

CHAPTER 9—CRIMINAL ENFORCEMENT OF PROTECTIVE ORDERS, MAGISTRATE'S ORDER OF EMERGENCY PROTECTION, AND BOND CONDITIONS—PART I: STATUTES AND CASE LAW

([Tex. Penal Code §§ 25.07, 25.071, and 38.112](#))

Note: 2013 legislative changes are noted in red.

Summary:

A violation of a Tex. Fam. Code (under § 6.504 or Title 4) protective order, a magistrate's order of emergency protection ([Tex. Code Crim. Proc. art. 17.292](#)), or a condition of bond carries criminal sanctions under [Tex. Penal Code § 25.07](#). A violation of a protective order issued after a crime motivated by bias or prejudice under [Tex. Code Crim. Proc. art. 6.08](#) is criminally enforceable under [Tex. Penal Code § 25.071](#). A protective order issue under Tex. Code Crim. Proc. art. 7A is criminally enforceable as a Class A misdemeanor under [Tex. Penal Code § 38.112](#). Violations of Tex. Code Crim. Proc. art. 6.09 and Tex. Code Crim. Proc. art. 7B are NOT subject to criminal penalties.

Certain protective order violation offenses can be enhanced to a third degree felony upon proof that the defendant has at least two prior convictions for a protective order violation or has violated a condition of bond by committing an assault or stalking offense.

After a court enters a finding that a crime was motivated by bias or prejudice, pursuant to [Tex. Code Crim. Proc. art. 42.014](#), the offense's penalty range may be enhanced under [Tex. Code Crim. Proc. art. 12.47](#).

9.1 *Penal Code § 25.07: Violation of a Family Code protective order.*

9.1.1 Elements of the offense.¹

The prosecution must establish that the defendant:

- (1) was subject to the terms and conditions of a protective order issued under [Tex. Fam. Code § 6.504](#) (divorce), chapter 85 (family violence), or chapter 88 (protective order from a foreign jurisdiction) at the time of the offense;
- (2) knew of the protective order;²
- (3) intentionally and knowingly³ engaged in one or more of the following acts that were prohibited by the order:
 - committed family violence;⁴

¹ *Lee v State*, [799 S.W.2d 750, 752](#) (Tex. Crim. App. 1990). The public policy purpose of former [Tex. Penal Code § 25.08](#) (now § 25.07) is to allow the violator to be removed from the scene by taking that person into custody. A protective order's statutory warnings are sufficient notice of criminal consequences of violation of the order.

See *Gharbi v. State*, [131 S.W.3d 481](#) (Tex. Crim. App. 2003). In a prosecution for violation of a protective order by going to prohibited location, the elements of the offense are: (1) a person; (2) knowingly or intentionally; (3) goes near the residence of a protected individual; and (4) in violation of an order issued under the Tex. Fam. Code. It is immaterial variance if indictment lists one protected individual and proof establishes the violation occurred at home of another protected individual. See also, *Small v. State*, [809 S.W.2d 253, 256](#) (Tex. App.—San Antonio 1991, pet. ref'd); and *Escobedo v. State*, No. 02-05-176-CR, [2006 Tex. App. Lexis 6045](#) (Tex. App.—Fort Worth, July 13, 2006, no pet.). In a prosecution for a protective order violation, variance between the address listed in protective order and the address where violation occurred was immaterial.

But see *Patton v. State*, [835 S.W.2d 684](#) (Tex. App.—Dallas 1992, no pet.). When the state chose to plead cause number of protective order, it was required to prove the number alleged.

² *Hernandez v. State*, No. 01-02-00986-CR, [2003 Tex. App. Lexis 6190](#) (Tex. App.—Houston [1st Dist.] July 17, 2003, pet. ref'd). Proof that defendant received copy of magistrate's order of emergency protection was sufficient to support conviction for violation of order whether or not defendant actually read the order.

³ *Harvey v. State*, [78 S.W.3d 368](#) (Tex. Crim. App. 2002). In prosecution for violation of a protective order, a culpable mental state is inherent in the term "in violation of the order" because "order" implies a document issued after defendant had notice and an opportunity to be heard at hearing—in other words, a level of knowledge that amounts to a mental state. The "intentionally or knowingly" culpable mental states apply to the acts described as being violative rather than to the phrase "in violation of the order."

⁴ *Polley v. State*, No. 11-03-00340-CR, [2004 Tex. App. Lexis 11317](#) (Tex. App.—Eastland, Dec. 16, 2004, pet. ref'd). A violation of [Tex. Penal Code § 25.07](#) was proven because the defendant assaulted the protected person by striking her in the head with his hand.

Villareal v. State, [286 S.W. 3d 321](#) (Tex. Crim. App. 2009). Proof that defendant struck his girlfriend with his hand was sufficient to find violation of a protective order that specifically prohibited defendant from committing family violence.

- committed an act in furtherance of the crime of sexual assault, aggravated sexual assault, or stalking;⁵
- directly⁶ communicated in a threatening or harassing⁷ manner with a protected individual or a member of the household or family of a protected individual;

Tovar v. State, No. 05-08-00424-CR, [2009 Tex. App. Lexis 678](#) (Tex. App.—Dallas, Feb. 3, 2009, no pet.). Threats to kill and assault of the victim was sufficient to establish a criminal violation of a family violence protective order.

Sam v. State, No. 14-08-00407-CR, [2009 Tex. App. Lexis 5121](#) (Tex. App.—Houston [14th Dist.] June 30, 2009, no pet.). In a prosecution for violation of a family violence protective order, proof that victim suffered pain when defendant prevented her from breathing and proof that defendant threatened victim by holding a knife to her throat was sufficient to prove the crime.

Wynn v. State, No. 02-04-00394-CR, [2005 Tex. App. Lexis 5155](#) (Tex. App.—Fort Worth, June 30, 2005, no pet.). Testimony of victim and witness to assault was sufficient evidence to convict the defendant of violation of a protective order.

Pickett v. State, No. 02-03-00373-CR, [2004 Tex. App. Lexis 7307](#) (Tex. App.—Fort Worth, Aug. 12, 2004, no pet.). In a prosecution for protective order violation, evidence that defendant tried to hit the victim's car with his car and broke the victim's car window was sufficient to support a conviction.

⁵ *Marston v. State*, No. 11-05-00358-CR, [2007 Tex. App. Lexis 8671](#) (Tex. App.—Eastland, Nov. 1, 2007, pet. ref'd). In prosecution for violating a protective order by committing acts in furtherance of stalking, evidence that defendant made repeated phone calls that caused the protected person (her former lover) to be fearful and that the defendant had previously attempted to break into the person's home was sufficient to prove the offense.

⁶ *Lemaire v. State*, No. 05-97-00290-CR, [1999 Tex. App. Lexis 801](#) (Tex. App.—Dallas, February 9, 1999, pet. ref'd). Failure to define "directly" in jury charge was not reversible error in a prosecution for violation of a family violence protective order. Phone call to protected person was sufficient to establish defendant violated the order by directly communicating with protected person in a threatening manner.

Feldman v. State, No. 11-02-339-CR to 11-02-344-CR, [2004 Tex. App. Lexis 1094](#) (Tex. App.—Eastland, Feb. 5, 2004, pet. ref'd). In a violation of a protective order prosecution, proof that the defendant sent a threatening or harassing letter to the protected person (his ex-wife) supported the conviction.

Moreno v. State, No. 04-02-00727-CR, [2003 Tex. App. Lexis 5998](#) (Tex. App.—San Antonio, July 16, 2003, no pet.). In a prosecution for protective order violation, proof that defendant knew of the order when he left a threatening voice mail message for the protected person was sufficient to support the conviction.

Stuyvesant v. State, No. 13-05-00664-CR, [2006 Tex. App. Lexis 5512](#) (Tex. App.—Corpus Christi, June 29, 2006, no pet.). In a prosecution for a protective order violation, defendant violated the order by sending recorded messages delivered to victim by telephone, which were communications prohibited by the order.

Gould v. State, No. 07-00-0018-CR, [2000 Tex. App. Lexis 5135](#) (Tex. App.—Amarillo, Aug. 2, 2000, no pet.). In a protective order violation prosecution, evidence that the defendant called the victim collect over 25 times in a two-hour period was sufficient to prove that the defendant violated the order by communicating with victim in a threatening or harassing manner.

⁷ *Garcia v. State*, [212 S.W.3d 877](#) (Tex. App.—Austin 2006, no pet.). [Tex. Penal Code § 25.07](#) is not facially overbroad because it only applies under a narrow set of circumstances to a narrow class of individuals for a limited

- indirectly communicated a threat to a protected individual or a member of the protected individual's family or household;
- communicated in a manner prohibited by the protective order with a protected individual or with a member of a protected individual's family or house (e.g., direct communication when the order prohibits communications except through the protected individual's attorney);
- possessed a firearm;
- harmed, threatened, or interfered with the care, custody, or control of a pet, companion animal, or assistance animal (as defined in Texas Human Resources Code § 121.002) that is possessed by a person protected by the order;

OR

- went to or within a specific distance of locations specifically described in the order, which may include:
 - a residence;
 - place of employment or business;
 - child-care facility;

OR

- a school.⁸

amount of time; further, it does not reach a substantial amount of constitutionally protected conduct because it is limited to "threatening" or "harassing" communications. As approved in other cases, the definition of "harass" as used to prove a violation of Penal Code § 25.07 is not unconstitutionally vague because it includes the following elements: (1) a course of conduct; (2) directed at a specific person or persons; (3) causing or tending to cause substantial distress; and (4) having no legitimate purpose.

⁸ *McGiffin v. State*, No. 13-03-094-CR, [2004 Tex. App. Lexis 6305](#) (Tex. App.—Corpus Christi, July 15, 2004, no pet.). In a prosecution for protective order violation, evidence that the defendant went within 500 feet of prohibited place (victim's residence) was sufficient to support a conviction.

Spencer-Auber v. State, No. 05-03-01259-CR, [2004 Tex. App. Lexis 1723](#) (Tex. App.—Dallas, Feb. 23, 2004, pet. dism'd). In a prosecution for violation of a protective order, testimony from victim and witness that defendant was at a prohibited place (victim's residence) was sufficient evidence to support the conviction.

Gardner v. State, No. 05-05-00750-CR, [2006 Tex. App. Lexis 4417](#) (Tex. App.—Dallas May 24, 2006, no pet.). In a prosecution for violation of protective order, evidence that the defendant drove past prohibited location (ex-girlfriend's house) was sufficient to support the conviction.

([Tex. Penal Code § 25.07\(a\)](#))

9.1.2 Definitions.

For purposes of prosecution under [Tex. Penal Code § 25.07](#):

- assistance animal has the meaning assigned to it in Texas Human Resources Code § 121.002.
- family violence, family, household, and member of a household have the meanings assigned by [Tex. Fam. Code Chapter 71](#);⁹

Dukes v. State, [239 S.W.3d 444](#) (Tex. App.—Dallas 2007, pet. ref'd). In a prosecution for a violation of a protective order, the defendant knew address of prohibited place (wife's residence) so the fact that the order had the incorrect address was not a defense to prosecution of violation by going within 500 feet of the prohibited place.

Russell v. State, No. 02-05-00346-CR, [2006 Tex. App. Lexis 8866](#) (Tex. App.—Fort Worth, Oct. 12, 2006, no pet.). In a prosecution for a protective order violation, evidence from a map that established that the defendant was within 200 feet of the victim's residence supported the conviction.

McIntosh v. State, No. 04-08-00713-CR and 04-08-00713-CR, [2009 Tex. App. Lexis 8845](#) (Tex. App.—San Antonio, Nov. 18, 2009, pet. ref'd). In a prosecution for a protective order violation, it was not a defense to prosecution for being at a prohibited location that defendant and victim were living together.

Sanchez v. State, No. 03-08-00707-CR, [2009 Tex. App. Lexis 7044](#) (Tex. App.—Austin, Aug 31, 2009, no pet.). In a prosecution for a violation of a protective order, evidence that the defendant entered a prohibited place (his ex-wife's home) was sufficient to support the conviction.

McEuen v. State, No. 03-08-0707-CR, [2009 Tex. App. Lexis 7044](#) (Tex. App.—Houston [14th Dist.] Aug. 13, 2009, no pet.) In a prosecution for a violation of a protective order, evidence in the form of testimony and photographs established that the defendant violated the order by twice going within 200 yards of a prohibited place (victim's residence).

⁹ Family includes individuals related by consanguinity or affinity, as determined under [Tex. Gov't Code §§ 573.022](#) and [573.024](#), individuals who are former spouses of each other, individuals who are the parents of the same child, without regard to marriage, and a foster child and foster parent, without regard to whether those individuals reside together. If the relationship is established only by virtue of a marriage (e.g., mother-in-law), the familial relationship ceases to exist once the marriage ends.⁹ ([Tex. Fam. Code § 71.003](#))

Family violence means:

- (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 [Tex. Fam. Code § 261.001\(C\), \(E\) and \(G\)](#), by a member of a family or household toward a child of the family or household; or
- (3) dating violence ([Tex. Fam. Code § 71.004](#)).

Household means a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other. ([Tex. Fam. Code § 71.005](#)).

AND

- firearm has the meaning assigned by [Tex. Penal Code Chapter 46.¹⁰](#)
[\(Tex. Penal Code 25.07\(b\)\)](#)

9.1.3 Venue; burden and standard of proof; mediation referral prohibited.

- Venue is in the county where:
 - the protective order was issued;

OR

- the offense occurred.
- The prosecution must prove all elements of the case beyond a reasonable doubt.
- In criminal cases for family violence offenses, the court shall **NOT** refer or order the victim or defendant to mediation, dispute resolution, arbitration, or other similar procedures.

[\(Tex. Code Crim. Proc. art. 5.07; Tex. Code Crim. Proc. art.5.08\)](#)

9.1.4 Defenses.

- It is **NOT** a defense to prosecution:
 - that the person protected by the order engaged in retaliatory conduct or agreed to the act constituting the violation;¹¹

Member of a household includes a person who previously lived in a household. ([Tex. Fam. Code § 71.006](#)).

¹⁰ **Firearm** means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use. Firearm does not include a firearm that may have, as an integral part, a folding knife blade or other characteristics of weapons made illegal by this chapter and that is:

- (A) an antique or curio firearm manufactured before 1899; or
- (B) a replica of an antique or curio firearm manufactured before 1899, but only if the replica does not use rim fire or center fire ammunition. ([Tex. Penal Code § 46.01\(3\); 18 U.S.C. 921\(a\)\(3\)](#)).

- that the protective order lacked confidential information about the protected person's residence, place of work or the child-care facility or school of a family or household member of the protected person;¹²

OR

- that the defendant failed to sign as approving the order's form.¹³
- A defendant in a criminal case may not collaterally attack a protective order if the defendant had notice and an opportunity to participate in the protective order proceeding.¹⁴
- Because a person protected by the order is not subject to arrest for violating the order, the person's protected status is a defense to prosecution under the statute.

([Tex. Penal Code §§ 25.07\(d\)-\(f\)](#))

9.1.5 Dual prosecution.

If the conduct in violation of [Tex. Penal Code § 25.07](#) also violates another section of the Penal Code, the defendant may be prosecuted under both sections.¹⁵

([Tex. Penal Code § 25.07\(c\)](#))

¹¹ *McIntosh v. State*, No. 04-08-00713-CR and 04-08-00713-CR, [2009 Tex. App. Lexis 8845](#) (Tex. App.—San Antonio, Nov. 18, 2009, pet. ref'd). In a prosecution for a protective order violation, it was not a defense to prosecution for being at a prohibited location that defendant and victim were living together.

¹² *Patton v. State*, [835 S.W.3d 684](#) (Tex. App.—Dallas 1992, no pet.). Omission of wife's work address from the protective order and failure to prove the order's exact cause number in criminal case for protective order violation did not render the evidence insufficient to prove the crime.

See also *Polk v. State*, No. 02-02-038-CR , [2003 Tex. App. Lexis 4415](#) (Tex. App.—Fort Worth, May 22, 2003).

¹³ *McIntosh v. State*, No. 04-08-00713-CR and 04-08-00713-CR, [2009 Tex. App. Lexis 8845](#) (Tex. App.—San Antonio, Nov. 18, 2009, pet. ref'd). In a prosecution for a protective order violation, the order was not void or otherwise unenforceable because it bore a notation that both the defendant and the victim refused to sign as approving the form of the order.

¹⁴ *Ramirez v. State*, No. 08-07-00207-CR, [2008 Tex. App. Lexis 6195](#) (Tex. App.—El Paso, Aug. 14, 2008, no pet.). In a prosecution for a protective order violation, the defendant impermissibly collaterally attacked the protective order by asserting that a variance between the cause number listed in the notice of hearing and the number included on the final order rendered the order unenforceable.

¹⁵ See *Marston v. State*, No. 11-05-358-CR, [2007 Tex. App. Lexis 8671](#) (Tex. App.—Eastland, Nov. 1, 2007, pet. ref'd). A defendant was subject to prosecution for burglary and for violating a protective order by committing acts in furtherance of stalking.

9.1.6 Continuances.

In prosecutions for violations of Texas Family Code protective orders, motions for continuance require that:

- upon request of a party, the court must state the reason for the continuance on the record;

AND

- before granting a motion for continuance, the court must consider the impact on the victim of continuing the case.

([Tex. Code Crim. Proc. art. 29.14](#))

9.1.7 Jury charge.

In prosecution for a violation of a protective order, the jury charge should define the phrase “in violation of an order” issued under applicable statute.¹⁶

9.1.8 Level of offense.

A violation of [Tex. Penal Code § 25.07](#) is a Class A misdemeanor.

([Tex. Penal. Code § 25.07\(g\)](#))

¹⁶ *Lemaire v. State*, No. 05-97-00290-CR, [1999 Tex. App. Lexis 801](#) (Tex. App.—Dallas, February 9, 1999, pet. ref'd). Failure to define “directly” in jury charge was not reversible error in a prosecution for violation of a family violence protective order.

Villareal v. State, [286 S.W.3d 321](#) (Tex. Crim. App. 2009). It was not error to instruct the jury on terms “dating violence” and “dating relationship” as those terms affect the meaning of family violence element of protective order violation offense.

Marston v. State, No. 11-05-358-CR, [2007 Tex. App. Lexis 8671](#) (Tex. App.—Eastland, Nov. 1, 2007, pet. ref'd). In a prosecution for violating a protective order by committing acts in furtherance of stalking, a jury charge that allowed the jury to find the defendant had committed a felony if she committed two or more of enumerated acts did not allow less than unanimous verdict because the conduct listed were just alternate means of committing the offense charged.

Castaneda v. State, No. 08-02-00381-CR, [2004 Tex. App. Lexis 2300](#) (Tex. App.—El Paso, Mar. 11, 2004, no pet.). In a prosecution for a violation of a protective order, the jury charge was proper because the abstract portion of the charge properly listed all the elements of the charge and the application portion required finding that defendant knowingly or intentionally committed an act of family violence against a protected person before the defendant could be convicted.

Harvey v. State, [78 S.W.3d 368](#) (Tex. Crim. App. 2002). In a prosecution for a violation of a protective order, the jury charge should define the phrase “in violation of an order” issued under applicable statute.

9.1.9 Enhancement of punishment.

Punishment may be enhanced to a third degree felony upon proof that:

- the defendant has at least two prior convictions for violations of [Tex. Penal Code § 25.07](#);¹⁷
- the defendant violated the protective order by committing an assault;

OR

- the defendant violated the protective order by stalking another person.¹⁸
[\(Tex. Penal Code § 25.07\(g\)\)](#)

9.1.10 Sentencing.

The trial court is not required to impose a probated sentence after a conviction for a protective order violation.¹⁹ To support a sentence for a protective order violation, the indictment or information must allege that offense.²⁰

9.1.11 Warning.

¹⁷ *Robertson v. State*, [175 S.W.3d 359](#) (Tex. App.—Houston [14th Dist.] 2004, pet. ref'd). In a prosecution for protective order violation, defendant's sentence was enhanced to felony with proof of two prior violations. Evidence that defendant threatened victim verbally and displayed a box-cutter was sufficient to establish a violation of the order.

¹⁸ See *Marston v. State*, No. 11-05-358-CR, [2007 Tex. App. Lexis 8671](#) (Tex. App.—Eastland, Nov. 1, 2007, pet. ref'd). In a prosecution for violating a protective order by committing acts in furtherance of stalking, evidence that the defendant made repeated phone calls that caused the protected person (her former lover) to be fearful and that the defendant had previously attempted to break into the victim's home was sufficient to prove that defendant committed offense of stalking as well as violation of protective order.

¹⁹ *Clark v. State*, No. 14-07-00276-CR, [2008 Tex. App. Lexis 6620](#) (Tex. App.—Houston [14th Dist.] Sept. 2, 2008, pet. ref'd). In a prosecution for violation of [Tex. Penal Code § 25.07](#), the trial court did not have to grant probation when the defendant had prior family violence assault conviction and received the minimum sentence.

Anderson v. State, No. 10-07-00294-CR, [2008 Tex. App. Lexis 6132](#) (Tex. App.—Waco, Aug. 13, 2008, no pet.). In a prosecution for violation of a protective order, the trial court did not abuse its discretion by not reducing length of sentence when probation was revoked due to defendant's commission of another family violence assault.

²⁰ *Owens v. State*, No. 02-06-00145-CR, [2006 Tex. App. Lexis 5756](#) (Tex. App.—Fort Worth, June 29, 2006, no pet.). A defendant had a valid appellate point that his sentence for a protective order violation was a variance from the indicted offense of assault.

After a defendant is convicted of a Class A misdemeanor family violence offense, the court must warn the defendant that possession of a firearm is a criminal offense.

([Tex. Code Crim. Proc. art. 42.0131](#))

9.2 *Penal Code § 25.07: Violation of a magistrate's order of emergency protection.*

9.2.1 Elements of the offense.

The prosecution must establish that the defendant:

- (1) was subject to the terms and conditions of a protective order issued under [Tex. Code Crim. Proc. art. 17.292](#) at the time of the offense;
- (2) knew of the magistrate's order;
- (3) intentionally engaged in one or more of the following acts that were prohibited by the order:
 - committed an act of family violence;²¹
 - committed an act in furtherance of the crime of sexual assault, aggravated sexual assault, or stalking;
 - directly communicated in a threatening or harassing manner with a protected individual or a member of the household or family of a protected individual;
 - indirectly communicated a threat to a protected individual or a member of the protected individual's family or household;
 - communicated in a manner prohibited by the protective order with a protected individual or with a member of a protected individual's family or house (e.g., direct communication when the order prohibits communications except through the protected individual's attorney);

²¹ *Hernandez v. State*, No. 01-02-00986-CR, [2003 Tex. App. Lexis 6190](#) (Tex. App.—Houston [1st Dist.] July 17, 2003, pet. ref'd). Proof of assault on a protected person established violation of a magistrate's order of emergency protection. Proof that defendant received copy of order was sufficient to support conviction for violation of order whether or not defendant actually read the order.

- went to or within a specific distance of locations specifically described in the order, which may include: a residence, child-care facility, or a school;²²

OR

- possessed a firearm.

[\(Tex. Penal Code § 25.07\(a\)\)](#)

9.2.2 Definitions.

For purposes of prosecution under [Tex. Penal Code § 25.07](#):

- family violence, family, household, and member of a household have the meanings assigned by [Tex. Fam. Code Chapter 71](#);²³
- firearm has the meaning assigned by [Tex. Penal Code Chapter 46](#).²⁴

[\(Tex. Penal Code 25.07\(b\)\)](#).

9.2.3 Burden and standard of proof.

The prosecution must prove all elements of the case beyond a reasonable doubt.²⁵

9.2.4 Defenses.

- It is **not** a defense to prosecution that the person protected by the order engaged in retaliatory conduct or agreed to the act constituting the violation;

²² See *Torres v. State*, No. 02-03-520-CR, [2004 Tex. App. Lexis 7534](#) (Tex. App.—Fort Worth, Aug. 19, 2004, no pet.). Defendant's admission that he went to the victim's apartment, a prohibited place, sufficient to support a conviction for a protective order violation.

²³ See definition of family violence in ch. 2.

²⁴ See definition of firearm in ch. 2.

²⁵ *Hernandez v. State*, No. 01-02-00986-CR, 2003 Tex. App. 6190 (Tex. App.—Houston [1st Dist.] July 17, 2003, pet. ref'd). Proof of the defendant's knowledge of the order was sufficiently proved by the court clerk's testimony that the signature on the order matched the defendant's; testimony of the responding officers was sufficient to establish that the victim of defendant's assault was the person protected by the order magistrate's order of emergency protection.

- It is **not** a defense to prosecution that the magistrate's order lacked confidential information about the location of the protected person's residence, place of work, or the child-care facility or school of a family or household member of the protected person;

([Tex. Penal Code §§ 25.07\(d\)-\(f\)](#))

9.2.5 Dual prosecution.

If the conduct in violation of [Tex. Penal Code § 25.07](#) also violates another section of the Texas Penal Code, the defendant may be prosecuted under both sections.²⁶

([Tex. Penal Code § 25.07\(c\)](#))

9.2.6 Level of offense.

A violation of [Tex. Penal Code § 25.07](#) is a Class A misdemeanor.²⁷

([Tex. Penal. Code § 25.07\(g\)](#))

9.2.7 Enhancement of punishment.

Punishment may be enhanced to a third degree felony upon proof that the defendant:

- has at least two prior convictions for violations of [Tex. Penal Code § 25.07](#);
- violated the protective order by committing an assault;

OR

- violated the protective order by stalking another person.

([Tex. Penal Code § 25.07\(g\)](#))

²⁶ *Black v. State*, No. 02-05-38-CR, [2006 Tex. App. Lexis 7823](#) (Tex. App.—Fort Worth, Aug. 31, 2006, pet. ref'd). Based on proof he threatened his wife and children with a knife, the defendant was convicted of aggravated assault and violation of a protective order with a deadly weapon finding on each count.

²⁷ *Ludwig v. State*, [969 S.W.2d 22, 29](#) (Tex. App.—Fort Worth 1998, pet ref'd). A conviction for the misdemeanor offense of violation of a protective order will be considered a crime of moral turpitude when the underlying, uncharged offense is one of family violence or the direct threat of family violence.

9.3 *Penal Code § 25.07: Violation of a bond condition.*

9.3.1 Elements of the offense.

The prosecution must establish that the defendant:

(1) was subject to bond that:

- issued in a case after an arrest for a family violence offense; **OR**
- **For offenses committed on or after September 1, 2013:** issued in a case after an arrest for sexual assault or abuse, or stalking. Tex. Penal Code § 25.07(a)

AND

- had one or more conditions that related to the safety of the victim or the community;

AND

(2) knowingly or intentionally engaged in one or more of the following acts that were prohibited by a bond condition:

- committed an act of family violence;²⁸
- committed an act in furtherance of the crime of sexual assault, aggravated sexual assault, or stalking;
- directly communicated in a threatening or harassing manner with a protected individual or a member of the household or family of a protected individual;
- indirectly communicated a threat to a protected individual or a member of the protected individual's family or household;

²⁸ *Hernandez v. State*, No. 01-02-00986-CR, 2003 Tex. App. Lexis 6190 (Tex. App.—Houston [1st Dist.] July 17, 2003, pet. ref'd). Proof of assault on protected person established violation of magistrate's order of emergency protection. Proof that defendant received copy of order was sufficient to support conviction for violation of order whether or not defendant actually read the order.

- communicated in a manner prohibited by the protective order with a protected individual or with a member of a protected individual's family or house (e.g., direct communication when the order prohibits communications except through the protected individual's attorney);
- went to or within a specific distance of locations specifically described in the order, which may include: a residence, child-care facility, or a school;²⁹

OR

- possessed a firearm or ammunition.

([Tex. Penal Code § 25.07\(a\)](#))

9.3.2 Definitions.

For purposes of prosecution under [Tex. Penal Code § 25.07](#):

- family violence, family, household, and member of a household have the meanings assigned by Chapter 71, Family Code;³⁰
- **For offenses committed on or after September 1, 2013:**
 - "Sexual abuse" means any act as described by § 21.02 or 21.11.
 - "Sexual assault" means any act as described by § 22.011 or 22.021.
 - "Stalking" means any conduct that constitutes an offense under § 42.072.
- firearm has the meaning assigned by Penal Code Chapter 46.³¹

([Tex. Penal Code § 25.07\(b\)](#))

9.3.3 Burden and standard of proof.

The prosecution must prove all elements of the case beyond a reasonable doubt.³²

²⁹ See *Torres v. State*, No. 02-03-520-CR, [2004 Tex. App. Lexis 7534](#) (Tex. App.—Fort Worth Aug. 19, 2004). Defendant's admission that he went to the victim's apartment, a prohibited place, was sufficient to support a conviction for a protective order violation.

³⁰ See footnote 231.

³¹ See footnote 232.

³² *Hernandez v. State*, No. 01-02-986-CR, 2003 Tex. App. 6190 (Tex. App.—Houston [1st Dist.] July 17, 2003, pet. ref'd). Proof of defendant's knowledge of the order was sufficiently proved by the court clerk's testimony that the signature on the order matched the defendant's; testimony of responding officers was sufficient to establish that the victim of defendant's assault was the person protected by the order magistrate's order of emergency protection.

9.3.4 Defenses.

- It is **not** a defense to prosecution that a person protected by bond condition engaged in retaliatory conduct or agreed to the act constituting the violation;
- It is **not** a defense to prosecution that the bond condition lacked confidential information about a protected person's residence, place of work or the child-care facility or school of a family or household member of the protected person;

([Tex. Penal Code §§ 25.07\(d\)-\(f\)](#))

9.3.5 Dual prosecution.

If the conduct in violation of [Tex. Penal Code § 25.07](#) also violates another section of the Penal Code, the defendant may be prosecuted under both sections.³³

([Tex. Penal Code § 25.07\(c\)](#))

9.3.6 Level of offense.

A violation of [Tex. Penal Code § 25.07](#) is a Class A misdemeanor.³⁴

([Tex. Penal Code § 25.07\(g\)](#))

9.3.7 Enhancement of punishment.

Punishment may be enhanced to a third degree felony upon proof that:

- the defendant has at least two prior convictions for violations of [Tex. Penal Code § 25.07](#);
- the defendant violated the bond by committing an assault;

³³ *Black v. State*, No. 02-05-38-CR, [2006 Tex. App. Lexis 7823](#) (Tex. App.—Fort Worth, Aug. 31, 2006, pet. ref'd). Based on threats to his wife and children with a knife, the defendant was convicted of aggravated assault and violation of a protective order with a deadly weapon finding on each count.

³⁴ *Ludwig v. State*, [969 S.W.2d 22, 29](#) (Tex. App.—Fort Worth 1998, pet. ref'd). A conviction for the misdemeanor offense of violation of a protective order will be considered a crime of moral turpitude when the underlying, uncharged offense is one of family violence or the direct threat of family violence.

OR

- the defendant violated the bond by stalking another person.

([Tex. Penal Code § 25.07\(g\)](#))

9.4 *Penal Code § 25.071: Violation of a protective order for offenses motivated by bias or prejudice.*

9.4.1 Elements of the offense.

The prosecution must establish that the defendant:

- (1) was subject to the terms and conditions of a protective order issued under [Tex. Code Crim. Proc. art. 6.08](#) at the time of the offense;

AND

- (2) knew of the protective order;
- (3) committed one or more of the following acts prohibited by the protective order:

- directly communicated in a threatening or harassing manner with a protected individual or a member of the household or family of a protected individual;
- indirectly communicated a threat to a protected individual or a member of the protected individual's family or household;
- communicated in a manner prohibited by the protective order with a protected individual or with a member of a protected individual's family or house (e.g., direct communication when the order prohibits communications except through the protected individual's attorney);

OR

- went to or within a specific distance of locations specifically described in the order, which may include: a residence, place of employment or business, child-care facility, or a school;

OR

(4) due to bias or prejudice, intentionally engaged in one or more of the following acts in violation of the order:

- committed an offense under Title 5 (homicide, kidnapping, unlawful restraint, trafficking in persons, sexual offenses, and assaults);
- committed the offense of arson;
- committed the offense of criminal mischief;

OR

- committed the offense of defacing another's property with graffiti.

([Tex. Penal Code § 25.071\(a\)](#))

9.4.2 Bias or prejudice defined.

In this context, bias or prejudice means the victim was chosen due to membership in a group identified by race, color, disability, religion, national origin or ancestry, age, gender, or sexual preference (regardless of whether that preference is for heterosexuality, homosexuality, or bisexuality).

([Tex. Code Crim. Proc. art. 42.014](#)).

9.4.3 Defenses.

A person protected by the order is not subject to arrest or prosecution for violating the order.

([Tex. Penal Code § 25.071\(c\)](#))

9.4.4 Dual prosecution.

If the conduct in violation of [Tex. Penal Code § 25.071](#) also violates another section of the Penal Code, the defendant may be prosecuted under both sections.

([Tex. Penal Code § 25.071\(b\)](#))

9.4.5 Level of offense.

A violation of [Tex. Penal Code § 25.07](#) is a Class A misdemeanor.

([Tex. Penal Code § 25.071\(d\)](#))

9.4.6 Enhancement of punishment.

Punishment may be enhanced to a third degree felony upon proof that:

- the defendant has at least two prior convictions for violations of [Tex. Penal Code § 25.071](#);

OR

- the defendant violated the protective order by committing an assault.

([Tex. Penal Code § 25.071\(d\)](#))

9.5 *Penal Code § 38.112: Violation of a protective order for a victim of a sexual assault, stalking, compelled prostitution, or human trafficking (for sexual exploitation).*

As of September 1, 2013, the 83rd Legislature amended this heading to read as follows:

Penal Code § 38.112: Violation of protective order issued on basis of sexual assault or abuse, stalking, or trafficking.

9.5.1 Elements of the offense.

The prosecution must establish that the defendant:

- (1) was subject to the terms and conditions of a protective order issued pursuant to [Tex. Code Crim. Proc. art. 7A](#) at time of offense;
- (2) knew of the protective order;

AND

- (3) intentionally engaged in one or more of the following acts prohibited by the order:

- communicated directly or indirectly in a threatening or harassing manner with the applicant or a member of the applicant's family or household;
- **For offenses committed on or after September 1, 2013:** communicated in any manner with the applicant or any member of the applicant's family or household except through the applicant's attorney or person appointed by the court.
- went to or near the residence, place of employment or business, child-care facility or school of the applicant or of a member of the applicant's family or household;

OR

- possessed a firearm.

([Tex. Penal Code § 38.112\(a\)](#))

9.5.2 Burden and standard of proof.

The prosecution must prove all elements of the crime beyond a reasonable doubt.

9.5.3 Defenses.

There are no specific defenses listed in [Tex. Penal Code § 38.112](#).

9.5.4 Dual prosecution.

If the conduct that violates [Tex. Penal Code § 38.112](#) also violates another section of the Penal Code, the defendant may be prosecuted under both sections.

([Tex. Penal Code § 38.112\(b\)](#))

9.5.5 Level of offense.

A violation of [Tex. Penal Code § 38.112](#) is a Class A misdemeanor.

9.5.6 Enhancement of punishment.

There is no enhancement provision in [Tex. Penal Code § 38.112](#). The offense is subject to enhancement under the provisions of [Tex. Penal Code § 12.43](#) (enhancement for prior misdemeanor conviction).

9.6 *Penal Code § 25.072: Repeated violation of certain court orders or conditions of bond in family violence cases. (Added during the 83rd legislative session)*

9.6.1 Elements of the offense.

For offense committed on or after September 1, 2013

The prosecution must establish that the defendant:

- (4) Engaged in conduct that constitutes an offense under [Tex. Penal Code § 25.07](#) two or more times; and
- (5) During a period that is 12 months or less in duration.

[\(Tex. Penal Code § 25.072\(a\)\)](#)

9.6.2 Charging

9.6.2.1. A defendant may not be convicted in the same criminal action of another offense an element of which is any conduct that is alleged as an element of this offense unless the other offense:

- (1) is charged in the alternative;
- (2) occurred outside the period in which the offense alleged was committed; or
- (3) is considered by the trier of fact to be a lesser included offense of the offense alleged.

[\(Tex. Penal Code § 25.072\(c\)\)](#)

9.6.2.2 A defendant may not be charged with more than one count in this section if all of the specific conduct that is alleged to have been engaged in is

alleged to have been committed in violation of a single court order or single setting of bond.

([Tex. Penal Code § 25.072\(d\)](#))

9.6.3 Venue; burden and standard of proof; mediation referral prohibited.

- Venue is in the county where:
 - the protective order was issued;
- OR**
- the offense occurred.

- The prosecution must prove all elements of the case beyond a reasonable doubt.
- In criminal cases for family violence offenses, the court shall **NOT** refer or order the victim or defendant to mediation, dispute resolution, arbitration, or other similar procedures.

([Tex. Code Crim. Proc. art. 5.07](#); [Tex. Code Crim. Proc. art.5.08](#))

9.6.4 Level of offense.

A violation of [Tex. Penal Code § 25.072](#) is a third degree felony misdemeanor.

([Tex. Penal Code § 25.072\(e\)](#))