

CHAPTER 6A—PROTECTIVE ORDERS FOR VICTIMS OF ANY TYPE OF HUMAN TRAFFICKING—PART I: STATUTES AND CASE LAW

(Tex. Code Crim. Proc. Art. 7B; Tex. Fam. Code Title 4)

Summary:

When it passed HB 2329, the 82nd Texas Legislature created a new type of protective order for victims of human trafficking. If there are reasonable grounds to believe a person has been a victim of a human trafficking offense, the person may be entitled to a temporary protective order. If there is a criminal charge pending, or after a conviction for, a human trafficking offense under [Tex. Penal Code § 20A.02](#), a protective order can issue to protect the victim.

An Article 7B protective order differs from an Art. 7A order in that the former is available to a victim of any type of human trafficking under [Tex. Penal Code § 20A.02](#); and requires the filing of a related criminal charge (except for a temporary order under Art. 7B.02).

Except as specified in Article 7B, the procedures in Texas Family Code Title 4 control in an Article 7B proceeding. Art. 7B has three types of protective order: a temporary order, a pre-trial order that lasts until the disposition of the associated criminal charge; and a post-trial order that can last up to the lifetime of the applicant or offender. Art. 7B.02 temporary order statute makes no mention of an associated criminal charge. The pretrial and post-trial orders are premised on the perpetrator's prosecution for a human trafficking offense, a requirement that distinguishes the Article 7B order from a Title 4 Family Code protective order or a Code of Criminal Procedure Article 7A protective order.

Despite the required language in the protective order's warning, a violation of an Art. 7B protective order is not a criminal offense. Neither [Tex. Penal Code § 25.071](#), [Tex. Penal Code § 38.112](#), or [Tex. Penal Code § 46.04](#) apply to an Article 7B order. However, depending on whom

the order protects and what findings it contains, it may be a violation of the federal Gun Control Act to possess a firearm while restrained by an Article 7B order. [18 U.S.C. § 921](#) and [18 U.S.C. § 922\(g\)\(8\)](#).¹

The confidentiality provisions of [Tex. Code Crim. Proc. art. 57D.02](#), which allow a victim of human trafficking to elect to be known by a pseudonym “in all public files and records” including “records of judicial proceedings”, apply to Article 7B protective orders.

6A.1 Eligibility; jurisdiction; venue.

A human trafficking victim is eligible for a temporary or permanent protective order under Tex. Code Crim. Proc. Article 7B, regardless of the relationship between the victim and the alleged offender (the person to be restrained), if the offense alleged or proven was in violation of any subsection of [Tex. Penal Code § 20A.02](#). Except for the temporary order under Article 7B.02, there must be a related pending or resolved criminal case for an Article 7B protective order to issue.

[\(Tex. Code Crim. Proc. art. 7B.01\(a\)\)](#)

6A.1.1 Controlling law.

Except as otherwise stated in Article 7B, this proceeding is controlled by Texas Family Code Title 4.

[\(Tex. Code Crim. Proc. art. 7B.05\)](#)

¹ [18 U.S.C. § 921](#) makes it an offense to possess a firearm while restrained by a protective order, which is defined in [18 U.S.C. § 922\(g\)\(8\)](#) as a court order issued after notice and an opportunity to be heard that restrains a person from harassing, stalking, or threatening an intimate partner or child of an intimate partner or engaging in conduct that would place an intimate partner in fear of bodily injury to the intimate partner or child and includes a finding that the person restrained represents a credible threat of physical safety to such intimate partner or child or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

6A.1.2 Standing to apply.

An application may be filed by:

(1) the victim of conduct by the offender that violates [Tex. Penal Code § 20A.02](#);

(2) the parent or guardian of a victim under 18 years of age;

OR

(3) a prosecuting attorney.

[\(Tex. Code Crim. Proc. art. 7B.01\(a\)\)](#)

6A.1.3 Where to file.

The application must be filed in :

6A.1.3.1 Type of Court:

(1) district court;

(2) juvenile court with district court jurisdiction;

(3) county court at law;

OR

(4) constitutional county court.

6A.1.3.2 Venue.

Venue lies in the county:

(1) where applicant resides;

OR

(2) where the alleged offender resides.

[\(Tex. Code Crim. Proc. art. 7B.01 \(a\)\)](#)

6A.1.4 Fees.

6A.1.4.1 No fees for applicant.

An applicant may **NOT** be assessed fees, costs, or other charges in connection with the filing, serving, entering, or transferring of a protective order. This prohibition covers motions to dismiss, modify, or withdraw a protective order, certified copies of the order, court reporter or judicial fund fees, and any other fee associated with a protective order.

[\(Tex. Fam. Code § 81.002\)](#)

6A.1.4.2 No fees for alleged offender.

Although Title 4 of the Texas Family Code authorizes assessment of fees (including attorney's fees), the assessment is tied to a finding that the person committed family violence. Such a finding may be inapplicable to a protective order under Art. 7B. Therefore, absent a finding of family violence, there is *no direct statutory authority permitting the assessment of fees or other costs against the alleged offender in this type of hearing.*

[\(Tex. Fam. Code § 81.003\)](#)

6A.2 *Contents of the application.*

The application must contain:

- the name and county of residence of applicant and alleged offender;
- a detailed description of the relevant facts establishing the applicant is a victim of conduct that violates [Tex. Penal Code § 20A.02](#) by the person to be restrained;
- for orders under Art. 7B.03 or Art. 7B.04, an allegation that the person to be restrained has been charged with or convicted of an offense under [Tex. Penal Code § 20A.02](#) and the applicant is the victim of that conduct;
- a request for a protective order;

AND

- if a temporary order is sought under Art. 7B.02, the applicant's sworn statement (which does not have to be notarized). (See [Tex. Civ. Prac. & Rem. Code § 132.001](#)).

[\(Tex. Fam. Code § 82.009\)](#)

6A.3 *Temporary protective order.*

A temporary protective order is available without notice to the alleged offender and without a hearing.

6A.3.1 Notice; service; hearing.

The temporary protective order may be issued without:

- prior notice to the alleged offender;
- service of process on the alleged offender;
- a criminal charge being filed against the offender;

OR

- a hearing, **UNLESS** the applicant is requesting that the alleged offender be excluded from the offender's residence, in which case the applicant must provide sworn written and oral testimony and appear in person at a hearing to request the exclusion. See § 3.2.3.

[\(Tex. Code Crim. Proc. art. 7A.02; Tex. Fam. Code § 83.006\)](#)

6A.3.2 Temporary protective order contents.

To issue a temporary order under this section, the court must have:

- received a properly completed application;

AND

- made a finding that there is a clear and present danger that the alleged offender will traffic the applicant in a manner that constitutes an offense

under [Tex. Penal Code § 20A.02](#) or that the victim will otherwise suffer harm described by that section.

([Tex. Code Crim. Proc. art. 7B.02](#); [Tex. Fam. Code § 83.002](#))

The temporary order must:

- contain the required finding that the alleged offender presents a clear and present danger of harm to the applicant or the applicant’s family or household members;
- set the duration of the order, not to exceed 14 days (20 days in district courts with multiple counties or in counties over 2 million in population). The temporary order may be extended;
- state whether the alleged offender is required to post bond;
- if an exclusion from the alleged offender’s residence is ordered, contain a finding that the applicant resides at the premises or has resided there within the past 30 days and that either the applicant has a legal interest in the property or the alleged offender is required to support the applicant or the applicant’s child;
- list the acts the alleged offender is required to do or to refrain from doing;
- list the persons with whom the alleged offender may not have contact;
- list the places the alleged offender must avoid;
- state the distance that the alleged offender must maintain from any person or location listed in the “stay away” provisions of the order;

AND

- contain the warning set out in [Tex. Code Crim. Proc. art. 7B.07](#).

NOTE: For procedures when the applicant requests the offender vacate a residence, see § 3.2.2.

[\(Tex. Code Crim. Proc. art. 7B.02; Tex. Fam. Code § 83.001; Tex. Fam. Code §83.002; Tex. Fam. Code § 83.003; Tex. Fam. Code § 83.004; Tex. Fam. Code § 83.005; Tex. Fam. Code § 83.006 Tex. Fam. Code § 85.021\)](#)

6A.3.3 Warning for temporary, pretrial, and post-trial orders.

The temporary and permanent order must contain the following warning, in letters that are either bold type, underscored, or in all caps:

“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.”

The statute also requires a temporary protective order to include the following language, even though this language is misleading (at best) because violating an Article 7B protective order is NOT a criminal offense nor is possession of firearms while restrained by the order a *state* offense. Depending on what the order prohibits and who it protects, possession of a firearm while restrained by

an Article 7B order might violate the federal Gun Control Act. [18 U.S.C. § 921](#) and [18 U.S.C. § 922\(g\)\(8\)](#).²

“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 A SEPARATE OFFENSE MAY BE PROSECUTED AS A SEPARATE OFFENSE IN ADDITION TO A VIOLATION OF THIS ORDER.”

[\(Tex. Code Crim. Proc. art. 7B.06\)](#)

6A.3.4 Enforcing an order to vacate a residence.

If the temporary or permanent order includes a requirement that the alleged offender vacate his residence, the court shall, upon request, issue an order requiring the appropriate law enforcement agency to:

- accompany the victim to the residence;
- inform the alleged offender of the order to vacate;
- protect the applicant while the applicant takes possession;

AND

- protect the applicant during the time it takes to gather up personal property if the alleged offender refuses to vacate the residence.

² [18 U.S.C. § 921](#) makes it an offense to possess a firearm while restrained by a protective order, which is defined in [18 U.S.C. § 922\(g\)\(8\)](#) as a court order issued after notice and an opportunity to be heard that restrains a person from harassing, stalking, or threatening an intimate partner or child of an intimate partner or engaging in conduct that would place an intimate partner in fear of bodily injury to the intimate partner or child and includes a finding that the person restrained represents a credible threat of physical safety to such intimate partner or child or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

[\(Tex. Fam. Code § 86.003\)](#)

6A.3.5 Duration.

The duration of the temporary order must not exceed 14 days (but may be up to 20 days in district courts with multiple counties or in counties over 2 million in population). The temporary order is subject to multiple extensions for the same duration as the initial order.

[\(Tex. Fam. Code § 83.002\)](#)

6A.4 *Pretrial protective order.*

If a criminal charge of human trafficking is still pending when the protective order application is heard, the applicant may be granted a pretrial protective order that lasts until the disposition of the criminal case. (This order should not be confused with the temporary order available under Art. 7B.02.)

6A.4.1 Required findings.

To issue a pretrial protective order under Art. 7B.03, the court must have:

- received a properly completed application;

AND

- made a finding that:
 - the applicant is younger than 18 years of age or, regardless of age, the subject of a threat that reasonably places the applicant in fear of further harm from the offender;

AND

- reasonable grounds exist to believe the applicant is the victim in the criminal case brought against the alleged offender for a human trafficking offense under [Tex. Penal Code § 20A.02](#).

[\(Tex. Code Crim. Proc. art. 7B.03; Tex. Fam. Code § 85.001\)](#)

6A.4.2 Conditions.

In the protective order, the following conditions may be imposed as necessary to protect the victim or the victim’s family or household. The court may require the defendant:

- (1) to take a specified action necessary or appropriate to prevent or reduce the likelihood of future harm;

AND

- (2) not to:

- communicate directly or indirectly in a threatening or harassing manner;
- go near the residence, work place, school, or child-care facility of a person protected by the order;
- engage in conduct, including following a person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass;

- harm, threaten, or interfere with the care, custody, or control of a pet, companion animal, or assistance animal that is possessed by a person protected by an order or by a member of the family or household of a person protected by the order;
- possess a firearm (unless the defendant works full time as a licensed peace officer);

OR

- carry a concealed handgun (by suspending a license issued under [Tex. Gov't Code § 411.177](#)).

NOTE: The federal authorities recommend that the order contain a “Brady marker,” which is some notation or finding that the respondent is subject to the prohibitions on firearm possession under [18 U.S.C. § 921](#). See chapter 14, *infra*.

([Tex. Code Crim. Proc. art. 7B.05](#); [Tex. Fam. Code § 85.021](#);

6A.4.3 Duration.

The pretrial protective order is effective until the date the alleged offender is convicted or acquitted or the disposition of the criminal case against the alleged offender.

([Tex. Code Crim. Proc. art. 7B.03](#))

6A.5 *Post-trial protective order.*

A permanent protective order may be granted after the disposition of a criminal charge of human trafficking against the offender.

6A.5.1 Required findings.

To issue a post-trial protective order under this section, the court must have:

- received a properly completed application;

AND

- made a finding that:
 - the applicant is younger than 18 years of age or, regardless of age, the subject of a threat that reasonably places the applicant in fear of further harm from the alleged offender;

AND

- reasonable grounds exist to believe the applicant is the victim of a human trafficking offense under [Tex. Penal Code § 20A.02](#) for which the offender has been convicted.

[\(Tex. Code Crim. Proc. art. 7B.04; Tex. Fam. Code § 85.001\)](#)

6A.5.2 Conditions.

In the protective order, the following conditions may be imposed as necessary to protect the victim or the victim's family or household. The court may require the defendant:

- (1) to take a specified action necessary or appropriate to prevent or reduce the likelihood of future harm;

AND

(2) not to:

- communicate directly or indirectly in a threatening or harassing manner;
- go near the residence, work place, school, or child-care facility of a person protected by the order;
- engage in conduct, including following a person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass;
- harm, threaten, or interfere with the care, custody, or control of a pet, companion animal, or assistance animal that is possessed by a person protected by an order or by a member of the family or household of a person protected by the order;
- possess a firearm (unless the defendant works full time as a licensed peace officer);

OR

- carry a concealed handgun (by suspending a license issued under [Tex. Gov't Code § 411.177](#)).

NOTE: The federal authorities recommend that the order contain a “Brady marker,” which is some notation or finding that the respondent is subject to the prohibitions on firearm possession under [18 U.S.C. § 921](#). See chapter 14, *infra*.

([Tex. Code Crim. Proc. art. 7B.05](#); [Tex. Fam. Code § 85.021](#);

6A.5.3 Duration.

The post-trial protective order lasts:

- for the time specified in the order;
- for two years, if no other period is specified in the order;
- for more than two years (up to the lifetime of the applicant or offender) if the court found reasonable cause to believe that the applicant is subject to a threat that places the victim in reasonable fear of further harm from the offender;
- if the offender was confined or imprisoned when the order issued, until the first anniversary after the offender is released from imprisonment or confinement;

OR

- until the order is rescinded at the request of:
 - an applicant, if the applicant is 18 years of age or older;

OR

- at the request of the parent or guardian of an applicant who is under 18 years of age.

NOTE: With regard to a conflict with [Tex. Fam. Code § 85.025](#), Art. 7B prevails.

([Tex. Code Crim. Proc. art. 7B.08](#))

6A.6 *Hearing.*

Art. 7B does not specifically address the issues of notice, settings, continuances, answers, agreed or separate orders, or defaults so the applicable procedures must be extrapolated from Texas Family Code Title 4. For instance, Article 7B does not specifically state what sort of notice must be provided to a defendant prior to holding the protective order hearing but its reference to the procedures set out in Texas Family Code Title 4 indicates that the safest course is to follow the requisites of the latter.

6A.6.1 **Minimum notice period for hearing.**

The alleged offender is entitled to at least 48 hours prior notice of the hearing date and time and the alleged offender's request for a resetting for failure to give the minimum notice must be granted.

[\(Tex. Fam. Code § 84.003; Tex. Fam. Code § 84.004\)](#)

6A.6.2 **Initial setting for hearing.**

The initial setting for the hearing must be:

- no later than the 14th day after the protective order application was filed for all courts **EXCEPT**
- in *district courts* that cover multiple counties or in district courts in counties over 2 million in population, the hearing may, upon request of the applicant's representative, be set no later than the 20th day after the application was filed.

[\(Tex. Fam. Code § 84.001; Tex. Fam. Code § 84.002\(a\)\)](#)

6A.6.3 **Resetting the hearing for insufficient notice.**

If the alleged offender is not served with notice of hearing at least 48 hours before the scheduled hearing time, either the applicant or the alleged offender may request the hearing be rescheduled for a date that is:

- within 14 days of the date the request was made;

OR

- within 20 days of the request for cases in the district courts in counties with a population over 2 million or that cover multiple counties.

[\(Tex. Fam. Code § 84.003; Tex. Fam. Code § 84.004\)](#)

6A.6.4 Continuances.

- The court has discretion over whether to grant a legislative continuance requested pursuant to [Tex. Civ. Prac. & Rem. Code § 30.003](#).

[\(Tex. Fam. Code § 84.005\)](#)

- The court **may not** continue or reset a hearing to consolidate it with a subsequently filed protective order application even if that protective order application was filed in conjunction with a divorce or SAPCR proceeding.

[\(Tex. Fam. Code § 84.001; Tex. Fam. Code § 85.061\)](#)

- Conducting discovery is not a basis for continuing a protective order case.³

6A.6.5 Order based on the parties' agreement.

³ *Martinez v. Martinez*, [52 S.W.3d 429](#) (Tex. App.—Fort Worth 2001, pet. denied).

There is no specific authority for entering an order based on an agreement between the applicant and the alleged offender.⁴ If the alleged offender does not contest the application, the court can enter an order based on stipulated or deemed facts.

6A.6.6 Separate or “mutual” protective orders.

There is no authority for entering a separate or “mutual” protective order that imposes criminally enforceable provisions against an applicant.⁵

6A.7 Answer.

An alleged offender may, but is not required to, file an answer at any time before the hearing.

[\(Tex. Fam. Code § 82.022\)](#)

6A.8 Default.

Whether or not the alleged offender files an answer, if the alleged offender fails to appear or be represented at the hearing, a default judgment may be entered after:

- proof of proper service of notice (service at least 48 hours before the hearing time or a rescheduled hearing);

⁴ Texas Code Criminal Proc. art. 7B refers only to “protective orders,” not to “agreed orders.” Title 4 of the Family Code treats protective orders slightly differently from “agreed order” so it is debatable that the procedure for agreed orders set out in Chapter 85 of the Family Code should be utilized in the context of article 7A protective orders. See Chapter 3. ([Tex. Fam. Code § 85.005](#) and [Tex. Fam. Code § 85.021](#))

⁵ In order to require a party to act or refrain from engaging in conduct, the court must find the person has committed family violence. Because Art. 7B does not require a finding of family violence, there does not appear to be a basis for entering a separate order against a person requesting a protective order under Art. 7B. ([Tex. Fam. Code §§ 85.001\(b\)](#), [Tex. Fam. Code § 85.003](#) and [Tex. Fam. Code § 85.022](#))

- the court deems the allegations in the application to be true and finds that the deemed facts are sufficient to support a finding that the alleged offender committed a sexual assault and a protective order is necessary to protect the victim;

AND

- proof of any evidence necessary to support the sanctions (terms and conditions imposed upon the alleged offender) imposed by the order.

[\(Tex. Fam. Code § 84.003; Tex. Fam. Code § 84.004, Tex. Fam. Code § 85.006; Tex. R. Civ. P. 107; Tex. R. Civ. P. 239; Tex. R. Civ. P. 243\)](#)

6A.9 Service and delivery.

6A.9.1 Service.

The protective order shall be delivered to the offender or alleged offender:

- as provided by [Tex. R. Civ. P. Rule 21a](#) (in person, by mail, or by facsimile to the person or the person's attorney);
- served in the same manner as a writ of injunction ([Tex. R. Civ. P. 689](#));

OR

- served in open court at the close of the protective order hearing.

NOTE: Oral warning required at hearing. If the order has not been reduced to writing but the (alleged) offender appears at the hearing, the court shall orally warn the person about any of the prohibitions listed in [Tex. Fam. Code § 85.022](#) that apply and of any other provisions necessary to prevent violence.

[\(Tex. Fam. Code § 85.041\)](#)

6A.9.2 Delivery to the victim and others.

The court's clerk shall send a copy of the order to:

- the victim or the victim's attorney (this is a certified copy);
- the local law enforcement agency (**either** the police department **or** the sheriff's office but not directly to the Department of Public Safety) having jurisdiction over the victim's residence. This copy of the order must be accompanied by a completed DPS protective order data entry sheet (see § 19.11);
- a school or child-care facility, if the alleged offender is ordered to stay away from the premises of that school or facility and if the victim has provided the address to the clerk;
- if the restrained person is a member of the state military force or is on active-duty status serving in the United State armed forces, to the staff judge advocate at the Joint Force Headquarters or the provost marshal of the military installation to which the respondent is assigned for immediate notification of the respondent's commanding officer ([Tex. Fam. Code § 85.042](#); Tex. Code Crim. Proc. art. 42.0182);

AND

- if the order suspends a concealed handgun license, to the Department of Public Safety's Concealed Handgun Division.

[\(Tex. Fam. Code § 85.042\)](#)

6A.10 Enforcement.

A violation of an Chapter 7B protective order is NOT a criminal offense. However a violator is subject to punishment for contempt of court.

[\(Tex. Code Crim. Proc. art. 7B.01\)](#)

6A.11 *Rescission of the order.*

The victim or the victim's parent or guardian (for victims under 18 years of age) may file to rescind the protective order at any time.

[\(Tex. Code. Crim. Proc. 7B.08\(c\)\)](#)

6A.12 *Confidentiality of victim's information.*

The victim of an offense may file a pseudonym form (developed by the state attorney general's office) requesting that a pseudonym be used instead of the victim's name in all public files and records concerning the offense, including records of judicial proceedings. Once the form is filed with law enforcement, the law enforcement agency must honor the request or provide notice of the filing to the state's attorney. After receiving notice of the filing, the state's attorney is thereafter responsible for ensuring that the pseudonym is used in all legal proceedings concerning the offense.

[\(Tex. Code. Crim. Proc. 57D.02\)](#)