

Family Violence Protective Orders in Texas

How do I apply for a protective order?



WHO: Prosecutors may file protective orders for family violence victims. You also have the option of hiring a private attorney, applying for legal aid, or applying pro se (on your own). Some family violence programs have attorneys on staff. You can find many free legal resources as well as tips, support, and the Texas Supreme Court Pro Se Protective Order Tool Kit at [TexasLawHelp.org](https://www.texaslawhelp.org).



WHAT: You will file several documents, including a sworn affidavit explaining the details of the abuse. You can choose to keep your address confidential. The law does not require photos, witnesses, medical records, police reports, or criminal prosecution, although these may help.



WHERE: You can choose to file for a protective order in the county where you are currently residing, where your abuser is residing, or where any of the violence occurred.



PROCESS: The judge will review your affidavit. If the judge signs the temporary order, someone will serve the respondent with the affidavit, order and notice of hearing. At the hearing, both parties have a chance to present evidence. If the respondent fails to appear, an order can still be entered. It is important that you attend the hearing. You have the right to request an interpreter.



NO COST: You cannot be charged any expenses for filing for a protective order, or having it served. Texas law requires the respondent pay all fees unless indigent, and the court may assess attorney fees against any party found to have committed family violence.

Who can get a family violence protective order?*

Victims of family violence (intentional act or imminent threat of physical or sexual abuse) involving the following relationships: Parties...

- Related by blood or marriage (including common law marriage)
- Living or who have lived together
- Who have children together
- Who foster children together
- Dating or who have dated – of any age
- Who are new dating partners or spouses of victim

* *PO are different than restraining orders. Talk to your advocate about the different types of protective orders available for victims of sexual assault/abuse, trafficking, and stalking.*

Safe Enforcement

- Keep certified copies of your order with you. You have the right to obtain free, certified copies from the clerk of court.
- All protective orders must be served to be criminally enforceable. MOEP are immediately served in court. TExPO and final PO must be served in court or in person.
- Document all violations and report when it is safe.
- A violation of a protective order in the presence of a peace officer is a mandatory arrest offense.
- Protective orders from any state or tribe are enforceable nationwide.

A protective order is an important part of a safety plan to prevent further family violence. If you need support or to find an advocate in your area to help you develop a personal safety plan, call the National Domestic Violence Hotline at 1-800-799-SAFE (7233) / TTY 1-800-787-3224.

Types of Protective Orders for Family Violence

MAGISTRATES' ORDER FOR EMERGENCY PROTECTION (MOEP)

Commonly referred to as an “emergency protective order (EPO),” MOEP may be issued at a “defendant’s appearance before a magistrate after arrest for an offense involving family violence.” It is mandatory in cases of serious bodily injury (31-61 days) or use or exhibition of a deadly weapon (61-91 days). MOEP can be requested by the victim, the victim’s guardian, a peace officer, the state’s attorney, or the magistrate on her/his own motion. The victim does not need to be in court when the judge issues the order.

TEMPORARY EX PARTE PROTECTIVE ORDERS (TEXPO)

Granted upon proof of “clear and present danger of family violence,” a TExPO lasts up to 20 days, from the time of filing until the hearing.

FINAL PROTECTIVE ORDERS

Entered at the hearing, upon proof that “family violence has occurred and is likely to occur in the future,” a PO is usually for two years, but can be longer if there was:

- Serious bodily injury; OR
- Two or more past PO between the same parties; OR
- Allegations of an act of violence “constituting a felony offense involving family violence” (This does NOT require a felony criminal case.)

How can a protective order help me?

You can choose what types of relief you request, and the judge makes the final decision.

MOEP

The respondent may not:

- Commit family violence or assault
- Communicate with the victim or victim’s family, personally or through another party, in a threatening or harassing manner (if “good cause,” no contact except through attorneys)
- Come within a certain distance from specific locations
- Possess a firearm (unless the respondent is a full-time peace officer)
- The Court may also order GPS
- The respondent’s handgun license must be suspended during the order

TEXPO AND FINAL POS

Criminal provisions

The respondent may not:

- Commit family violence
- Communicate with the victim or victim’s family, personally or through another party, in a threatening or harassing manner (no contact except through attorneys)
- Go near the victim’s residence or place or employment (address can be confidential)
- Stalk victim or member of victim’s family
- Possess a firearm (unless the respondent is a full-time peace officer)
- Harm, threaten, or interfere with possession of your pet, service or companion animal
- Participate in anything that the courts decides could increase the likelihood of family violence
- Violation = Class A misdemeanor (up to 1 year/\$4,000/both – first offense)

Civil provisions

The respondent may not:

- Remove your child from your possession
- Transfer or dispose of property
- The Court may also:
 - Set child custody and visitation orders
 - Require the payment of child or spousal support
 - Award community property
 - Require the respondent to complete a batterer intervention and prevention program (BIPP)
- Violation = Contempt (typically results in fine or additional court appearances)

The Court may order the respondent to be removed from the residence in some cases.

You have the right to request that the court order a peace officer accompany you to your residence to safely collect your property and serve the protective order.