

PO Bootcamp:

Nuts & Bolts for Newbie Attorneys & Seasoned Practitioners Alike

2026 SBOT Poverty Law Conference

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True or False

1. Every two minutes, someone in the United States is sexually assaulted.
2. Every nine minutes, that someone is a child.
3. Protective orders are as much as 80% effective in reducing future violence.
4. About 75% of sexual assault survivors do not report to law enforcement.
5. 1 in 3 Texans will experience domestic violence in their lifetime.
6. 1 in 5 men in Texas has been sexually assaulted.

Foundation,
Definitions,
Types



Legal Definition: Family Violence [TFC 71.004]

1. An act by a member of a family or household against another member of the family or household intended to result in physical harm, bodily injury, assault, or sexual assault or a threat that reasonably places the person in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself
2. Abuse by a member of a family or household against a child of the family or household
3. Dating violence

Legal Definition: Dating Violence [TFC 71.0021]

- An act defined in 71.004 made against a victim with whom the actor has or has had a dating relationship, or 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
- Dating relationship: between individuals who have or have had a continuing relationship of a romantic or intimate nature, determined based on length and nature of the relationship and frequency and type of interaction between the persons involved (does not include a casual acquaintance or ordinary fraternization in a business or social context)

The presence of a gun in a
domestic violence situation
increases the risk of homicide
by 500%

Types of POs – Temporary

Magistrate's Order for
Emergency Protection (MOEP):
CCP 17.292

Temporary Ex Parte Protective
Order (TEXPO): TFC Ch. 83;
CCP 7B.002

Magistrate's Order for Emergency Protection [CCP 17.292]

- MOEP or MEPO or EPO
- CCP 17.292(a), Magistrate may issue MOEP: family violence, sexual assault, stalking, or trafficking
- CCP 17.292(b), Magistrate shall issue MOEP: family violence with serious bodily injury or use/exhibition of a deadly weapon
- Must be served on D at magistration
- LEO, victim, victim's guardian, prosecutor, or judge can request
- 61-121 days in length

Types of POs – Final

Family Violence Protective Order
(FVPO): TFC Ch. 85

Sexual Assault Protective Order (SAPO):
CCP Ch. 7B

Stalking Protective Order: CCP Ch. 7B

Trafficking Protective Order: CCP Ch. 7B

Burglary Protective Order: CCP Ch. 7B

POs Under CCP

- Found in CCP Ch. 7B (but references TFC throughout)
- Victim of [laundry list of penal code provisions]
- No requirement that the underlying criminal behavior be charged or even reported to police

Sexual Assault Protective Order (SAPO)

Texas Penal Code

21.02 – continuous sexual abuse of young child or disabled individual

21.11 – indecency with a child

22.011 – sexual assault

22.012 – indecent assault

22.021 – aggravated sexual assault

43.05 – compelling prostitution

Stalking Protective Order

Texas Penal Code

42.072 – stalking

42.07 – harassment

Intimate-Partner Stalking

- More likely to approach victim, reoffend, and use weapons
- 76% of intimate partner femicide victims have been stalked by their partner
- 67% had been physically abused by their partner
- 89% who had been physically assaulted had also been stalked in the past 12 months before the murder
- 54% reported stalking to police before they were killed by their stalker

Trafficking Protective Order

Texas Penal Code

20A.02 – trafficking of persons

20A.03 – continuous trafficking of
persons

Burglary Protective Order

Texas Penal Code

30.02 – burglary

Types of POs – Other

Bond Conditions

Parole No Contact Order

Military Protective Order

Red Flag Laws/Extreme Risk
Protective Order (ERPO)*

Separation

- 77% of domestic violence-related homicides occur upon separation
- There is a 75% increase of violence upon separation, lasting for at least 2 years

Ethical Considerations: Separation

- Barriers to Leaving
- Safety Plan
 - Digital and Technology
 - Workplace
 - Financial
- Housing/Relocation
- Children and Schools
- Client Autonomy

Pleadings



Office of Court
Administration
(OCA) Forms

Application

Temporary Ex Parte
Protective Order

Final Protective Order

OCA Standard Forms: [TFC 85.0221]

- Courts **shall** use the standardized forms
- Failure to use forms does not affect the validity or enforceability of the PO

Attachments

TEXPO Affidavit

Confidentiality Affidavit

Final Decree of Divorce

Final SAPCR Order

Expired prior MOEP or PO

Current, unexpired MOEP or PO

Initial Procedures



Ethical Considerations: Scope of Representation

- Parallel litigation
- Managing expectations
- Representation agreements
- Realistic timeline

TFC and CCP Relationship

- Both apply to sexual assault, stalking, trafficking, and burglary POs
- TFC only applies where CCP does not provide a specific provision otherwise (CCP 7B.008)
 - Ex. service, setting a hearing
- TFC alone applies to FVPOs

Who May Apply: FVPO [TFC 82.002]

- Adult member of the family or household (including prior HH members)
- Adult to protect a child from family violence
- Prosecuting attorney
- Department of Family and Protective Services
- Adult or child member of a dating relationship
- Adult member of the marriage if A was abused because of A's marriage/dating relationship with a person with whom R is or has been in a marriage/dating relationship

Who May Apply: Sexual Assault, Stalking, Trafficking, Burglary POs [CCP 7B.001(a)]

- Without regard to the relationship between A and R
- Victim of Penal Code provisions previously mentioned
- Parent or guardian on behalf of a minor victim of Penal Code provisions previously mentioned
- Prosecuting attorney

Ethical Considerations: Pro Se Respondents

- Setting clear boundaries early on
- Communication guidelines
- Courtroom Considerations
- Agreements
- Minors

Venue

[TFC 82.003;
CCP 7B.001(b)]

- The county in which A resides
- The county in which R resides
- Any county in which the family violence (or any element of the alleged offense) is alleged to have occurred

Venue: Considerations

- Reasons A may **not** want to apply where they live:
 - Recently fled from county where the abuser resides
 - Trying to keep county of residence confidential
- There is no requirement that A must reside in the county issuing the protective order

Venue: Divorces and SAPCRs

Pending: TFC 85.062(a)

- May file in court where divorce/SAPCR is pending; or
- May file where A resides if outside the jurisdiction of divorce/SAPCR court

Finalized: TFC 85.063(a)

- If filed in same county as divorce/SAPCR, shall file in the same court
- If filed in different county as divorce/SAPCR, may file in any court having jurisdiction

Jurisdiction

Goldstein v. Sabatino, 690 S.W. 3d 287
(2024)

- “Territorial Jurisdiction” (a criminal concept) is not implicated in a PO
- Court must still consider whether it has personal jurisdiction over R before granting PO

Service [TFC 82.043(c)]

- PO application must be served on R in the same manner as citation under TRCP
- Type of service is “notice” not “citation”
 - Standard language informing R of the traditional answer deadline
 - Double-check your return
- Service by publication is not authorized

Temporary Ex Parte Protective Order [TFC Ch. 83]

- TEXPO or TPO
- An immediate court order of protection
- Intended to protect A from further abuse or violence until a final PO hearing is held
- Entered without notice to and without the presence of R
- No hearing, evidence, testimony*

TEXPO Affidavit [TFC 82.009(a)(1)]

- Detailed information about abusive behavior in an affidavit attached to the application
- Court grants TEXPO based on the information in application + affidavit
- Affidavit can be done as an unsworn declaration under CPRC 132.001(d)
- No need for notary; electronic signature permissible
- Drafted in A's own words – not as a lawyer

Unsworn Declaration

"My name is Applicant, my date of birth is XX/XX/XXXX, and my address is 2507 N.W. 36th Street, San Antonio, Texas 78228. I declare under penalty of perjury that the foregoing is true and correct."

Executed in Bexar County, Texas, on Month ##, 2026.

Applicant Signature

Applicant Printed Name

Standard of Proof: TEXPO

- TFC 83.001(a): clear and present danger of family violence
- CCP 7B.002: clear and present danger of sexual assault or abuse, stalking, trafficking, burglary, or other harm

TEXPO Duration [TFC 83.002]

- For the period specified in the order, or until the final PO hearing, but not to exceed 20 days
- May be extended for additional 20-day periods
- Statutorily, there is no limit on number of extensions*

TEXPO Affidavit – Kickout Request

- Used to physically remove R from the residence
- Must also show violence in past 30 days + parties lived together in past 30 days
- Residence: jointly owned/leased by A and R, owned/leased by A, or owned/leased by R + R has obligation to support A
- Court must find that there is a clear and present danger of family violence
- Some judges may want an ex parte hearing on the kickout portion

Setting the Final Hearing

- TFC 84.001(a): No later than the 14th day after the date application is filed
 - Not 14 days after filing is accepted by the District Clerk's office
 - Not 14 days from when Judge signs the Show Cause Order
- TFC 84.002(a): Exception (20-day instead of 14-day window)
 - When county has population of more than 2 million
 - When judicial district is composed of more than 1 county

Granting a Final Protective Order



Trial Practice Limitations

Limited continuances

No discovery

No jury trial

No right to counsel

Common Continuance Requests

- R wants time to hire a private attorney or get a court-appointed attorney
- Newly-hired OC wants more time to prepare
- OC wants time to conduct discovery
- OC requests continuance until the conclusion of the underlying criminal case or pending divorce/SAPCR involving the same parties
- Return of service has not been on file for at least 10 days

Proper Continuances

- TFC 84.003: R has not been served
 - Hearing is rescheduled at the request of A
- TFC 84.004: R received less than 48 hours' notice
 - Hearing is rescheduled at the request of R

No Right to Counsel

- Exception: minor R gets AAL
- *Turner v. Roberson* (2013 WL 2152636): Rs in PO cases have no right to counsel
- *Beach v. Beach* (2020 WL 1879553): POs may be civil orders with criminal penalties but are still civil proceedings governed by TFC and not the Penal Code

Final PO Hearing

- Bench trial for limited purpose of determining if the judge will grant a PO
- A provides testimony and evidence and is then cross-examined by R's attorney (or pro se R)
- R provides testimony and evidence and is then cross-examined by A's attorney or chooses not to testify
- Either side may call additional Ws to offer relevant testimony (uncommon)
- Judge decides whether A has met the burden of proof

PO Hearing Evidence

Police reports

Officer testimony

Witness testimony

Pictures of injuries

Texts, emails, DMs, phone logs

Hospital records*

Expert testimony*

Issuance of a Final Protective Order

- Family violence: A court shall render a PO if the court finds that family violence has occurred (TFC 85.001) or finds that R violated a prior final FVPO while it was in place and the FVPO has since expired (TFC 85.002)
- Sexual assault, stalking, trafficking, burglary: A court shall render a PO if the court finds there are reasonable grounds to believe that the applicant is the victim of sexual assault or abuse, stalking, trafficking, or burglary (CCP 7B.003)

Standard of Proof: Family Violence POs

- Preponderance of the evidence
- But TFC does not explicitly proscribe an evidentiary standard
- Standard is not beyond a reasonable doubt, even if FVPO is based on an underlying criminal charge
- *Stary v. Ethridge*, 712 S.W.3d 584 (2025): clear and convincing standard is imposed instead for POs prohibiting contact between parent and child for more than 2 years

Standard of Proof:
Sexual Assault, Stalking,
Trafficking, and
Burglary POs

- CCP 7B.003(a): reasonable grounds to believe
- Ex. CPS finding of "reason to believe" of abuse

Agreed Protective Orders

- Parties may agree to the terms of an agreed PO subject to the approval of the court
- TFC 85.005: court cannot approve an agreement that requires A to do or refrain from certain acts (no mutual)

Agreed Protective Orders Without Findings

- Parties can agree to a PO without any findings of family violence
- *Perez v. State*, 2017 WL 1955338: agreed PO without findings sufficient to sustain criminal conviction for PO violations
- *In re I.E.W.*, 2010 WL 3418276: no SAPCR presumptions exist when R agrees to a PO without findings
- Possible consequence: likely A's CVC application will be denied

Mutual PO or Injunctions

- TFC 85.003(c): court cannot render one PO that applies to both parties
- Some OCs will ask to confer and offer to agree to a mutual injunction instead
- Injunction in lieu of PO is void and unenforceable without pleading in the alternative (still not advisable)
- *Rivera v. Figueroa*, 2019 WL 691502: even when pleading in alternative, court cannot grant a mutual injunction

Defending Against PO

- PO is sometimes filed by abuser
- Cross-examine based on TEXPO affidavit, if TEXPO is requested
- Must file separate PO if requesting one for client against abuser (no counterpetition, not done in an answer)
- Direct exam showing self-defense, abuser as primary aggressor, power imbalance, retaliation

Conflicting Orders [TFC 81.012]

- PO prevails over any order rendered in a divorce or SAPCR
- Only applies to those provisions in conflict with one another
- Applies to both final and temporary ex parte POs

Order

Duration and

Extensions



Duration

[TFC 85.025(a)-(a-1)]

- Any duration no more than 2 years
- 2 years is the default if not specified
- May exceed 2 years if R-
 - Committed an act constituting felony offense against A (regardless of charges or conviction)
 - Caused serious bodily injury to A
 - Was subject of 2 or more previous POs against this same A

Duration

[CCP 7B.007(a)]

- May be of any duration
- Can be for the lifetime R or A
- 2 years is the default if not specified

Automatic Extensions [TFC 85.025]

- Divorce suit is pending: PO expires 2 years from date on which final decree is approved and signed by judge
- SAPCR is pending: PO expires 2 years from date final order is rendered
- R has a pending FV criminal case: PO expires 2 years from date of the final disposition of the criminal case
- R is incarcerated on the date the PO expires: PO is in effect 1 year from R's release, if R was sentenced to more than 5 years / 2 years if 5 years or less

Order Contents



Prohibitions

[TFC 85.021]

- Removing a child who is a member of the family or household
- Transferring, encumbering, or disposing of property mutually owned or leased by the parties
- Removing a pet, companion animal, or assistance animal from the possession or actual or constructive care of a person named in the order

Prohibitions

[TFC 85.022]

- Committing family violence
- Communicating directly with the protected person in a threatening or harassing manner
- Communicating a threat to the protected person through another person
- Communicating in any manner with a protected person (upon a showing of good cause)

Prohibitions [TFC 85.022] cont'd

- Going near the protected person's residence, place of work, childcare, or school
- Engaging in conduct that is intended to harass, annoy, alarm, abuse, torment, or embarrass the protected person
- Possessing firearms or ammunition
- Tracking or monitoring the person, property, or car of the protected person

Provisions [TFC 85.021]

- Grant exclusive possession of residence
- Direct party to vacate the residence
- Provide for the possession of and access to a child (no conservatorship)
- Require the payment of spousal or child support
- Award the use and possession of specified property that is community property or jointly owned or leased property

Provisions

[TFC 85.022]

- Complete a battering intervention and prevention program (BIPP) or counseling program if BIPP is not available
- Suspend a license to carry a handgun

Enforcement and Aftermath



Post-Hearing Service [TFC 85.041(a)]

- To be enforceable against R, PO must be served on R
- Service under TRCP 21a
- Served on R in the same manner as a writ of injunction
- Served on R in open court at the close of the hearing

Enforcement

Civil

- Motion for enforcement of PO is filed in court
- Confinement in jail up to 6 months and/or fine up to \$500

Criminal

- Police called and/or report is made for violation of PO
- Usually a Class A misdemeanor, can be enhanced to felony
- Confinement in jail up to 10 years and/or fine up to \$10,000
- Federal offense if firearm violation

Motion to Vacate

[TFC 85.025(b)-(b-3)]

- R can file a motion to vacate a FVPO
- Does not apply to POs under CCP
- Cannot file before the first anniversary of when FVPO was entered
- Court will determine whether there is still a need for the FVPO
- If PO is in effect for more than 2 years, R can only file one additional motion if first one is denied and it must not be filed before the first anniversary of the order denying the first motion

LEO Duties [TFC Ch. 86]

- Have agency procedures in place that allow officers responding to calls to be aware of the names of protected persons and perpetrators subject to POs
- Enter PO information in agency's records of outstanding warrants
- Enter PO information into statewide law enforcement information system
- Advise a firearms dealer the sale or transfer is prohibited upon the dealer's request for a law enforcement system check

Ethical Considerations: Post-Hearing Safety

- LEO escort
- Safety planning
- Address Confidentiality Program
- CVC application
- Lease termination

Hypo

Sue came to your office. Her estranged husband was arrested for assaulting her last night. She wants to apply for a “restraining order.” She tells you how he has been following her to and from work for weeks, but it never got physical until last night. She shows you her phone, which has around 50 missed calls from him and 200 texts from the last week. She also describes the incident last night, where her husband beat down her front door, punched her, strangled her, and then sexually assaulted her while she was in and out of consciousness.

Sue’s husband is still on the lease of the apartment Sue lives in. Sue and her husband have one child together, a 4-year-old child who lives with Sue. The child was asleep during the incident and did not hear or see anything. There are no custody orders in place, and there is no divorce pending.

Sue’s husband will probably be released on bond in about one or two weeks. Sue is unsure if there is a MOEP in place.

What will you file?