

Applicant: \_\_\_\_\_

Case No.: \_\_\_\_\_

Respondent: \_\_\_\_\_

v.

In the \_\_\_\_\_

of \_\_\_\_\_

County, Texas

County of Residence: \_\_\_\_\_

### 1 Parties

Name: \_\_\_\_\_

## Application for Protective Order

Applicant: \_\_\_\_\_

Respondent: \_\_\_\_\_

Respondent's address for service: \_\_\_\_\_

*Check all that apply:*

- The Applicant and Respondent are or were members of the same family or household.
- The Applicant and Respondent are parents of the same child or children.
- The Applicant and Respondent are or were married.
- The Applicant and Respondent are or were dating.
- The Applicant is an adult asking for protection for a child or children.
- The Applicant is asking for protection for a child or children or dating violence.

Children: The Applicant is asking for protection for \_\_\_\_\_

Name: \_\_\_\_\_

# Protective Orders in Texas

Glen Kercher  
Katrina Rufino

June 2008



*...from the Director*

Victims of violence, despite the extent of their injuries and fears, are often disinclined to seek an order of protection out of concern that their reports will not be believed and fear that the abuse will continue even after the protection order is obtained. To encourage these victims to make reports to the police and to seek an order of protection, the process must be user friendly and supportive. Their procedural questions and concerns of victims need to be addressed, and the process must be streamlined. This requires effective and timely communication between law enforcement agencies, prosecutors, and victim service organizations. Enforcement of orders needs to be a priority for law enforcement, not only to prevent further violence, but to encourage other victims to seek similar protections.

Despite the progress that has been made to protect victims of crime, there is more that can be done. This report is designed to inform the various stakeholders in the protective order process of the intent of the law and the obstacles that many victims face in deciding whether or not to apply for protection. Our hope is that renewed effort and resolve to protect crime victims will result.

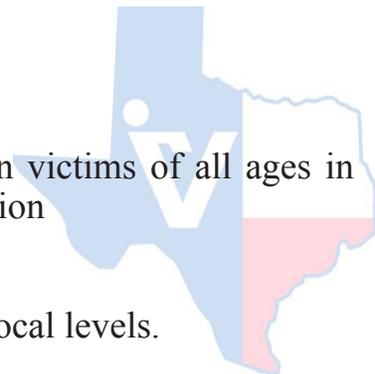
**Glen Kercher**  
**Crime Victims' Institute**



## MISSION STATEMENT

The mission of the Crime Victims' Institute is to

- conduct research to examine the impact of crime on victims of all ages in order to promote a better understanding of victimization
- improve services to victims
- assist victims of crime by giving them a voice
- inform victim-related policymaking at the state and local levels.



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## Protective Orders in Texas

Individuals experiencing abuse often lack recourse from their perpetrator. Despite reports estimating that between 3 and 4 million women are victims of domestic violence each year (Walker, 1998), only two states had protective order legislation specifically for battered women before Pennsylvania's 1976 Protection from Abuse Act was passed. Shortly thereafter, other states began to follow suit, and by 1983 protective orders were available in 32 states. By 1994 all 50 states provided some sort of legislation for battered women in the form of protective orders (Chaudhuri & Daly, 1992). Before this legislation, the only option for battered women was to file criminal proceedings, which in addition to being burdensome were usually ineffective (Carlson, Harris, & Holden, 1999).

According to Chapter 5 of the Code of Criminal Procedures of the State of Texas:

*Family violence is a serious danger and threat to society and its members. Victims of family violence are entitled to the maximum protection from harm or abuse or the threat of harm or abuse as is permitted by law (Tex. Code Crim. Proc. Art. 5.01 (a)). In any law enforcement, prosecutorial, or judicial response to allegations of family violence, the responding law enforcement or judicial officers shall protect the victim, without regard to the relationship between the alleged offender and victim (Tex. Code Crim. Proc. Art. 501 (b)).*

As such, victims of family violence have the right to file for an order of protection, which is defined by the Attorney General of the State of Texas as “a civil court order issued to prevent continuing acts of family violence ([www.oag.state.tx.us/victims/protective.shtml](http://www.oag.state.tx.us/victims/protective.shtml)). The intent of a protective order is to prevent the offender from committing future acts of violence, as well as threatening or harassing the victim through both direct and indirect contact. In some jurisdictions additional requirements may be added in order to qualify for a protective order, such as the violence must have occurred within the past 30 days. If the petitioner is represented by counsel in a divorce proceeding, assistance may not be provided in some jurisdictions. In some areas a petitioner is charged \$36 to file a protective. That is contrary to the provisions as spelled out in the Violence Against Women Act (1994). Any fees associated with filing a protective order are supposed to be paid by the respondent.

By law, however, the only two requirements are that violence occurred and there is a likelihood it will occur again. Provisions of a protective order can also mandate counseling for the offender, the payment of child or spousal support, maintain a specific distance from the victim, and that the offender vacate a residence ([www.oag.state.tx.us/victims/protective.shtml](http://www.oag.state.tx.us/victims/protective.shtml)).

Currently, there are three types of protective orders available in Texas: (1) Magistrate's Order of Emergency Protection which is commonly referred to as simply Emergency Protection Orders (Tex. Code Crim. Proc. Art. 17.292), (2) Temporary Ex Parte Orders (Tex. Code §83.001), and (3) Permanent Protective Orders (Tex. Code §85.001).

**Emergency Protection Orders** are issued upon the request of a victim, a guardian of a victim, a peace officer, or the district attorney after an arrest for family violence or sexual assault has been made (Tex. Code Crim. Proc. Art. 17.292 (a)). They are valid for up to 90 days and no less than 60 days after the date of issuance (Tex. Code Crim. Proc. Art. 17.292 (j)). Emergency Protection Orders are the only type of order that require an arrest prior to issuance. They are enforceable both civilly and criminally.

**Temporary Ex Parte Orders** are issued if the court finds “clear and present danger of family violence” from the information in the application (Tex. Code §83.001 (a)). They are issued without a court hearing, are meant to provide immediate protection until a court hearing can be set, and are valid for a specified period of time, usually until the court hearing, but are not to exceed 20 days after the date of issuance (Tex. Code §83.002 (a)). Until recently these orders were only civilly enforceable. Now they are criminally enforceable as well, and that may lead to challenges on constitutional grounds.

**Permanent Protective Orders**, on the other hand, are valid for a specified time not exceeding two years (Tex. Code §85.025 (a) (1)). If no time period is specified, the order expires on the second anniversary of issuance (Tex. Code §85.025 (a) (2)). The exception is when an offender is incarcerated during the time the protective order is in place. In this case, the protective order remains active for a year after the offender’s release.

Permanent Protective Orders issued as a result of a sexual assault can be effective for the duration of the lifetime of the offender and the victim if the court finds that the victim is the subject of a reasonable threat placing her at risk of further harm (Tex. Code Crim. Proc. Art. 7A.07 (b)). Some district attorneys do not want sexual assault victims to obtain a protective order, because the application will give the opposing party advance notice about the facts to be introduced into criminal proceedings. In this case, there are two competing concerns: protecting a victim and obtaining a conviction of the perpetrator.

Unlike the other protective orders, Permanent Protective Orders require written notice be given to the offender that a court hearing is scheduled (Tex. Code §85.001). These orders are criminally enforceable.

Although the petitioner may file these forms without having a lawyer, victims are encouraged to get legal representation to help with this process. Legal aid may be available free from the local legal aid office. The State of Texas has no statutory provision for a petitioner to represent himself or herself in the matter of protective orders. However, this option is available in many other states.

### **Qualifying for a Protective Order**

While the intent behind protective order legislation is appropriate, the specifics of the legal code often render them ineffective. For example, the law specifies who is and is not eligible for an order of protection. Currently, with the exception of sexual assault victims (Tex. Code Crim. Proc. Art. 7A.01), only family members, defined as “individuals related by consanguinity or affinity, individuals who are former spouses of each other, individuals who are the parents of the same child without regard to marriage, a foster parent and foster child” (Tex. Code §71.003) and those in a dating relationship defined as “a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature” (Tex. Family Code §73.021 (b)) are eligible for a protective order. The law specifies who in particular can apply for an order of protection as well. Accordingly, only an adult member of a household, an adult member of a dating relationship, an adult on behalf of the protection of

a child, a prosecuting attorney, or the Department of Human and Regulatory Services can file for a protective order (Tex. Code §82.002). Teenagers are also eligible for protective orders, but Texas requires that an adult file on their behalf.<sup>1</sup> Additionally, both men and women are eligible for protective orders. The law in Texas is gender-neutral and does not specifically include or exclude same-sex relationships. Texas is one of 40 states that are either affirmative or neutral on this issue. However, since a majority of protective order applicants are women, they are the focus of relevant literature. As such, the following review of the current literature will also follow suit.

While the eligibility for a protective order may seem extensive, the aforementioned criteria still leaves situations in which women are not eligible for a protective order. In fact, it was only in 1997 (Tex. Code §71.005) that a partner in a cohabitating relationship became eligible for a protective order in Texas, while in some states they are still not eligible. It was originally thought that women in a non-marital relationship could easily leave, but research has shown that women in cohabitating relationships are just as invested as women in marital relationships (Shannon, Logan, & Cole, 2007). Research has also found that women in cohabitating relationships report similar rates of intimate partner violence to women in marital relationships (Shannon et al., 2007). In fact, a study by the Crime Victims' Institute found that women in cohabiting relationships were three times more likely to experience intimate partner violence than married women (Kercher, Johnson, & Yun, 2008).

### **Enforcement of Protective Orders**

Another positive shift in protective order policy was the implementation of the full faith and credit provisions of the Violence Against Women Act. Historically, states were opposed to enforcing protective orders issued in other jurisdictions, so women were not safe across state or even county lines. However, the implementation of the Violence Against Women Act (18 U.S. Code §2265) requires states to honor protective orders from other states, tribes, or nations and enforce them as if they were the issuing state (Eigenberg, McGuffee, Berry, & Hall, 2003). This act also established punishments for abusers that crossed state lines to continue abuse by making interstate harassment and domestic abuse a federal offense (Malecha et al., 2003).

Following this, Texas adopted the Uniform Interstate Enforcement of Protective Orders Act which took effect in 2001 (Tex. Family Code §88.001). This allows local law enforcement agencies and courts to enforce protective orders from other jurisdictions. It also allows individuals to register their protective order from another state so it appears as part of the local registry; however, this is not mandatory and is decided by the individual. To assist in the process of intra- and interstate information transfer, Texas law mandates that every protective order issued is entered into a statewide law enforcement information system immediately, but no more than 10 days after receipt. This database is maintained by the Department of Public Safety and is also linked to the Federal Bureau of Investigation's National Crime Information Center (Tex. Code §86.0011).

1. Personal Communication with Barbara Nichols, Montgomery County District Attorney Office

## **Effectiveness of Protective Orders and Reducing Violence**

Research shows that women receiving protective orders generally experienced a reduction in abuse (Carlson et al., 1999; Gist et al., 2001; Malecha et al., 2003; McFarlane et al., 2002). For example, Carlson and colleagues (1999) found that during the two-year period following the issuance of a protective order, the women in their sample reported a 66% decline in physical violence. Similarly, women's scores on the Severity of Violence Against Women Scale drastically decreased at 3-, 6-, and 12-month follow ups after receiving a protective order (Gist et al., 2001). However, there are mixed results when victims are asked to rate the effectiveness of their protective order. One study reported that 75% of the subjects rated their protective orders as effective, (Logan, Cole, Shannon, & Walker, 2007) another study reported that 75% of their subjects rated it as ineffective or unsure of its effectiveness, (Shannon et al., 2007) while yet another study has the ratings split more evenly (Logan, Shannon, & Walker, 2005). The discrepancy in reporting is where further investigation is necessary, because while protective orders are theoretically successful, their intentions are not always practically applicable.

## **Violation of Protective Orders**

Research has found that protective orders are often violated, leaving the victims in the same fearful situation as before their issuance. For example, multiple studies show that approximately 30-40% of protection orders issued are violated (Logan et al., 2005; Logan et al., 2007). For example, McFarlane et al. (2004) found that of 81 women granted a protection order, 44% reported at least one violation over an 18-month follow up, and Shannon et al. (2007) reported that 26% of the women surveyed reported a violation of their protective order, with an average of nine violations over an average of five weeks. Research has also found that more women with children report physical violence after a protective order than women with no children (Carlson et al., 1999). Custodial exchange of shared children could account for much of this violence as it forces contact. In these circumstances the perpetrator is required to maintain distance from the victim, yet may need to interact with the victim to make the exchange. The court does not typically provide any sort of intermediary unless such exchanges are ordered to occur at a place such as the police department.

Further complicating the enforcement of protective orders is when a victim either initiates or agrees to meet with the perpetrator after the order was granted. Sometimes this is done to see if reconciliation between the parties is possible. An offender violates a protective order even when he or she is responding to a request from the victim. A victim is not liable for violating the provisions of a protective order.

An interesting development is that criminal background checks requested by businesses or agencies on prospective employees may now include information about protective orders in which the applicant was the defendant.

## **Failure to Complete an Application**

In addition to the rate of violation, the number of victims who do not receive a protective order and the number that drop their applications are also a cause for concern. There is a multitude of reasons women drop protective order applications, including but not limited to a lack of faith that it will be effective (Logan et al., 2007; Logan, Shannon, Walker, & Faragher, 2006), the inconvenience involved in filing (McFarlane et al., 2004), financial dependence on the perpetrator (Logan et al., 2005, 2006, 2007), and fear of or coercion from the perpetrator (Logan et al., 2005, 2006). The application process to receive a protective order is cumbersome and usually requires multiple trips to court, which often equate to days off from work and lost wages, child care arrangements, and travel that is difficult and time consuming for the applicant. This is further exacerbated when the applicant is financially dependent on the abuser and lacks alternate housing or the money to travel to and from court. Finally, it is common for the victim to drop her application out of fear of her abuser and retaliation on her or her family, or even for the perpetrator to coerce the applicant to take him back, which was reported by approximately 50% of Logan et al.'s (2005) sample as their reason for dropping a protective order application.

## **Protective Order Applications that are Not Approved**

Another problem related to the efficacy of protective orders is the number of women who apply but do not actually receive the order. The most common reason women do not qualify for a protective order is a lack of a cohabitating relationship as previously discussed (Gist et al., 2001). The most-reported reasons women who qualified did not receive their order are (1) processing delays at the agency (Gist et al., 2001), as it often takes multiple weeks and multiple trips to the court to get all the paperwork in order, and (2) the inability to locate and serve the abuser (Gist et al., 2001), which was the reason cited by 18 out of 69 women who were not granted an order of protection in one sample (McFarlane et al., 2004). A study by Malecha and colleagues (2003) in Harris County, Texas, found that of the 2,932 applicants in their jurisdiction, only 1,980 (68%) qualified for a protective order, and of those who qualified, only 962 (49%) actually received the order.

Even though a victim may qualify for a protective order, whether or not it is filed is often a function of the jurisdiction in which victim assistance is requested. In several counties throughout Texas the likelihood of having a protective order approved is quite good, if all other requirements are met. In other counties, that likelihood is low even when the applicant meets the requirements under the law. This means that a victim of violence is more likely to be protected by the court in some places than she would be in others.<sup>2</sup> Accordingly, it is in this area that policy reform is most critical, as it re-emphasizes the lack of control the applicant has over her life.

2. Personal Communication with D'An Anders, Women's Advocacy Project, Austin, TX, 7-8-2008

## **Recommendations for Improving Protective Order Policies and Procedures In Texas**

- **Improve interagency cooperation to make information readily available and to improve the filing process.**

Applicants of a protective order need to feel that their claim is taken seriously. It is often very difficult to come forward and claim abuse, and therefore, applicants should be encouraged through the process and provided with guidance. To accomplish this, the applicant should have to file only once, and be assured that the information is being shared and passed through the appropriate channels. All of the required processing must be completed in time for the hearing. The process should not require repeated trips to provide the same information as has previously been reported by the applicant (McFarlane et al., 2004).

Communication between the different departments, particularly the police and the filing agency, needs to be enhanced throughout the application process. For example, emergency protection orders require that an arrest has been made before the order can be granted. Accordingly, information about the arrest needs to be shared with the court and other stakeholders in a timely manner. Perhaps this is sometimes not done expeditiously because of conflicts between an officer's duty assignments and time constraints or not fully appreciating how delays in communicating arrest information affects victims. Law enforcement officers and others who play pivotal roles in the protective order process may need to be reminded of how delays in one link in the chain have repercussions down the line for victims. Perhaps it would be useful to develop a timeframe in which these tasks must be completed.

In addition, there should be sufficient staff to avoid delays in the filing process and shorten the time it takes to apply. Finally, protective orders can only be filed during business hours, Monday through Friday, nine through five. If agencies provide employees on a rotating basis to be available one night per week or for a few hours on Saturday, perhaps more women would be able to complete the application process.

- **Increased clarity and interpretability of relationship criteria.**

A significant number of applicants denied orders were told they lacked the relationship criteria set forth by the law (Gist et al., 2001). However, as it is currently stated, the relationship criterion is not clear. The law states that, with the exception of sexual assault victims, the relationship between the victim and the offender must be romantic or intimate in nature; however, it is left to interpretation from there. Applicants of various ages have vastly different definitions of the words "romantic" and "intimate" but they are offered no guidance from the law. It would be frustrating for an individual to apply for a protective order only to learn they misinterpreted the law and did not in fact qualify. For this reason, the relationship criteria, as well as general eligibility criteria, should be written clearly and in an easily interpretable manner.

- **Standardize procedures for obtaining a protective order across the State and eliminate idiosyncratic local criteria.**

Some would argue that district and county attorneys are allowed too much leeway in deciding whether to move forward with an application for a protective order. Justice may be better served by standardizing the criteria and processing requirements so that fundamental victim rights are provided.

- **Provide counselors throughout the application process.**

Most women applying for a protective order feel alone and may have no one to whom they can turn. On-site counselors or even past victims or caseworkers trained in counseling should be available to provide support concurrent with the application process. Although women applying for protective orders are often referred to counselors, they are more likely to utilize the service if they do not have to seek it out. Additionally, the counselors would be able to provide the applicant support throughout the process so she knows what to expect during each phase. For most victims, counselors are only available on site through shelters, but if they are not currently at a shelter their resources are limited, so even if available, some women will be hampered by transportation issues.

- **More effective means to locate and serve the perpetrator with a protective order.**

Another reason applicants do not receive orders is because of an inability to locate and serve the offender to appear in court (Gist et al., 2001; McFarlane et al., 2004). Efforts should be increased, and other methods should be implemented. Instead of only attempting to serve perpetrators at their last known home address, attempts should be made to locate the offender at his place of work, through relatives, or other known addresses. Procedures for locating offenders should be standardized so it is not left to the initiative of the serving officers. An applicant and/or her children should not be subjected to the possibility of future violence because their offender could not be located. For example, after three attempts to locate the offender at his last known address, two attempts should be made to locate him at his place of employment. If the offender cannot be located following these attempts, a family member can be served, but only if there is some assurance that the offender will receive the information.

- **Punishment for the violation of a protective order.**

A violation of any of the three kinds of protective orders is both civilly and criminally enforceable. However, given the range and severity of possible consequences and the lack of uniformity across jurisdictions in terms of which sanctions are applied, violators of a protective order may assume that the likelihood of being caught violating an order and being sentenced to jail time are small. This may account in part for victims' belief's that protective orders are ineffective. In order to increase the effectiveness of an order, the punishment for a violation should be more uniformly applied and more strictly enforced.

Thousands of women apply for protective orders in Texas each year, nearly 3,000 in Harris County alone (Malecha et al., 2003), but research shows inconsistency in the outcome. It is the duty of the government to protect its citizens, and feeling safe and living free of fear are rights every citizen should be afforded. By enhancing the process and efficacy of protective orders through the implementation of the aforementioned suggestions, victims will receive the protection that is their right under the law.

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