

PROTECTIVE ORDERS IN TEXAS

(From WomensLaw.org)

How can a protective order help me?

A protective order can order the abuser to:

- Stop committing acts of family or dating violence or any acts that are reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass you or a family/ household member;
- Stop all communication with you or a family member (directly or through a third party) or stop communication made in a threatening or harassing manner;
- Stay away from your home or place of employment or those of your family or household member;
- Stay away from a school or day center that a child protected under the order attends;
- Complete a battering intervention and prevention program or attend counseling with someone who specializes in family violence;
- Allow you visitation with your child (or give the abuser visitation);
- Not remove your child from your possession or from the jurisdiction of the court;
- Stop any transfer or disposal of property that you own or lease with the abuser;
- Not remove a pet, companion animal, or assistance animal from your possession;
- Pay child or spousal support for the time you have the protective order;
- Leave your home or other specified property (if certain conditions are met) and allow you to remain there;
- Turn over any firearms in his/her possession to law enforcement (unless the person is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency) and the court must suspend his license to carry a concealed handgun if he has been found to have committed family violence;
- Not harm, threaten, or interfere with the care, custody, or control of your pet, companion animal, or assistance animal, or that of your family or household member;
- Perform any other acts that are necessary to prevent or reduce the likelihood of family or dating violence.*

Whether a judge orders any or all of the above depends on the facts of your case.

Note: Even if the order doesn't specifically say that the abuser has to turn over his/her firearms, possession of a firearm by a non-police officer respondent is illegal under Texas state law and federal law. Please see TX State Gun Laws and Federal Gun Laws for more information

*Tex. Fam. Code §§ 85.021, 85.022

What types of protective orders are available?

In Texas, there are three types of orders of protection based on family violence:

1. **Temporary ex parte protective order;**
2. **Permanent protective order; and**
3. **Magistrate's order of emergency protection**
(what most people call an emergency protective order)

The first two orders are issued by the civil court upon your application. The abuser does not have to be arrested for you to get one of these orders. The third order is issued by the criminal court after the abuser is arrested for family violence. Each order is explained in more detail in the following questions.

What is a temporary ex parte order? How long does it last?

A temporary ex parte order is a court order designed to provide you and your family members with immediate protection from the abuser. You can get a temporary ex parte order without the abuser present in court. To get a temporary ex parte order, the judge has to believe that the abuser presents a clear and present danger of family violence to you or a family member. The judge will make this decision based upon the information you include in your application for a protective order.*

A temporary ex parte order lasts for the period of time stated in the order, usually up to 20 days. The temporary ex parte order can be extended for additional 20-day periods if you request it or if the judge decides to extend it.**

* Tex. Fam. Code § 83.001

** Tex. Fam. Code § 83.002

How long does a permanent (final) protective order last?

A permanent protective order is effective for the time period stated in the order, which generally may be up to a maximum of 2 years. If there is no time period written on the order, then it expires on the second anniversary of the date the order was issued.* However, a new law that took effect in September 2011 allows the judge to issue an order for longer than two years if:

- the abuser caused serious bodily injury to you or a member of your family or household; or
- the same petitioner (you or your child) had two or more protective orders issued against the abuser in the past and in each of those prior cases, the judge found that the abuser committed family violence and was likely to commit family violence in the future.**

After the order has been in effect for 1 year, the abuser can petition the court to ask that the order be discontinued. The judge will hold a hearing to determine whether there is a continuing need for the order. If the judge believes there is no need to continue the order, the judge can end the order earlier than the original date set. Evidence that the abuser did not violate the order does not by itself support a decision that the order is not needed anymore.***

Note: If the abuser is in prison on the date that the protective order is set to expire, then the expiration date is extended and it will expire on the one year anniversary date of his/her release from prison.****

* Tex. Fam. Code § 85.025(a)

** Tex. Fam. Code § 85.025(a-1)

*** Tex. Fam. Code § 85.025(b)

**** Tex. Fam. Code § 85.025(c)

What is a magistrate's order for emergency protection? How long does it last?

A magistrate's order for emergency protection (what most people call an emergency protective order) is issued by the criminal court after the abuser is arrested for committing family violence, sexual assault, or stalking.*

A magistrate's order for emergency protection is usually good for between 31-61 days. However, if the abuser was arrested for assault with a deadly weapon, the order would be good for between 61 - 91 days.** The court can issue this order upon your request, or upon the request of your guardian, a police officer, or the state attorney. If the crime involved serious physical injury or use of a deadly weapon, the judge is supposed to issue this order even if no one requests it.***

* Texas C.C.P Art. 17.292(a)

** Texas C.C.P Art. 17.292(j)

*** Texas C.C.P Art. 17.292(a)&(b)

Can the abuser be removed from the home?

Possibly, yes. A judge can consider excluding the abuser from the home and allow you to stay in the home (grant you "exclusive possession") if the home is:

- jointly owned or leased by you and the abuser;
- owned or leased by you; or

- owned or leased by the abuser and s/he has an obligation to support you or to support your child.*

If you are asking that the abuser be excluded as part of a temporary ex parte protection order, you must prove ALL of the following through your affidavit and testimony:

- you currently live in the residence or you have lived there within the 30 days before you filed the application;
- the abuser has committed family violence against a member of the household within the 30 days before you filed the application; and
- there is a clear and present danger that the abuser is likely to commit family violence against a member of the household again.**

Note: If you are asking for exclusion as part of a temporary ex parte order, the judge can postpone the hearing until the end of the same day in order to call the respondent and give him/her the opportunity to be present in court when the court resumes the hearing.**

* Tex. Fam. Code § 85.021(2)

** Tex. Fam. Code § 83.006