

Protective Orders in Texas: 2011 Legislative Update

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Overview

- Minor changes to POs
- Major changes to POs
- Brand new POs

Changes to Family Violence Protective Orders

Required Finding for Family Violence Protective Orders

1. Family violence has occurred;
and
2. Family violence is likely to occur in the future.

TFC 85.001(b)

Required Finding for Family Violence Protective Orders

- The court can also issue a FVPO if the court finds that the respondent violated a FVPO while it was in effect

TFC 85.002

What is Family Violence?

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

TFC 71.004

Dating Violence

- (a) “Dating Violence” means an act by an individual that is against another individual with whom that person has had a dating relationship and that is intended to result in physical harm, bodily injury, assault, sexual assault or that is a threat that reasonably places the individual in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself. TFC 71.0021.

Dating Violence contd.

- (b) For purposes of this title, “dating relationship” means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on consideration of:
 - the length of the relationship
 - the nature of the relationship, and
 - the frequency and type of interaction between the persons involved in the relationship.

TFC 71.0021

Dating Violence contd.

- (c) A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a “dating relationship” under Subsection (b).

TFC 71.0021

SB 116 – Change to Dating Violence

- The definition of “dating violence” now includes non-intimate partners
- Called the Kristy Appleby Act
- Has been the law since June 17, 2011 (when signed by the governor)

Text of SB 116

- TFC 71.0021(a) now reads: (a) "Dating violence" means an act, other than a defensive measure to protect oneself, by an actor [individual] that: (1) is committed against a victim: ... (B) because of the victim's marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and ...
- See:<http://www.legis.state.tx.us/tlodocs/82R/billtext/html/SB00116F.htm>

Who May File Application for Protective Order

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

TFC 82.002

SB 819 – Minor Applicants

- SB 819 removes the requirement that an adult apply on behalf of a minor child member of a dating relationship and allows any child to apply against her partner, regardless of age
- Also allows a statement from a minor child signed under oath to be valid for an application for temporary ex parte PO

Duration

- For the period stated in the order not to exceed 2 years.
- BUT, if Respondent is incarcerated on the date of expiration, extends one year after date of release from incarceration.
 - Applicants and their attorneys should ensure that a written order reflecting the extension is obtained from the Court for enforcement purposes.

TCF 85.025

SB 789 – Permanent FVPOs

- SB 789 will give the Court the authority to grant orders exceeding 2 years upon a finding that Respondent:
 - 1) Caused serious bodily injury to the Applicant or a member of the Applicant's family or household; or
 - 2) Was the subject of 2 or more previous protective orders.

SB 789 Cont'd

- The two or more previous protective orders must...
 - Protect the current applicant; and
 - Contain findings of family violence

Motion to Vacate PO

- After one year, the Respondent may petition the Court to vacate the PO upon a showing that there is no continuing need for the PO.

TFC 85.025

Sexual Assault Protective Orders (SAPO)

Required findings for SAPO

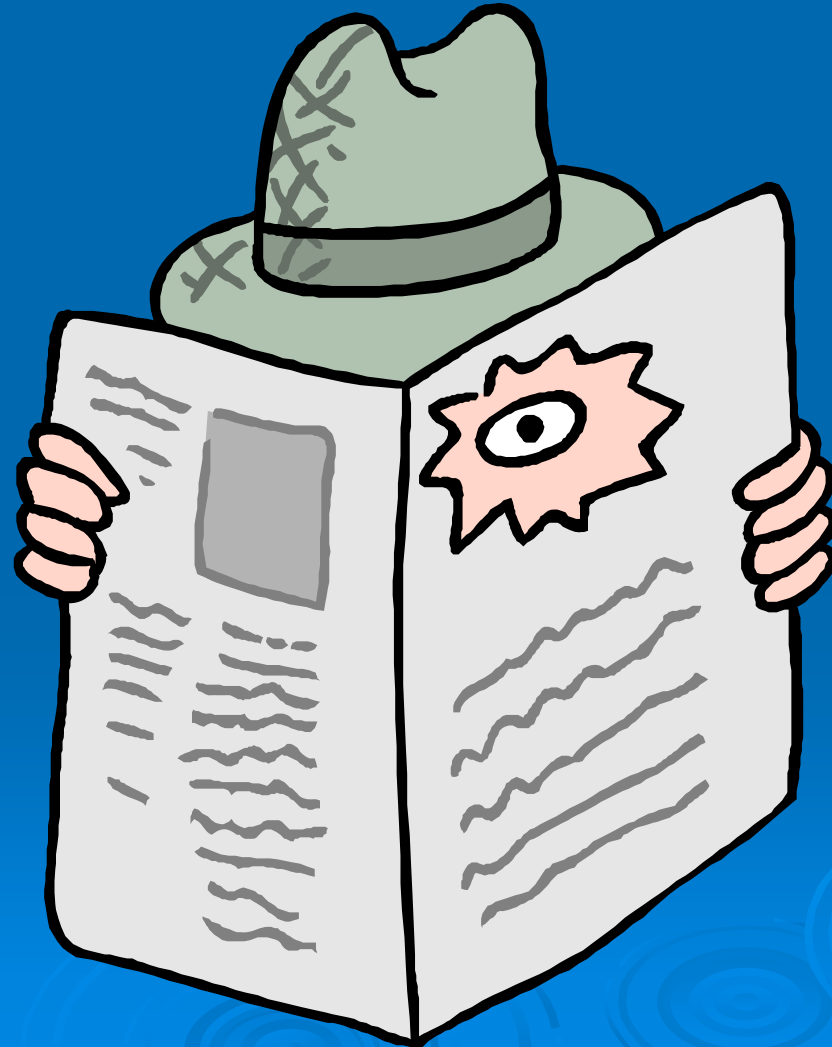
- 1) Reasonable grounds to believe the applicant is a victim of a sexual assault
AND
 - The applicant is younger than 18 OR
 - The applicant is the subject of a threat that reasonably places the applicant in fear of further harm from the alleged offender

CCP 7A.03

HB 649 – Change to Required Findings

- Only required finding will be
 - Reasonable grounds to believe the applicant is a victim of a sexual assault

NEW! Stalking Protective Orders



Notes on Stalking POs

- 2 very different new stalking PO statutes
- Stalking is defined in TPC 42.072
- Stalking requires
 - Stalker must knowingly engage in conduct that victim will regard as threatening
 - Conduct must actually cause fear in victim
 - Victim's fear must be reasonable

SB 250 - Stalking Protective Orders in Civil Court

- SB 250 (signed by governor) will add stalking as a basis for a CCP Article 7A Protective Order.
- 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

HB 1721 - Stalking Protective Orders in Criminal Court

- HB 1721 allows for a protective order to be filed:
 - As part of a criminal prosecution for stalking;
 - In the same manner as Title IV of the Family Code (FVPO statute).
- Court must find that *probable cause* exists to believe:
 - Stalking occurred; and
 - Stalking behavior likely to occur in the future.

HB 905 - Hearsay Exception

- Allows a statement made by a minor child who is 12 years of age or younger that describes alleged family violence against the child to be admissible as evidence in an application for PO
- The court must find that the time, content, and circumstances of the statement provide sufficient indications of the statement's reliability TFC 104.006.

SB 279 – Pets

- SB 279 allows for pets and other companion animals to be included in the PO
- TPC 25.07 modified to make it criminally enforceable
- (Court already had authority to make orders relating to property, but now it is criminally enforceable)

SB 218 – CPS and POs

- Now CPS can:
 - File a PO on behalf of the child
 - Assist a parent or other adult with whom a child resides in obtaining a protective order
- What has changed?
 - Perhaps clarifies that PO is an alternative to TRO (TFC 262.1015 – “shall file a petition for removal”)

SB 819 – Venue for Enforcement

- TFC Section 81.010: clarifies that any enforcement via contempt can occur in
 - any court in the county in which the order was rendered with jurisdiction;
 - a county in which the movant or respondent resides; or
 - a county in which an alleged violation of the order occurs
- Remember TPC 25.07 and TFC 88.004

HB 2624 – Trafficking PO

- Similar to the SAPO
- Requires reasonable grounds to believe that the applicant is a victim of stalking
- Applicant also must be the subject of a threat that reasonably place applicant in fear of further harm
- No criminal enforcement provision
- May last lifetime

HB 2624 - Military Personnel and POs

- POs forwarded to military armed forces in the same way they are forwarded to law enforcement
- Commanding officer is notified
- FV convictions also trigger notice requirements

HB 3172 – Killed in Committee

- FYI...HB 3172 would have clarified that the court may render an agreed FVPO without making findings of family violence

Questions?

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