

**CHAPTER 5—PROTECTIVE ORDERS FOR VICTIMS OF
COMPELLED PROSTITUTION, SEXUAL ASSAULT, STALKING,
OR HUMAN TRAFFICKING (FOR SEXUAL EXPLOITATION),
(Art. 7A)—PART I: STATUTES AND CASE LAW**

**(Tex. Code Crim. Proc. Ch. 7A;
Tex. Fam. Code Title 4)**

Note: 2013 legislative changes are noted in red.

Summary:

Under Texas Code of Criminal Procedure Article 7A, a protective order is available to a victim of certain criminal conduct (sexual assault, stalking, human trafficking (for sexual exploitation), or compelling prostitution) regardless of the victim's relationship with the alleged offender or whether a criminal charge is filed against the alleged offender. A violation of an Article 7A protective order is a Class A misdemeanor under [Tex. Penal Code § 38.112](#). Except as otherwise provided in [Tex. Code Crim. Proc. Art. 7A](#), the procedures of Tex. Fam. Code Title 4 control an Art. 7A protective order proceeding.

The 82nd Texas Legislature amended Texas Code of Criminal Procedure Art. 7A to add stalking, compelling prostitution, and human trafficking (for sexual exploitation) to sexual assault as predicate criminal conduct that will support issuance of a protective order for the victim. The 82nd Legislature also enacted two entirely new protective order statutes in the Code of Criminal Procedure: one that creates an alternate stalking victim protective order (Texas Code of Criminal Procedure Art. 6.09); and one that creates a protective order for a victim of human trafficking of any kind listed in [Tex. Penal Code § 20A.02](#). (Texas Code of Criminal Procedure Article 7B). Further complicating the situation, Article 7B overlaps Art. 7A regarding human trafficking victims.

This Chapter discusses only the Article 7A protective order. The Article 6.09 stalking protective order is discussed in Chapter 5A and the Article 7B human trafficking protective order is discussed in Chapter 6A.

The 82nd Legislature amended Article 7A with four separate bills, three of which overlapped in substance, but none of which tracked each other well.

Article 7A.01(a) was amended by two bills:

SB 24 (adding human trafficking for sexual exploitation and compelling prostitution to list of predicate criminal conducts); and

SB 250 (adding stalking to the list of predicate criminal conduct).

Art. 7A.03 was also amended by two separate bills:¹

SB 250 (for stalking victims, requiring only one finding to issue the order—that reasonable grounds exist to believe that the applicant was a stalking victim); and

HB 649 (for sexual assault or stalking victims, requiring only one finding to issue the order—that reasonable grounds exist to believe that the applicant was either a sexual assault or stalking victim).

Art. 7A.035, added by HB 1721, made a change regarding evidence:

HB 1721 (under certain circumstances, the court may admit a hearsay statement of a child applicant for a protective order if the child is a victim of conduct that violates [Tex.](#)

¹ To the extent it matters for purposes of analyzing provisions of these two bills, HB 649 was enacted after SB 250. Section 311.025 of the Government Code (part of the Code Construction Act) states that if two statutes are irreconcilable, the statute “latest in date of enactment prevails.”

[Penal Code § 21.02](#), [Tex. Penal Code § 21.11](#), [Tex. Penal Code §22.011](#), or [Tex. Penal Code §22.021](#).) (Note that HB 1721 does not mention any of the other predicate criminal conduct so it is applicable only to child victims of sexual assault.)

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As required by the Texas Code Construction Act, any inconsistencies in these laws must be harmonized if possible.² In this case, harmonization of the three laws that amended Articles 7A.01 and 7A.03 clearly results in the addition of stalking, compelling prostitution, and human trafficking for sexual exploitation to the list of predicate criminal conduct. Additionally, it is clear that for sexual assault victims and stalking victims, the only required finding to support the order is that there are reasonable grounds to believe that the applicant is a victim of that type of criminal conduct.

The amended Article 7A does not specify what findings are required to issue an order for a victim of human trafficking or compelled prostitution. SB 250 tracked the prior law and required additional findings only for sexual assault victims. HB 649 removed the additional findings on sexual assault that SB 250 had reenacted. SB 24, which added human trafficking and compelling prostitution as predicate criminal conduct amended only Art. 7A.01 and those offenses are not mentioned elsewhere in the amended statute. However, the Texas Code Construction Act requires that the law be given effect if possible and to give effect to SB 24, the court must have findings to support issuance of a protective order based on the predicate criminal conduct.³ The most harmonious reading of SB 24, SB 250, and HB 649 (and one that gives effect to all the amendments) produces a single required finding to issue a protective order for a victim of either human trafficking or compelled prostitution—that there are reasonable grounds to believe that the applicant is a victim of that type of criminal conduct by the alleged offender.

5.1 *Eligibility; jurisdiction; venue.*

A victim⁴ is eligible for a temporary or permanent protective order under Tex. Code Crim. Proc. Art. 7A, regardless of the relationship between the victim and the offender (or alleged offender) or whether a criminal charge is filed, if the criminal conduct alleged violates:

² Tex. Gov't Code § 311.025(b).

³ Tex. Gov't Code § 311.021.

⁴ As used in this section the term “sexual assault victim” includes a victim of the offense of indecency with a child.

[Tex. Penal Code § 21.02](#) (continuous sexual abuse of a child);

[Tex. Penal Code § 21.11](#) (indecenty with a child);

[Tex. Penal Code § 22.011](#) (sexual assault);

[Tex. Penal Code § 22.021](#) (aggravated sexual assault); **OR**

(for applications filed on or after September 1, 2011):

[Tex. Penal Code § 20A.02 \(a\)\(3\),\(4\),\(7\), or \(8\)](#) (human trafficking involving sexual exploitation);

[Tex. Penal Code § 42.072](#) (stalking); **OR**

[Tex. Penal Code § 43.05](#) (compelling prostitution).

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

5.1.1 Controlling law.

Except as otherwise stated in Art. 7A, a proceeding under this chapter is controlled by [Tex. Fam. Code §84.001- 84.006](#)

([Tex. Code Crim. Proc. art. 7A.04](#))

5.1.2 Standing to apply.

Regardless of whether the applicant and the alleged offender had a relationship with each other or whether a criminal charge is filed, an application for the protective order may be filed by:

(1) the victim of criminal conduct act that constitutes the predicate offense;

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- (2) for applications before September 1, 2011, the parent or guardian of the victim if the victim is under 17 years of age ;⁵
- (3) for applications on or after September 1, 2011, the parent or guardian of a victim if the victim is under 18 years of age;
- (4) for applications filed on or after September 2013, a parent or guardian acting on behalf of a person younger than 18 years of age who is a victim of Tex. Penal Code § 20A.02 (human trafficking involving sexual exploitation) or Tex. Penal Code § 43.05 (compelling prostitution).

OR

- (5) a prosecuting attorney

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

5.1.3 Where to file.

The application must be filed in:

5.1.3.1 Type of Court:

- (1) district court;
- (2) juvenile court with district court jurisdiction;
- (3) county court at law;
- (4) constitutional county court.

OR

⁵ *In re Ortman*, No. 14-07-1022-CV, [2009 Tex. App. Lexis 5280](#) (Houston [14th] Jul. 9, 2009) (mem. op.). In an application for a protective order under [Tex. Code Crim. Proc. art. 7A](#), the mother of the 17- year-old victim did not have standing to apply for the protective order.

- (5) **For applications filed on or after September 1, 2013:** any court with jurisdiction over a protective order Title 4, Family Code, involving the same parties named in the application.

5.1.3.2 Venue.

Venue lies in the county:

- (1) where applicant resides;
- (2) where the alleged offender resides.

OR

- (3) **For applications filed on or after September 1, 2013:** any county in which an element of the alleged offence occurred.

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

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5.1.4 Fees.

5.1.4.1 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.

[\(Tex. Fam. Code § 81.002\)](#)

5.1.4.2 No fees for alleged offender.

Although Title 4 of the Tex. Fam. Code authorizes assessment of fees (including attorney's fees), that assessment is tied to a finding that the

person committed family violence, a finding that may be inapplicable to a protective order under Article 7A. 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.*

[\(Tex. Fam. Code § 81.003\)](#)

5.2 *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 that set out reasonable grounds to believe that the applicant is the victim of the alleged offender’s criminal conduct;
 - an allegation that the alleged offender has committed an act (whether or not a criminal charge has been filed) that constitutes, or been criminally charged with, a violation of [Tex. Penal Code § 21.02](#) (continuous sexual abuse of a child); [Tex. Penal Code § 21.11](#) (indecenty with a child); [Tex. Penal Code § 22.011](#) (sexual assault); [Tex. Penal Code § 22.021](#) (aggravated sexual assault); [Tex. Penal Code § 20A.02\(a\)\(3\),\(4\),\(7\), or \(8\)](#) (human trafficking involving sexual exploitation); [Tex. Penal Code § 42.072](#) (stalking); **OR** [Tex. Penal Code § 43.05](#) (compelling prostitution);
- a request for a protective order;

AND

- if a temporary order is requested, the applicant’s signature taken under oath. For applications filed on or after September 1, 2011, the applicant’s oath need not be notarized and the affidavit of a child is sufficient. See [Tex. Civ. Prac. & Rem. Code § 132.001](#); [\(Tex. Fam. Code § 82.009\)](#)

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5.3 *Temporary protective order.*

The applicant may request issuance of a temporary protective order.

5.3.1 **Requisites for issuing a temporary order.**

To issue a temporary order, the court must have:

- received a properly completed application (with the applicant's sworn statement);

AND

- made a finding that the alleged offender poses a clear and present danger of sexual assault or abuse, stalking, trafficking, or other harm to the applicant or the applicant's family or household.

[\(Tex. Code Crim. Proc. art. 7A.02\)](#)

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5.3.2 **Notice; service; hearing.**

The temporary protective order may be issued without:

- prior notice to the alleged offender;
- service of process on the alleged 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.

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

5.3.3 Temporary protective order.

The temporary order must:

- contain a finding that the alleged offender presents a clear and present danger of sexual assault, stalking, or other harm to the applicant or the applicant's family or household members;⁶
- set the duration of the order, not to exceed 14 days (20 days in district courts with multiple counties or district courts in counties with populations over 2 million). The temporary order is subject to multiple extensions for the same duration as the initial order.;
- 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;

⁶ Despite TRCP 299a's prohibition on inserting a finding of fact in a civil judgment, this finding is the equivalent of a finding of family violence in a Tex. Fam. Code Title 4 protective order, which was found to be appropriately included in the order in *Pena v. Garza*, [61 S.W.3d 529, 531](#) (Tex. App.—San Antonio, 2001, no pet.).

- 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. 7A.06](#).

([Tex. Code Crim. Proc. art. 7A.02](#); [Tex. Fam. Code § 83.001](#)-83.006; [Tex. Fam. Code § 85.021](#))

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5.3.4 Warning on temporary order.

The temporary 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. ”

NOTE: The required warning differs from the required warning in [Tex. Fam. Code § 85.026](#) in that it does not require a warning about possible sanctions for a violation.

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

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5.3.5 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.

[\(Tex. Fam. Code § 86.003\(1\)-\(4\)\)](#)

5.4 *Hearing.*

Art. 7A 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 Tex. Fam. Code Title 4. For instance, Article 7A does not specifically state what sort of notice must be provided to a defendant or alleged offender prior to holding the protective order hearing but its reference to the procedures set out in Tex. Fam. Code Title 4 indicates that the safest course is to follow the requisites of the latter.

5.4.1 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.

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

5.4.2 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\(a\)\)](#)

5.4.3 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.

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

5.4.4 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.⁷

5.4.5 Order based on the parties' agreement.

There is no specific authority for entering an order based on an agreement between the applicant and the alleged offender.⁸ If the alleged offender does not contest the application, the court can enter an order based on stipulated or deemed facts.

5.4.6 Separate or “mutual” protective orders.

⁷ *Martinez v. Martinez*, [52 S.W.3d 429](#) (Tex. App.—Fort Worth 2001, pet. denied).

⁸ [Tex. Code Crim Proc. art. 7A](#) 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; Tex. Fam. Code § 85.021](#))

There is no authority for entering a separate or “mutual” protective order that imposes criminally enforceable provisions against an applicant.⁹

5.4.7 Hearsay statement of a child witness.

{XE "hearsay: child: sexual assault victim's protective order" }

The court may admit the outcry statement of a child victim under 14 years in an application for a sexual assault victim's protective order if the statement describes the offense against the child and if, after a hearing, the court determines that the statement is reliable and if the child testifies or is available to testify or if the court determines that the use of the statement in lieu of the child's testimony is necessary to protect the child's welfare.

NOTE: This provision does not discuss admissibility of the hearsay statement if the child is a victim of a non-sexual offense such as stalking. This provision applies only to applications file on or after September 1, 2011, but it is not clear whether it applies to a hearsay statement made before that date.

[\(Tex. Code Crim. Proc. art. 7A.035\)](#)

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5.5 Answer.

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

[\(Tex. Fam. Code § 82.022\)](#)

5.6 Default.

⁹ 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. 7A 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. 7A. [\(Tex. Fam. Code § 85.001\(b\)](#), [Tex. Fam. Code § 85.003](#), [Tex. Fam. Code § 85.022](#))

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);
- 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.

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

NOTE: In a default proceeding, the court **MAY NOT** take evidence on any issue other than proof of service of notice and sanctions.

5.7 *Permanent protective order.*

5.7.1 Required findings for a permanent order.

5.7.1.1 Sexual assault victims.

For orders on applications filed before September 1, 2011, the statutorily required findings differ based on the applicant's age. There are two sets of required findings that support a protective order for a sexual assault victim. One set applies if the victim is under the age of 18 and the other if the victim is 18 or older.

For applicants under the age of 18 years, the court must find that there are reasonable grounds to believe that the applicant is:

- a victim of a sexual assault by the alleged offender;

AND

- under the age of 18 years.

For applicants who are 18 years of age or older, the court must find that there are reasonable grounds to believe that applicant is:

- the victim of a sexual assault by the alleged offender;

AND

- the subject of a threat¹⁰ that reasonably causes the applicant to fear further harm from the alleged offender.

For orders based on applications filed or after September 1, 2011, the only statutorily required finding, regardless of the victim's age, is that reasonable grounds exist to believe that the applicant is the victim of a sexual assault by the offender or alleged offender.

For orders on applications filed on or after September 1, 2013, Article 7A.03, Code of Criminal Procedure was amended to read as follows:

Art. 7A.03. REQUIRED FINDINGS; ISSUANCE OF PROTECTIVE ORDER.

¹⁰ *Garcia v. Tautenhahn*, [314 S.W.3d 541](#) (Tex. App.—Corpus Christi 2010, no pet.). In an application for a protective order under [Tex. Code Crim. Proc. art. 7A.01](#), evidence that the respondent had expressed an interest in seeing the child conceived during the sexual assault and that the respondent's sister had contacted the victim was not sufficient to establish a threat of further harm under Tex. Code Crim. Proc. art. 7A.03.

- (a) At the close of a hearing on an application for a protective order under this chapter, the court shall find whether there are reasonable grounds to believe that the applicant is the victim of sexual assault or abuse, stalking, or trafficking.
- (b) If the court makes a finding described by Subsection (a), the court shall issue a protective order that includes a statement of the required findings.

(Tex. Code Crim. Proc. art. 7A.03)

5.7.1.2 Stalking victims.¹¹

The required finding to issue a protective order for a victim of stalking is that reasonable grounds exist to believe that the applicant is a victim of stalking.

5.7.1.3 All other victims.¹²

The statute does not specify what finding is required to support a protective order for a victim of compelled prostitution. After applying the principles set out in the Texas Code Construction Act (requiring harmonization of laws and implementation of legislative intent), the required finding to support a protective order for a victim of compelled prostitution or human trafficking appears to be that there are reasonable grounds to believe the applicant is the victim of the predicate offense, as that offense is defined the Texas Penal Code.

5.7.1.4 Universal finding.

All protective orders issued under this article should state that the findings support a conclusion that a protective order is necessary to protect the applicant and the applicant's family or household from further harm by the alleged offender.

¹¹ See the discussion of the amendments by the 82nd Legislature in the Summary at the beginning of Chapter 5.

¹² See the discussion of the amendments by the 82nd Legislature in the Summary at the beginning of Chapter 5.

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

5.7.2 Conditions.

To protect the applicant or the applicant's family or household, the court may order the alleged offender:

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

OR

(2) not to:

- communicate directly or indirectly in a threatening or harassing manner;
- **For orders on or after September 1, 2013:** in any manner with the applicant or any member of the applicant's family or household except through the applicant's attorney or a person appointed by the court, if the court finds good cause for the prohibition ([Tex. Code Crim. Proc. art. 7A.05](#));
- go near the residence, work place, residence, school, or child-care facility;
- 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;

The court must order the defendant not to:

- possess a firearm (unless the alleged offender works full time as a licensed peace officer);

OR

- carry a concealed handgun (by suspending a license issued under [Tex. Government Code § 411.177](#)).

NOTE: Although [Tex. Code Crim. Proc. art 7A.05\(c\)](#) states the court *may* suspend a respondent’s concealed weapon license, as a practical matter the court *must* suspend the license because federal law prohibits the defendant from possessing a firearm and the defendant will no longer qualify for a concealed handgun license once the protective order issues. See [Tex. Gov’t Code § 411.172](#). The federal government recommends using a “Brady marker” on the order to indicate that the defendant is subject to the prohibitions on firearm possession under 18 U.S.C. ch. 44. See Ch. 14 of this Benchbook.

([Tex. Code Crim. Proc. art. 7A.05\(a\)](#); [Tex. Fam. Code § 85.021](#) and [85.022](#))

5.7.3 Stay away provisions; confidential locations.

With regard to places the alleged offender must stay away from, the permanent order must specifically describe each location and the minimum distance that the offender must maintain from that location, *unless* the applicant requests that location not be disclosed.

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

5.7.4 Warning.

The permanent (final) protective order must contain the same warning as contained in the temporary order (see § 5.3.5 above):

“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. ”

In addition, the permanent order must also contain the following:

“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.”

The warning must be in letters that are bold, underlined, or all caps.

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

NOTE: The order should inform the respondent of the deadline for surrendering firearms and ammunition. The respondent should be told where and how to surrender weapons to law enforcement or another entity and how to present proof to the court that the surrender has occurred.

NOTE: Oral warning required at hearing. It is not quite clear that the provisions of [Tex. Fam. Code § 85.041\(c\)](#) regarding oral warnings apply in this context (because the Tex. Fam. Code requirements address family violence). However,

the better practice seems to be to warn the alleged offender orally as well as in writing of the order's prohibitions and attendant consequences for violations.

5.7.5 Duration.

The permanent order lasts:

- for the time specified in the order;
- for two years, if no other period is specified in the order;
- **for applications filed before September 1, 2011**, for more than two years (up to the lifetime of the applicant or alleged offender) if the court makes a finding that it reasonably believes that the applicant is threatened with further harm by the alleged offender;
- **for applications filed on or after September 1, 2011**, the court has full discretion to set the term of the order, which may last up to the lifetime of the applicant or alleged offender;
- if the alleged offender was confined or imprisoned when the order issued, until the first anniversary after the alleged offender is released from imprisonment or confinement;

OR

- until the order is rescinded at the request of:
 - an applicant, if the applicant is 17 years of age or older;
 - at the request of the parent or guardian of an applicant who is under 17 years of age.

OR

- **For applications filed on or after September 1, 2013,**
 - A victim of an offense listed in Article 7A.01(a)(1) who is 17 years of age or older or a parent or guardian acting on behalf of a victim who is younger than 17 years of age; or
 - a victim of an offense listed in Article 7A.01(a)(2) or a parent or guardian acting on behalf of a victim who is younger than 18 years of age

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

[\(Tex. Code Crim. Proc. art. 7A.07\)](#)

5.7.6 Service and delivery.

5.7.6.1 Service of the permanent order on respondent.

The protective order shall be delivered to the respondent:

- 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 respondent appears at the hearing, the court shall orally warn the respondent about any of the prohibitions listed in

[Tex. Fam. Code § 85.022](#) that apply and of any other provisions necessary to prevent family violence.

([Tex. Fam. Code § 85.041](#))

5.7.6.2 Delivery to victim and others.

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

- the victim or the victim's attorney;
- 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](#))

5.7.7 Confidentiality of victim's identity.

The victim of an offense may file a request for 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 and 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.

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

5.8 Enforcement.

A violation of a sexual assault protective order is a Class A misdemeanor under [Tex. Penal Code § 38.112](#). A violator is also subject to punishment for contempt of court.

[\(Tex. Penal Code § 38.112\)](#)

5.9 Rescission of the order.

The victim or the victim's parent or guardian (for victims under 17 years of age) may file to rescind the protective order at any time.

[\(Tex. Code. Crim. Proc. 7A.07\(c\)\)](#)

CHAPTER 5—PART II: COMMENTS

5.10 Overview of the law.

Victims of sexual assault (as defined in [Tex. Penal Code § 21.02](#), [Tex. Penal Code §21.11](#), [Tex. Penal Code §22.011](#), or [Tex. Penal Code § 22.021](#)), stalking (as defined in [Tex. Penal Code § 42.072](#)), human trafficking for sexual exploitation (as defined in [Tex. Penal Code § 20A.02\(3\),\(4\),\(7\), or \(8\)](#)), or compelled prostitution (as defined in [Tex. Penal Code § 43.05](#)) are eligible to apply for a protective order against the offender or alleged offender. ([Tex. Code Crim. Proc. art. 7A.01\(a\)](#)). This protective order is available without regard to whether there is any specific type of relationship between the victim and the offender or alleged offender. There is no requirement in the statute that a criminal complaint be filed before a protective order is available under Article 7A.

Comment [User11]: Added full citations, please add hyperlinks.

Application. An application may be filed by the victim, the victim’s parent or guardian, or a prosecuting attorney. For applications filed on or after September 1, 2011, the victim must be under 18 years of age for the parent or guardian to have standing to file an application. For application filed before September 1, 2011, the parent or guardian could file on behalf of a victim under victims under 17 years of age.¹³ ([Tex. Code Crim. Proc. art. 7A.01\(a\)](#))

The application must be filed in a district court, a juvenile court with district court jurisdiction, a statutory county court, or a constitutional county court in either the county where the victim resides or the county where the alleged offender resides. ([Tex. Code Crim. Proc. art. 7A.01\(b\)](#))

Controlling law. Except where it conflicts with provision of Texas Code Criminal Procedure article 7A, the procedures in Tex. Fam. Code Title 4 control a Tex. Code Crim. Proc. art. 7A protective order proceeding. ([Tex. Code Crim. Proc. art. 7A.04](#))

¹³ Under the law in effect before September 1, 2011, a parent or guardian had no standing to file on behalf of a victim over 17 years of age. See *In re Ortman*, No. 14-07-1022-CV, [2009 Tex. App. Lexis 5280](#) (Tex. App.—Houston [14th] Jul. 9, 2009, no pet.) (mem. op.). In an application for a protective order for a sexual assault victim under [Tex. Code Crim. Proc. art. 7A](#), the victim’s mother did not have standing to apply for the protective order on behalf of her 17-year-old daughter.

Temporary order. If the court finds from the application (which must be supported by the applicant’s sworn statement) that the alleged offender poses a clear and present danger of a sexual assault, stalking, or other harm to the applicant, the court may grant a temporary *ex parte* order to protect the applicant and the applicant’s family and household. The temporary order may be granted without notice to the alleged offender and without a hearing unless the order excludes the offender from his or her residence. ([Tex. Code Crim. Proc. art. 7A.02](#); [Tex. Fam. Code § 83.006](#))

Hearing and findings for a permanent order. A hearing is required before issuance of a permanent protective order.

The alleged offender is entitled to at least 48 hours prior notice of the hearing and must be given a continuance upon request if notice is untimely. The hearing must be set within 14 days of the application (except for applications in district courts in multi-county districts and in counties over 2 million in population, where the hearing must be held within 20 days). ([Tex. Fam. Code § 84.001-84.004](#)) Legislative continuances are within the court’s discretion but the court may not continue a hearing on application because a divorce or SAPCR involving the parties is pending. ([Tex. Fam. Code § 84.001](#); [Tex. Fam. Code § 84.005](#); [Tex. Fam. Code § 85.061](#))

There is no clear authority for entering an Article 7A protective order based on an agreement of the parties. There is no authority for issuing separate or “mutual” orders against each party based on a single application. ([Tex. Fam. Code § 82.022](#))

The alleged offender is not required to file an answer. A default order may be entered if the alleged offender fails to appear or be represented at the hearing after receiving proper notice. ([Tex. Fam. Code § 85.006](#))

Findings. For applications based on an alleged or proven sexual assault that were filed **before September 1, 2011**, there are two sets of required findings—one for victims over the age of 18 and one for victims under the age of 18.

Under age 18. For victims under the age of 18, the court must find that there are reasonable grounds to believe that the applicant (1) is a victim of a sexual assault by the alleged offender; and (2) is under 18 years of age. ([Tex. Code Crim. Proc. art. 7A.03\(b\)](#))

For victims 18 years of age or older. For victims 18 years old or older, the court must find there are reasonable grounds to believe that the applicant is (1) a victim of a sexual assault by the alleged offender and (2) has a reasonable fear of further harm from the alleged offender. ([Tex. Code Crim. Proc. art. 7A.03\(b\)](#))

Indirect attempts by the alleged offender to contact the victim may not be sufficient to establish a reasonable fear of further harm.¹⁴ Reasonable fear of harm is viewed from the victim's perspective, and includes, but is not limited to, overt threats the respondent may have made. Conduct or communication that otherwise would be innocuous is often harmful in and of itself when performed by a perpetrator of sexual assault toward his or her victim. The threat of further contact with the respondent often is a threat of further harm.

Required findings for issuance of a protective order for an application filed on or after September 1, 2011. Whatever the predicate criminal conduct, the only required finding is that reasonable grounds exist to believe that the applicant is the victim of that criminal conduct. (See the discussion in the Summary at the beginning of Chapter 5).

Contents of the order. In addition to the required findings, the court may enter any order necessary to protect the victim or the victim's family or household. The order **may** prohibit the alleged offender from: (1) communicating directly or indirectly in a threatening or harassing manner with a protected person; (2) going to or near the residence, place of employment, business, child-care facility, or school of the protected persons; or (3) engaging, harassing, annoying, alarming, abusive, tormenting, or embarrassing conduct directed at the protected persons. The order **shall** prohibit the alleged offender from possessing a firearm and **may** suspend a concealed handgun license (in reality, the court must suspend the license—see note at § 5.7.2). The court may also order other actions necessary to prevent or reduce the likelihood of future harm to the protected persons. **NOTE:** Although Article 7A does not enumerate protection of pets or assistance animals as one of conditions that may be imposed, the Article is meant to mirror Tex. Fam. Code Title 4, so as long as there is no conflict, the

¹⁴ *Garcia*, [314 S.W.3d 541](#).

terms and condition found in [Tex. Fam. Code § 85.021](#) and [Tex. Fam. Code § 85.022](#) can be part of an Article 7A order ([Tex. Code Crim. Proc. art. 7A.05](#))

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Warnings and stay away provisions. The order must also warn the alleged offender of the civil and criminal consequences of violating the order or possessing a firearm. ([Tex. Code Crim. Proc. art. 7A.04](#)). Unless the safety of a protected person requires the information to be withheld, the order must specifically state the locations from which the alleged offender must stay away. ([Tex. Code Crim. Proc. art. 7A.05\(b\)](#))

Duration. The protective order lasts: (1) for the period stated in the order; (2) for applications by sexual assault victims filed before September 1, 2011, for the lifetime of the applicant or alleged offender if the court reasonably believes that the applicant is threatened with further harm by the alleged offender; (3) for applications filed on or after September 1, 2011, the court may set the duration of the order at its discretion (up to the lifetime of the applicant or the offender or alleged offender); **OR** (4) if the order does not specify, for the duration is two years from the date of issuance. If the offender is confined or imprisoned on the order's expiration date, the expiration date is extended to the first anniversary after the date of the offender's release. ([Tex. Code Crim. Proc. art. 7A.07](#))

Delivery of order. The signed order shall be served on the alleged offender as provided for in the Texas Rules of Civil Procedure. A copy shall also be provided to the victim or the victim's attorney, the law enforcement agencies where the victim resides, and the locations listed in the order. A completed form containing identifying information about the person restrained by the order will need to be sent to law enforcement with the protective order. (See § 19.11.) ([Tex. Fam. Code § 85.041](#); [Tex. Fam. Code § 85.042](#))

Rescission. The victim (or the victim's guardian) may file to rescind the order at any time. ([Tex. Code Crim. Proc. art. 7A.07\(c\)](#))

Violation. A violation of the order is a class A misdemeanor under [Tex. Penal Code § 38.112](#).