Protective Order Law Update: Practice, Procedures, and Pitfalls

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TWO TYPES:
FAMILY CODE & CODE OF CRIMINAL PROCEDURE

Basics of a Family Code Title 4 P.O.

As opposed to an Article 7B PO, a TFC protective order is only available to members of the household or family of the alleged offender or a person in a dating relationship with the alleged offender.

<u>Applicant must show by a preponderance of the evidence:</u>

1) Family Violence (defined by § 71.004) has occurred

Applicable Definitions for a Title 4 PO

TFC 71.004 “Family violence”:

(1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself;

(2) abuse, as that term is defined by Sections 261.001(1)(C), (E), (G), (H), (I), (J), (K), and (M), by a member of a family or household toward a child of the family or household; or

(3) dating violence, as that term is defined by Section 71.0021.

Burdens of Proof for Family Code Title 4 P.O.

TWO-YEAR PROTECTIVE ORDER:

Applicant must show by a preponderance of the evidence that family violence (defined by § 71.004—includes dating violence) has occurred

PO EXCEEDING TWO YEARS AND PROHIBITING ALL CONTACT BETWEEN A PARENT AND CHILD:

- Applicant must show clear and convincing evidence for why the order should exceed two years
- Applicant must show why no contact is in the child's best interest

Basics of Art. 7B.001 and 7B.051 Code of Criminal Procedure POs

Filing procedure is the same as a Family Code Title 4 protective order

Unlike a Title 4 protective order, a 7B protective order can be requested regardless of the relationship between Applicant and Respondent.

<u>Applicant must show reasonable grounds</u>

Under 7B.001 - that Applicant was a victim of one of the following:

Penal Code 20A.02 (trafficking), 20A.03 (,continuous trafficking), 21.02 (continuous sexual abuse of a young child or disabled individual), 21.11 (indecency with a child), 22.011 (sexual assault), 22.021 (aggravated sexual assault), 42.072 (stalking--includes harassment) or 43.05 (compelling prostitution).

<u>Applicant must show probable cause</u>

Under 7B.051 – that Applicant was victim of stalking or harassment.

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FILING A PROTECTIVE ORDER APPLICATION IN TEXAS

WHO CAN FILE

TFC 82.002

(a) With regard to family violence under Section 71.004(1) or (2), an adult member of the family or household may file an application for a protective order to protect the applicant or any other member of the applicant's family or household.

(b) With regard to family violence under Section 71.004(3), an application for a protective order to protect the applicant may be filed by:

(1) an adult member of the dating relationship; or

(2) an adult member of the marriage, if the victim is or was married as described by Section 71.0021(a)(1)(B).

(b) With regard to family violence under Section 71.004(3), an application for a protective order to protect the applicant may be filed by a member of the dating relationship, regardless of whether the member is an adult or a child.

(c) Any adult may apply for a protective order to protect a child from family violence.

(d) In addition, an application may be filed for the protection of any person alleged to be a victim of family violence by:

(1) a prosecuting attorney; or

(2) the Department of Family and Protective Services.

(e) The person alleged to be the victim of family violence in an application filed under Subsection (c) or (d) is considered to be the applicant for a protective order under this subtitle.

WHERE TO FILE

Sec. 82.003. VENUE. An application may be filed in:

(1) the county in which the applicant resides;

(2) the county in which the respondent resides; or

(3) any county in which the family violence is alleged to have occurred.

Effective September 1, 2025, new mandatory transfer language affects venue.

MUST USE OFFICE OF COURT ADMINISTRATION FORMS!!

- Senate Bill 48 – directed the OCA to create protective order forms, codified as Texas Family Code section 82.004
- A person filing a PO “shall use” mandatory forms
- Available in Word format to fill out online
- https://www.txcourts.gov/rules-forms/standardized-protective-order-forms/
- Failure to use the forms does not affect the validity and enforceability of a temporary ex parte protective order or final protective order

NOTABLE CASES FROM THE PAST YEAR

CONSTITUTIONAL LIMITATIONS

NOYES V. STATE – Lifetime Firearm Prohibitions

Facts: Trial court found "reasonable grounds" to believe Noyes had engaged in criminal stalking and issued a permanent protective order prohibiting him from possessing firearms for the remainder of his life. Noyes challenged the lifetime firearm restriction under the United States and Texas Constitutions.

Issue: Whether a lifetime firearm prohibition imposed through a stalking protective order violates the Second Amendment and Texas Constitution.

Ruling: **Texas Supreme Court** vacated and remanded for trial court reconsideration under *United States v. Rahimi*. Constitutional challenges were preserved; the Court did not decide their merits.

Court also clarified that additional requirements to grant a TFC PO for more than two years (TFC 85.025) does NOT apply to a 7B protective order (burdens of proof are not the same for lifetime POs under each code)

Takeaway: Lifetime firearm restrictions remain constitutionally contested. *Rahimi* upheld temporary disarmament of persons posing credible threats, not necessarily lifetime prohibitions. Concurring justices expressed serious constitutional concerns.

Practice tip: Be careful when asking for a lifetime P.O.

APPEALABILITY

BELMONT v. BELMONT

Protective Orders in Divorce Proceedings

Facts: During the parties' pending divorce, the trial court entered a protective order against John Belmont, titled **"Final Protective Order."** Belmont attempted to immediately appeal the protective order before the divorce was finalized. The appellate court determined that the protective order was not independently appealable while the divorce remained pending and that John's filings did not satisfy the procedural requirements for mandamus.

Issue: Whether a protective order entered during a pending divorce could be appealed immediately.

Ruling: Appeal dismissed for lack of jurisdiction.

Takeaway: Under § 81.009(b), an order entered within a divorce generally must await an appealable final divorce decree.

Practice Tip: Be careful about the sequence of filing a protective before versus during a divorce case. If defending, consider the immediate remedies if the PO is granted during the divorce.

APPEALABILITY

***VICKERS v. CHAISSON-MUNOZ* — Appealability of Protective Orders in SAPCR Proceedings**

Facts: Mother filed two protective-order applications against the father. The protective-order proceedings were heard together with a pending SAPCR modification.

Legal Issue: Whether protective orders filed under separate cause numbers are immediately appealable when heard jointly with a pending SAPCR modification.

Ruling: Appeals dismissed for lack of jurisdiction. Although filed separately, the protective-order proceedings were heard together with the SAPCR modification, and all three cause numbers appeared on the protective order. Under Texas Family Code § 81.009(c), the orders were interlocutory and not immediately appealable.

Takeaway: Attorneys should carefully consider the appellate consequences before agreeing to joint hearings or consolidation. The procedural relationship between the cases—not merely their original cause numbers—can determine appellate jurisdiction.

Practice tip: Don’t have them heard together if you can prevent it.

APPEALABILITY

RENTFRO v. RENTFRO — Untimely Appeal

Facts: Rentfro sought to appeal a protective order signed in October 2023, arguing that he had not received proper notice of the order and had subsequently filed postjudgment motions. His notice of appeal was filed long after the original appellate deadline. In 2025, he filed a motion specifically seeking to vacate it, which the trial court denied on August 19, 2025. Rentfro then filed a notice of appeal identifying the original 2023 protective order as the order he wanted to challenge.

Issue: Whether a later motion to vacate permitted an appeal from an earlier protective order.

Ruling: Appeal dismissed for lack of jurisdiction.

Takeaway: A later motion does not automatically restart the deadline to appeal the original order.

Practice tip: What could he have done instead? If he was arguing lack of actual notice, he could have filed a Bill of Review.

APPEALABILITY

IN RE SCHMIDT — Mandamus Relief Not Available to Stand-Alone P.O.

Facts: Parents were each subject to stalking protective orders issued under Chapter 7B of the Texas Code of Criminal Procedure. Rather than pursuing timely direct appeals, they filed pro se petitions for writs of mandamus challenging the orders and requesting emergency stays.

Legal Issue: Whether stalking protective orders issued under Chapter 7B of the Texas Code of Criminal Procedure are final, appealable orders, and whether mandamus is available when a party fails to pursue a direct appeal.

Ruling: Mandamus petitions denied. The Dallas Court of Appeals held that Chapter 7B stalking protective orders are final and appealable when they dispose of all parties and issues in the protective-order proceeding. Because direct appeal was available, mandamus was improper, even though the parties failed to timely appeal. The relators also failed to establish that the orders were void.

Takeaway: Mandamus cannot substitute for a missed appeal. Stalking protective orders under Chapter 7B are civil proceedings subject to the finality principles applicable to Family Code protective orders. Attorneys must timely appeal final protective orders rather than attempting to challenge them later through mandamus.

Practice tip: Where an order can be (or could have been) challenged through a direct appeal, it cannot be challenged by a petition for writ of mandamus. Become familiar with the difference between an appeal and mandamus. Even if you never file one, it will inform your strategic choices at trial and help you explain options to clients.

DRAFTING P.O. APPLICATIONS

MAHASNEH v. MAHASNEH — Evidence and Relief

Facts: Applicant sought protection from her ex-husband, who had been criminally charged with stalking her. She filed a PO under 7B and the Texas Family Code, on behalf of herself and children (adults, with one "child" being under 18 during one month of the time in question). The trial court issued a 30-year protective order protecting the former wife and members of her family and household.

Issue: Evidentiary sufficiency and other challenges to protective-order relief. Respondent also argued that the burden of proof should have been CCE because the PO kept him from communicating with his ADULT children (and one child who was a minor for one month of the protective order term).

Ruling: Protective-order findings upheld in relevant part; separate issue on attorney's fees remanded. Adult children do not create CCE burden of proof. Minor child was only a minor for one month, not over two years during duration of the order, so the standard in *Stary v. Ethridge* did not apply.

Takeaway: Distinguish challenges to the family violence finding from challenges to particular relief.

Practice tip: Calculate whether child will be a minor for less than 2 years under PO.

DRAFTING P.O. APPLICATIONS

ARIZOLA v. RODRIGUEZ — Persons Protected by the Order

Facts: Applicant sought a protective order against her former live-in boyfriend after alleging that he pulled her hair during a family gathering, bit her face, and threatened their adult daughter and her boyfriend with a firearm. The protective order did not state the names of her children. Neither Arizola nor his attorney appeared at the final hearing, and the court entered a two-year protective order protecting all three individuals, listing the individual children's names. Respondent argued that the trial court abused its discretion by entering a protective order that ordered more or greater relief than the application supported or requested. (Applicant's live-in boyfriend was included in final order).

Issue: Whether including additional protected persons exceeded the pleadings and denied notice.

Ruling: Protective order affirmed. Court found that the application requested protection for "household members," and it was clearly stated in the affidavit that the children were household members of the Applicant (they were her children); therefore, Respondent had sufficient notice that their children were included in the request for a PO.

Takeaway: Plead and establish the basis for protecting additional family or household members.

Practice tip: Be cautious when adding other household members to the protective order application; list them by name, especially if the additional "protected persons" are not biological relatives of the Applicant.

DRAFTING FINAL ORDERS

ZBIKOWSKI v. FLUEGGE — Findings and Order Drafting

Facts: District attorney applied for a protective order on behalf of a man and his wife against the wife's brother. The trial court issued a two-year protective order protecting the Applicant brother-in-law and Respondent's sister.

Issue: Factual sufficiency and accuracy of protective-order provisions.

Ruling: Protective order affirmed though modified. The appellate court corrected some errors on the final order and remove an improper finding.

Takeaway: Verify the designation of applicants, respondents, and protected persons before entry.

Practice tip: This was a pro se appeal. According to the appellate court, the pro se Appellant's brief "present[ed] multifarious issues that are difficult to comprehend." And yet, the court still carefully analyzed the factual sufficiency of the evidence. Make sure your evidence meets the statutory requirements.

******Take some time to meticulously review your affidavit/declaration. I often see protective order applications that, when read carefully, do not actually allege any act that meets the definition of Texas Family Code 71.004******

CRIMINAL ENFORCEMENT OF PROTECTIVE ORDERS

LAYTON v. STATE – Notice of Extension Order

Facts: A protective order issued against William Layton following family violence against his former wife was subsequently extended while he was incarcerated on an unrelated matter. Layton was later convicted of violating the extended order, although the State had not established that he knew about the extension.

Issue: Whether knowledge of an original protective order establishes the required mental state for violating a subsequently extended order.

Ruling: Conviction reversed and acquittal rendered. State failed to establish knowledge of the extension; an instruction directing service did not prove service occurred.

Takeaway: Document service of modified or extended orders. Original notice alone may be insufficient for criminal enforcement. Current statutory warnings regarding automatic extensions are particularly important.

Practice tip: Make sure the final PO contains the statutory language that it is extended. If it's not, you will need to modify and treat it like a new suit.

PROCEDURAL SAFEGUARDS

IN RE SUS — Protective Order Hearing Deadlines

Facts: Respondent sought mandamus relief in connection with the scheduling of a protective-order hearing, contending that the trial court had failed to comply with the statutory hearing deadlines under Texas Family Code § 84.004. He was served within 48 hours of the hearing, but failed to appear and was defaulted. Court signed PO. He filed a request to reschedule, which was denied, and then filed a mandamus.

Issue: Mandamus challenge involving the statutory timing requirements for protective-order hearings.

Ruling: Mandamus denied.

Takeaway: Apply Family Code § 84.004 carefully when requesting continuances or opposing postponements.

Practice tip: If you represent the Respondent and know notice is insufficient, you must still appear to object and ask for a reset. If you fail to, and they are defaulted, the proper procedure is a motion for new trial/appeal of the final order, NOT a mandamus.

PROCEDURAL SAFEGUARDS

ALAZZAWI v. ALGHARRAWI — Lost Trial Record

Facts: In litigation involving a divorce and protective order, the husband appealed adverse rulings, but substantial portions of the trial proceedings couldn't be adequately reconstructed from the court reporter's records. The dispute over the missing or unusable record became central to the appeal and the request for a new trial.

Issue: Whether an unavailable trial record required a new trial.

Ruling: Divorce decree and protective order reversed; case remanded. Alazzawi showed a significant portion of the reporter's record was lost; that no fault was attributable to him; that the lost portion was necessary to his appeal; and that the parties cannot agree to a replacement of the missing portion of the record. Court also discussed the "mootness doctrine."

Takeaway: A lost trial record can result in a new trial.

Practice tip: Ensure protective-order hearings are recorded and the record preserved. At trial, always be thinking about what you need to do to preserve appeal.

MODIFYING AND VACATING PROTECTIVE ORDERS

TATE v. LANDA — Modification Jurisdiction

Facts: The final PO was granted under both CCP 7B and TFC. After Applicant obtained a lifetime protective order against Respondent in 2019 based on stalking and family-violence allegations, Respondent subsequently sought to modify its restrictions—specifically, to allow him to possess a firearm. The trial court denied his postjudgment motion, prompting an appeal and later a request for mandamus review.

Issue: Whether the trial court retained authority to consider modification of an existing protective order.

Ruling: Trial court erred. Court recognized jurisdiction to consider relief under Family Code § 87.001. Article 7B specifies who may apply for recission of a protective order, and it is clear that offenders are not permitted to make that request; however, Respondent was permitted to request modification.

Takeaway: Trial Court He could not "rescind" under 7B because Respondents are not permitted to do so; but he could seek "modification" under the Family Code.

Practice tip: Pay close attention to the separate avenues for recission or modification under the CCP vs. TFC.

MODIFYING AND VACATING PROTECTIVE ORDERS

IKHLAS V. RASOOLI — Denial of Motion to Dissolve

Facts: Ikhlas sought review, modification, or dissolution of an existing protective order under Texas Family Code § 85.025(b), arguing that the order was no longer necessary. After the trial court denied the motion, Ikhlas attempted a direct appeal and alternatively requested mandamus relief.

Issue: Whether denial of a motion to review or dissolve a protective order is appealable.

Ruling: Appeal dismissed for lack of jurisdiction.

Takeaway: Denial of review under § 85.025(b) does not itself create a new appealable protective order.

Practice tip: You cannot use denial of a modification as a method to attack the original underlying PO. Advise clients on their appellate remedies and stress the deadlines.

EVIDENCE AND CREDIBILITY

SHAW v. SHAW — P.O. GRANTED

Facts: During a pending divorce, Applicant sought a protective order alleging that her husband had repeatedly physically and emotionally abused her, threatened to kill or deport her, and assaulted her during an argument over her telephone. Following a three-day hearing, the trial court granted the protective order.

Issue: Sufficiency of evidence supporting family violence findings.

Ruling: Protective order affirmed.

Takeaway: Appellate courts defer substantially to trial courts' credibility determinations. Appellate court stated, “evidence does not have to be corroborated.”

Practice tip: This case is an excellent example of how factual sufficiency challenges are difficult to win on appeal. Respondent pointed out all of the facts that he believed undermined Applicant’s claims that assault occurred, but the trial court was free to disregard them.

Say it with me: “Testimony is evidence.” A PO can be granted based on a witness who is believable and a judge who believes them.

EVIDENCE AND CREDIBILITY

VEST v. VEST — P.O. DENIED

Facts: Applicant, age 77, sought a protective order against her husband of nearly 40 years, alleging that he had physically attacked her and caused injuries requiring medical attention. Applicant was confused about the facts and admitted to drinking. The trial court denied the protective order but entered permanent injunctions restricting the husband's conduct. Applicant appealed.

Issue: Whether the trial court improperly denied a requested protective order despite assault allegations.

Ruling: Trial court affirmed.

Takeaway: Even serious allegations may fail when the trial court finds the supporting testimony not credible.

Practice tip: Be really careful about how much you revise your client's Applicant statement; make sure to review it before the hearing. If defending, be prepared to cross-examine Applicant about inconsistencies and unusual language that sounds like it was written by an attorney or AI. Ask the Applicant if any part of the statement was written by AI.

ATTORNEY'S FEES

STATE FOR PROTECTION OF WALLIS v. ETHERIDGE — Statutory Interpretation

Facts: Sarah Wallis applied for a protective order against Alexis Etheridge based on alleged family violence, but the trial court found insufficient grounds for relief. The court denied the application and ordered Wallis to pay $1,110 in attorney's fees, prompting her appeal without a reporter's record.

Issue: Whether the trial court correctly interpreted 81.005 in awarding attorney's fees to a Respondent.

Ruling: Denial of protective order affirmed; separate statutory ruling reversed and remanded.

Takeaway: Court abused its discretion in granting fees.

Practice tip: Respondent can't get attorney's fees under this specific statute (at least, in this appellate jurisdiction (Tyler).

ATTORNEY'S FEES

FOURIE v. FOURIE

Facts: Applicant filed protective order application in Montgomery County after earlier application was denied in Harris County. Respondent moved for Rule 13 sanctions.

Issue: Whether trial court abused its discretion in denying protective order and awarding attorney's fees against Applicant.

Ruling: Denial of protective order affirmed; affirmed Rule 13 sanctions but reversed the $5000 sanction amount for insufficient evidence of reasonable attorney's fees, remanding for a supported amount.

Takeaway: Respondent can be awarded attorney's fees if another statutory basis exists. Res judicata applies to POs.

Practice tip: If you represent a Respondent, consider whether the application is sanctionable under CPRC 10 or TRCP 13.

OTHER INTERESTING CASES

TAYLOR v. NORTON — Standing After Termination of Parental Rights

Facts: Granddaughter applied for protective order to protect her grandmother from alleged abuse and exploitation by her mother. Although Respondent's parental rights to her daughter had previously been terminated and the daughter had been adopted, the daughter maintained that she remained a family member entitled to seek protection for her biological grandmother.

Issue: Whether termination of a parent's rights eliminates the child's biological relationship with a grandparent for protective-order standing.

Ruling: Protective order affirmed; consanguinity remained. "Preserving the legal effect of the biological descent relationship for both inheritance and consanguinity would be more harmonious than preserving the legal effect of that relationship for one and destroying it for the other."

Takeaway: Termination of parental rights does not necessarily eliminate qualifying biological relationships under protective-order statutes.

Practice tip: Make sure when you file an application under Texas Family Code, you check familial relationships if they are required by statute.

OTHER INTERESTING CASES

TRAVIS v. VANDERBILT — Mediated Settlement Agreements

Facts: During divorce proceedings, April Vanderbilt sought a protective order against Keith Travis, alleging stalking, threats, property tampering, and interference with security equipment. The parties subsequently signed a mediated settlement agreement providing for a lifetime protective order, but Travis later sought to reduce its duration to two years.

Issue: Whether the trial court was required to enter an agreed protective order contained in a binding divorce MSA.

Ruling: Court held that Family Code § 6.602 required entry of the agreed order.

Takeaway: Carefully draft protective-order provisions in MSAs; binding settlement language can control entry of the order.

Practice tip: If you decide to mediate a PO, take the application with you and make sure that the MSA tracks exactly what you agreed to. Also consider the long-term legal ramifications of agreeing to a lifetime PO.

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CITATIONS

1. Noyes v. State, 735 S.W.3d 731 (Tex. 2026) (per curiam).
2. Belmont v. Belmont, No. 02-25-00388-CV, 2025 WL 2492351 (Tex. App.—Fort Worth Aug. 29, 2025).
3. Vickers v. Chaisson-Munoz, Nos. 13-26-00222-CV & 13-26-00223-CV, 2026 WL 2138920 (Tex. App.—Corpus Christi–Edinburg July 24, 2026) (mem. op.).
4. Rentfro v. Rentfro, No. 02-25-00481-CV, 2025 WL 3038951 (Tex. App.—Fort Worth Oct. 30, 2025).
5. In re Schmidt, Nos. 05-26-00492-CV & 05-26-00557-CV, 2026 WL 1853830 (Tex. App.—Dallas June 26, 2026, orig. proceeding) (mem. op.).
6. Mahasneh v. Mahasneh, No. 02-25-00076-CV, 2026 WL 784900 (Tex. App.—Fort Worth Mar. 19, 2026).
7. Arizola v. Rodriguez, No. 02-25-00172-CV, 2026 WL 406036 (Tex. App.—Fort Worth Feb. 12, 2026).
8. Zbikowski v. Fluegge, No. 04-24-00651-CV, 2025 WL 3538958 (Tex. App.—San Antonio Dec. 10, 2025).
9. Layton v. State, No. 13-24-00521-CR, 2026 WL 3025241 (Tex. App.—Corpus Christi–Edinburg Oct. 8, 2026) (mem. op., not designated for publication).
10. In re Sus, No. 14-25-01028-CV, 2025 WL 3280735 (Tex. App.—Houston [14th Dist.] Nov. 24, 2025, orig. proceeding) (mem. op.).
11. Alazzawi v. Algharrawi, No. 08-23-00326-CV, 2026 WL 1001907 (Tex. App.—El Paso Apr. 13, 2026) (substituted op.).
12. Tate v. Landa, No. 01-23-00656-CV, 2025 WL 2697839 (Tex. App.—Houston [1st Dist.] Sept. 23, 2025).
13. Ikhlas v. Rasooli, No. 14-25-00733-CV, 2026 WL 2123399 (Tex. App.—Houston [14th Dist.] July 23, 2026) (mem. op.).
14. Shaw v. Shaw, No. 02-25-00376-CV, 2026 WL 1614603 (Tex. App.—Fort Worth June 4, 2026).
15. Vest v. Vest, No. 05-24-00898-CV, 2025 WL 3036667 (Tex. App.—Dallas Oct. 30, 2025).
16. State for Protection of Wallis v. Etheridge, No. 12-25-00190-CV, 2026 WL 696912 (Tex. App.—Tyler Mar. 11, 2026).
17. Taylor v. Norton, 727 S.W.3d 511 (Tex. App.—Texarkana 2025).
18. Travis v. Vanderbilt, No. 03-25-00528-CV, 2026 WL 1194006 (Tex. App.—Austin May 1, 2026).