inside. Clients may also have a preference about taking the stairs vs. the elevator. Advocates from the local victim service agency are tremendous resources for court accompaniment. The final protective order hearing is a terrifying

experience for most clients and fraught with anxiety. An advocate can provide comfort and information for client while the attorney answers docket call and negotiates with Respondent or their attorney. A family member or friend may also be helpful. Be sure to reassure client throughout this process. They are doing a very brave thing for their own protection. They deserve support.

When possible arrive before the client to check for the presence of the respondent. You can also use this time to check location of courtroom and whether there is an available waiting room for your client. When client arrives take them to this waiting room if available. Also, alert the bailiff to the safety concerns of client. Be alert for additional supporters of Respondent who may appear at court.

Try to minimize the amount of time client and Respondent are in the same room together. When client is in the presence of the Respondent, remain in the line of sight between them (stand between them at the bench or sit between them during a hearing). If you've gotten to court early, try to pay attention to which counsel table is directly across from the witness stand, and when possible, choose this table so that Client is looking at you while testifying, not the Respondent. Be sure and tell Client that she does not have to look at Respondent or their counsel during cross examination. If Client brought friends or family members for support, make sure they sit in line of sight of the witness stand so Client sees them and can feel their support while testifying. Have client sit with you during the hearing at counsel table. Be sure to object to inappropriate or badgering questions by Respondent during cross-examination. An objection can be useful when the Respondent is behaving in a manner consistent with the behavior that is the basis of the application. Reassure client after the hearing, default, or agreement that they have done well. This is not the time to be overly critical of client's demeanor (unless you notice the Judge reacting).

After the Judge rules, the safety of client should be of paramount concern. Specifically, make sure you have a plan for how the client will exit the courthouse. This is more important than responding to client's questions and providing a copy of the order. You can talk on the phone and email a copy of the order after they leave the courthouse. When possible, request that the court require Respondent to remain in the courtroom until released to afford client time to exit the building. When Respondents are able to exit first, they may lay in wait for client or circle the courthouse to follow client to their confidential address.

After client has been able to safely exit the courthouse, finish the process of acquiring file-stamped copies and issuing the final order.

## **PROTECTIVE ORDER SCRIPTS**

[PO SCRIPT CONTESTED](#)

[PO SCRIPT KICKOUT](#)

[PO DEFAULT](#)

## **RESOURCES**

[Third Party Firearms](#)

[Risk Assessment](#)

[Screening Form Template](#)

[Safety Plan](#)

[Stalking Log Instructions](#)

### **FILE SAMPLES**

[Application for Protection Order – Stalking](#)

[Protective Order Declaration](#)

[Final Protection Order](#)

[Temporary Ex Party Protective Order and Show Cause Order](#)

[Sample Case Story](#)