

FAMILY CODE CHAPTER 85. ISSUANCE OF PROTECTIVE ORDER

FAMILY CODE

TITLE 4. PROTECTIVE ORDERS AND FAMILY VIOLENCE

SUBTITLE B. PROTECTIVE ORDERS

CHAPTER 85. ISSUANCE OF PROTECTIVE ORDER

SUBCHAPTER A. FINDINGS AND ORDERS

Sec. 85.001. REQUIRED FINDINGS AND ORDERS. (a) At the close of a hearing on an application for a protective order, the court shall find whether:

- (1) family violence has occurred; and
- (2) family violence is likely to occur in the future.

(b) If the court finds that family violence has occurred and that family violence is likely to occur in the future, the court:

- (1) shall render a protective order as provided by Section 85.022 applying only to a person found to have committed family violence; and

- (2) may render a protective order as provided by Section 85.021 applying to both parties that is in the best interest of the person protected by the order or member of the family or household of the person protected by the order.

(c) A protective order that requires the first applicant to do or refrain from doing an act under Section 85.022 shall include a finding that the first applicant has committed family violence and is likely to commit family violence in the future.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.
Amended by Acts 2001, 77th Leg., ch. 91, Sec. 6, eff. Sept. 1, 2001.

Sec. 85.002. EXCEPTION FOR VIOLATION OF EXPIRED PROTECTIVE ORDER. If the court finds that a respondent violated a protective order by committing an act prohibited by the order as provided by Section 85.022, that the order was in effect at the time of the violation, and that the order has expired after the date that the violation occurred, the court, without the necessity of making the findings described by Section 85.001(a), shall render a protective order as provided by Section 85.022 applying only to the respondent and may render a protective order as provided by Section 85.021.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.
Amended by Acts 1997, 75th Leg., ch. 1193, Sec. 13, eff. Sept. 1, 1997.

Sec. 85.003. SEPARATE PROTECTIVE ORDERS REQUIRED. (a) A court that renders separate protective orders that apply to both parties and require both parties to do or refrain from doing acts under Section 85.022 shall render two distinct and separate protective orders in two separate documents that reflect the appropriate conditions for each party.

(b) A court that renders protective orders that apply to both parties and require both parties to do or refrain from doing acts under Section 85.022 shall render the protective orders in two separate documents. The court shall provide one of the documents to the applicant and the other document to the respondent.

(c) A court may not render one protective order under Section 85.022 that applies to both parties.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 85.004. PROTECTIVE ORDER IN SUIT FOR DISSOLUTION OF MARRIAGE. A protective order in a suit for dissolution of a marriage must be in a separate document entitled "PROTECTIVE ORDER."

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 85.005. AGREED ORDER. (a) To facilitate settlement, the parties to a proceeding may agree in writing to the terms of a protective order as provided by Section 85.021. An agreement under this subsection is subject to the approval of the court.

(b) To facilitate settlement, a respondent may agree in writing to the terms of a protective order as provided by Section 85.022, subject to the approval of the court. The court may not approve an agreement that requires the applicant to do or refrain from doing an act under Section 85.022. The agreed order is enforceable civilly or criminally.

(c) If the court approves an agreement between the parties, the court shall render an agreed protective order that is in the

best interest of the applicant, the family or household, or a member of the family or household.

(d) An agreed protective order is not enforceable as a contract.

(e) An agreed protective order expires on the date the court order expires.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 541, Sec. 1, eff. June 17, 2005.

Sec. 85.006. DEFAULT ORDER. (a) A court may render a protective order that is binding on a respondent who does not attend a hearing if the respondent received service of the application and notice of the hearing.

(b) If the court reschedules the hearing under Chapter 84, a protective order may be rendered if the respondent does not attend the rescheduled hearing.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 85.007. CONFIDENTIALITY OF CERTAIN INFORMATION.

(a) On request by a person protected by an order or member of the family or household of a person protected by an order, the court may exclude from a protective order the address and telephone number of:

(1) a person protected by the order, in which case the order shall state the county in which the person resides;

(2) the place of employment or business of a person protected by the order; or

(3) the child-care facility or school a child protected by the order attends or in which the child resides.

(b) On granting a request for confidentiality under this section, the court shall order the clerk to:

(1) strike the information described by Subsection (a) from the public records of the court; and

(2) maintain a confidential record of the information for use only by the court.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Amended by Acts 2001, 77th Leg., ch. 91, Sec. 7, eff. Sept. 1, 2001.

Sec. 85.009. ORDER VALID UNTIL SUPERSEDED. A protective order rendered under this chapter is valid and enforceable pending further action by the court that rendered the order until the order is properly superseded by another court with jurisdiction over the order.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

SUBCHAPTER B. CONTENTS OF PROTECTIVE ORDER

Sec. 85.021. REQUIREMENTS OF ORDER APPLYING TO ANY PARTY.

In a protective order, the court may:

(1) prohibit a party from:

(A) removing a child who is a member of the family or household from:

(i) the possession of a person named in the order; or

(ii) the jurisdiction of the court; or

(B) transferring, encumbering, or otherwise disposing of property, other than in the ordinary course of business, that is mutually owned or leased by the parties;

(2) grant exclusive possession of a residence to a party and, if appropriate, direct one or more parties to vacate the residence if the residence:

(A) is jointly owned or leased by the party receiving exclusive possession and a party being denied possession;

(B) is owned or leased by the party retaining possession; or

(C) is owned or leased by the party being denied possession and that party has an obligation to support the party or a child of the party granted possession of the residence;

(3) provide for the possession of and access to a child of a party if the person receiving possession of or access to the child is a parent of the child;

(4) require the payment of support for a party or for a child of a party if the person required to make the payment has an obligation to support the other party or the child; or

(5) award to a party the use and possession of specified property that is community property or jointly owned or leased property.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 85.022. REQUIREMENTS OF ORDER APPLYING TO PERSON WHO COMMITTED FAMILY VIOLENCE. (a) In a protective order, the court may order the person found to have committed family violence to perform acts specified by the court that the court determines are necessary or appropriate to prevent or reduce the likelihood of family violence and may order that person to:

(1) complete a battering intervention and prevention program accredited under Article 42.141, Code of Criminal Procedure;

(2) beginning on September 1, 2008, if the referral option under Subdivision (1) is not available, complete a program or counsel with a provider that has begun the accreditation process described by Subsection (a-1); or

(3) if the referral option under Subdivision (1) or, beginning on September 1, 2008, the referral option under Subdivision (2) is not available, counsel with a social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor who has completed family violence intervention training that the community justice assistance division of the Texas Department of Criminal Justice has approved, after consultation with the licensing authorities described by Chapters 152, 501, 502, 503, and 505, Occupations Code, and experts in the field of family violence.

(a-1) Beginning on September 1, 2009, a program or provider serving as a referral option for the courts under Subsection (a)(1) or (2) must be accredited under Section 4A, Article 42.141, Code of Criminal Procedure, as conforming to program guidelines under that article.

(b) In a protective order, the court may prohibit the person found to have committed family violence from:

(1) committing family violence;

(2) communicating:

(A) directly with a person protected by an order or a member of the family or household of a person protected by an order, in a threatening or harassing manner;

(B) a threat through any person to a person protected by an order or a member of the family or household of a person protected by an order; and

(C) if the court finds good cause, in any manner with a person protected by an order or a member of the family or household of a person protected by an order, except through the party's attorney or a person appointed by the court;

(3) going to or near the residence or place of employment or business of a person protected by an order or a member of the family or household of a person protected by an order;

(4) going to or near the residence, child-care facility, or school a child protected under the order normally attends or in which the child normally resides; and

(5) engaging in conduct directed specifically toward a person who is a person protected by an order or a member of the family or household of a person protected by an order, including following the person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the person.

(6) possessing a firearm, unless the person is a peace officer, as defined by Section 1.07, Penal Code, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

(c) In an order under Subsection (b)(3) or (4), the court shall specifically describe each prohibited location and the minimum distances from the location, if any, that the party must maintain. This subsection does not apply to an order in which Section 85.007 applies.

(d) In a protective order, the court may suspend a license to carry a concealed handgun issued under Section 411.177, Government Code, that is held by a person found to have committed family violence.

(e) In this section, "firearm" has the meaning assigned by Section 46.01, Penal Code.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Amended by Acts 1997, 75th Leg., ch. 1193, Sec. 14, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1412, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 91, Sec. 8, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 23, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 113, Sec. 4, eff. September 1, 2007.

Sec. 85.023. EFFECT ON PROPERTY RIGHTS. A protective order or an agreement approved by the court under this subtitle does not affect the title to real property.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 85.024. ENFORCEMENT OF COUNSELING REQUIREMENT.

(a) A person found to have engaged in family violence who is ordered to attend a program or counseling under Section 85.022(a)(1), (2), or (3) shall file with the court an affidavit before the 60th day after the date the order was rendered stating either that the person has begun the program or counseling or that a program or counseling is not available within a reasonable distance from the person's residence. A person who files an affidavit that the person has begun the program or counseling shall file with the court before the date the protective order expires a statement that the person completed the program or counseling not later than the 30th day before the expiration date of the protective order or the 30th day before the first anniversary of the date the protective order was issued, whichever date is earlier. An affidavit under this subsection must be accompanied by a letter, notice, or certificate from the program or counselor that verifies the person's completion of the program or counseling. A person who fails to comply with this subsection may be punished for contempt of court under Section 21.002, Government Code.

(b) A protective order under Section 85.022 must specifically advise the person subject to the order of the requirement of this section and the possible punishment if the person fails to comply with the requirement.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Amended by Acts 1997, 75th Leg., ch. 1193, Sec. 15, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 113, Sec. 5, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 770, Sec. 1, eff. September 1, 2007.

Sec. 85.025. DURATION OF PROTECTIVE ORDER. (a) Except as provided by Subsection (b) or (c), an order under this subtitle is effective:

(1) for the period stated in the order, not to exceed two years; or

(2) if a period is not stated in the order, until the second anniversary of the date the order was issued.

(b) A person who is the subject of a protective order may file a motion not earlier than the first anniversary of the date on which the order was rendered requesting that the court review the protective order and determine whether there is a continuing need for the order. After a hearing on the motion, if the court finds there is a continuing need for the protective order, the protective order remains in effect until the date the order expires under this section. If the court finds there is no continuing need for the protective order, the court shall order that the protective order expires on a date set by the court.

(c) If a person who is the subject of a protective order is confined or imprisoned on the date the protective order would expire under Subsection (a), the period for which the order is effective is extended, and the order expires on the first anniversary of the date the person is released from confinement or imprisonment.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Amended by Acts 1999, 76th Leg., ch. 1160, Sec. 3, eff. Sept. 1, 1999.

Sec. 85.026. WARNING ON PROTECTIVE ORDER. (a) Each protective order issued under this subtitle, including a temporary

ex parte order, must contain the following prominently displayed statements in boldfaced type, capital letters, or underlined:

"A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF AS MUCH AS \$500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH."

"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER."

"IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A FIREARM OR AMMUNITION."

(b) Each protective order issued under this subtitle, except for a temporary ex parte order, must contain the following prominently displayed statement in boldfaced type, capital letters, or underlined:

"A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS."

(c) Each protective order issued under this subtitle, including a temporary ex parte order, must contain the following prominently displayed statement in boldfaced type, capital letters, or underlined:

"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER."

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.
Amended by Acts 1999, 76th Leg., ch. 178, Sec. 3, eff. Aug. 30,

1999; Acts 1999, 76th Leg., ch. 1160, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 23, Sec. 5, eff. Sept. 1, 2001.

SUBCHAPTER C. DELIVERY OF PROTECTIVE ORDER

Sec. 85.041. DELIVERY TO RESPONDENT. (a) A protective order rendered under this subtitle shall be:

(1) delivered to the respondent as provided by Rule 21a, Texas Rules of Civil Procedure;

(2) served in the same manner as a writ of injunction;
or

(3) served in open court at the close of the hearing as provided by this section.

(b) The court shall serve an order in open court to a respondent who is present at the hearing by giving to the respondent a copy of the order, reduced to writing and signed by the judge or master. A certified copy of the signed order shall be given to the applicant at the time the order is given to the respondent. If the applicant is not in court at the conclusion of the hearing, the clerk of the court shall mail a certified copy of the order to the applicant not later than the third business day after the date the hearing is concluded.

(c) If the order has not been reduced to writing, the court shall give notice orally to a respondent who is present at the hearing of the part of the order that contains prohibitions under Section 85.022 or any other part of the order that contains provisions necessary to prevent further family violence. The clerk of the court shall mail a copy of the order to the respondent and a certified copy of the order to the applicant not later than the third business day after the date the hearing is concluded.

(d) If the respondent is not present at the hearing and the order has been reduced to writing at the conclusion of the hearing, the clerk of the court shall immediately provide a certified copy of the order to the applicant and mail a copy of the order to the respondent not later than the third business day after the date the hearing is concluded.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.

Sec. 85.042. DELIVERY OF ORDER TO OTHER PERSONS. (a) The clerk of the court issuing an original or modified protective order under this subtitle shall send a copy of the order, along with the information provided by the applicant or the applicant's attorney that is required under Section 411.042(b)(6), Government Code, to the chief of police of the municipality in which the person protected by the order resides, if the person resides in a municipality, or to the appropriate constable and the sheriff of the county in which the person resides, if the person does not reside in a municipality.

(b) If a protective order made under this chapter prohibits a respondent from going to or near a child-care facility or school, the clerk of the court shall send a copy of the order to the child-care facility or school.

(c) The clerk of a court that vacates an original or modified protective order under this subtitle shall notify the chief of police or constable and sheriff who received a copy of the original or modified order that the order is vacated.

(d) The applicant or the applicant's attorney shall provide to the clerk of the court:

(1) the name and address of each law enforcement agency, child-care facility, and school to which the clerk is required to mail a copy of the order under this section; and

(2) any other information required under Section 411.042(b)(6), Government Code.

(e) The clerk of the court issuing an original or modified protective order under Section 85.022 that suspends a license to carry a concealed handgun shall send a copy of the order to the appropriate division of the Department of Public Safety at its Austin headquarters. On receipt of the order suspending the license, the department shall:

(1) record the suspension of the license in the records of the department;

(2) report the suspension to local law enforcement agencies, as appropriate; and

(3) demand surrender of the suspended license from the license holder.

Added by Acts 1997, 75th Leg., ch. 34, Sec. 1, eff. May 5, 1997.
Amended by Acts 1997, 75th Leg., ch. 614, Sec. 3, eff. Sept. 1,
1997; Acts 1999, 76th Leg., ch. 1412, Sec. 4, eff. Sept. 1, 1999;
Acts 2001, 77th Leg., ch. 91, Sec. 9, eff. Sept. 1, 2001; Acts 2001,
77th Leg., ch. 35, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg.,
ch. 91, Sec. 9, eff. Sept. 1, 2001.

SUBCHAPTER D. RELATIONSHIP BETWEEN PROTECTIVE ORDER AND SUIT FOR
DISSOLUTION OF MARRIAGE AND SUIT AFFECTING PARENT-CHILD
RELATIONSHIP

Sec. 85.061. DISMISSAL OF APPLICATION PROHIBITED;
SUBSEQUENTLY FILED SUIT FOR DISSOLUTION OF MARRIAGE OR SUIT
AFFECTING PARENT-CHILD RELATIONSHIP. If an application for a
protective order is pending, a court may not dismiss the
application or delay a hearing on the application on the grounds
that a suit for dissolution of marriage or suit affecting the
parent-child relationship is filed after the date the application
was filed.

Added by Acts 1997, 75th Leg., ch. 1193, Sec. 16, eff. Sept. 1,
1997.

Sec. 85.062. APPLICATION FILED WHILE SUIT FOR DISSOLUTION
OF MARRIAGE OR SUIT AFFECTING PARENT-CHILD RELATIONSHIP PENDING.

(a) If a suit for dissolution of a marriage or suit affecting the
parent-child relationship is pending, a party to the suit may apply
for a protective order against another party to the suit by filing
an application:

(1) in the court in which the suit is pending; or
(2) in a court in the county in which the applicant
resides if the applicant resides outside the jurisdiction of the
court in which the suit is pending.

(b) An applicant subject to this section shall inform the
clerk of the court that renders a protective order that a suit for
dissolution of a marriage or a suit affecting the parent-child
relationship is pending in which the applicant is party.

(c) If a final protective order is rendered by a court other
than the court in which a suit for dissolution of a marriage or a

suit affecting the parent-child relationship is pending, the clerk of the court that rendered the protective order shall:

(1) inform the clerk of the court in which the suit is pending that a final protective order has been rendered; and

(2) forward a copy of the final protective order to the court in which the suit is pending.

(d) A protective order rendered by a court in which an application is filed under Subsection (a)(2) is subject to transfer under Section 85.064.

Added by Acts 1997, 75th Leg., ch. 1193, Sec. 16, eff. Sept. 1, 1997.

Sec. 85.063. APPLICATION FILED AFTER FINAL ORDER RENDERED IN SUIT FOR DISSOLUTION OF MARRIAGE OR SUIT AFFECTING PARENT-CHILD RELATIONSHIP. (a) If a final order has been rendered in a suit for dissolution of marriage or suit affecting the parent-child relationship, an application for a protective order by a party to the suit against another party to the suit filed after the date the final order was rendered, and that is:

(1) filed in the county in which the final order was rendered, shall be filed in the court that rendered the final order; and

(2) filed in another county, shall be filed in a court having jurisdiction to render a protective order under this subtitle.

(b) A protective order rendered by a court in which an application is filed under Subsection (a)(2) is subject to transfer under Section 85.064.

Added by Acts 1997, 75th Leg., ch. 1193, Sec. 16, eff. Sept. 1, 1997.

Sec. 85.064. TRANSFER OF PROTECTIVE ORDER. (a) If a protective order was rendered before the filing of a suit for dissolution of marriage or suit affecting the parent-child relationship or while the suit is pending as provided by Section 85.062, the court that rendered the order may, on the motion of a party or on the court's own motion, transfer the protective order to

the court having jurisdiction of the suit if the court makes the finding prescribed by Subsection (c).

(b) If a protective order that affects a party's right to possession of or access to a child is rendered after the date a final order was rendered in a suit affecting the parent-child relationship, on the motion of a party or on the court's own motion, the court may transfer the protective order to the court of continuing, exclusive jurisdiction if the court makes the finding prescribed by Subsection (c).

(c) A court may transfer a protective order under this section if the court finds that the transfer is:

(1) in the interest of justice; or

(2) for the safety or convenience of a party or a witness.

(d) The transfer of a protective order under this section shall be conducted according to the procedures provided by Section 155.207.

(e) Except as provided by Section 81.002, the fees or costs associated with the transfer of a protective order shall be paid by the movant.

Added by Acts 1997, 75th Leg., ch. 1193, Sec. 16, eff. Sept. 1, 1997.

Sec. 85.065. EFFECT OF TRANSFER. (a) A protective order transferred under Section 85.064 has the same effect as if the order remained in the court that rendered the order. The protective order may be enforced by the court that receives the order in the same manner as if the court originally rendered the order.

(b) A protective order that is transferred is enforceable by contempt or by any other means by which the court that rendered the order could enforce the order. The court that receives the protective order may punish a violation of the order regardless of whether the violation occurred before or after the date of the transfer.

(c) A protective order that is transferred is subject to modification by the court that receives the order to the same extent modification is permitted under Chapter 87 by a court that rendered

the order.

Added by Acts 1997, 75th Leg., ch. 1193, Sec. 16, eff. Sept. 1, 1997.