

MEMORANDUM

To: Richard Orsinger
From: Jocelyn Fowler on behalf of the SCOT Protective Order Task Force
CC: Martha Newton, Stewart Gagnon, Jeana Lungwitz, Trish McAllister
Date: November 21, 2017
Re: Updates to Proposed Protective Order Kit Changes

Dear Mr. Orsinger,

Thank you for your patience and time spent reviewing the Protective Order Kit updates. Included for your review is a summary of the changes made to the Kit, a clean updated copy of the Kit, and updated copy with highlights indicating major changes to the Kit.

I have tried to organize the updates to be easily understood and followed throughout. If you need any clarification or would like it organized a different way please let me know. Since we last submitted proposed changes to the SCAC, the Task Force has made edits required by the 85th Legislature's actions. The Task Force also identified a few changes that we missed from earlier sessions and general changes that make the document easier to use for the intended audience.

To help identify these new edits from the ones you have previously seen, I have highlighted previously seen comments in yellow and new edits in green. The following summary includes:

- I. Revisions in response to the 85th legislative changes
- II. Non-legislative changes since last submission
- III. Answers to previous questions from Mr. Orsinger
- IV. Revisions in response to the 84th legislative changes
- V. Revisions in response to the 83rd legislative changes

I. Revisions in response to the 85th legislative changes

1) Tx. Fam. Code §85.025(a-1)(1)

Amendments to §85.025(a-1)(1) added another basis for a Protective Order that exceeds two years. No charge or conviction for such an offense is required for the court to determine an extension of the final Protective Order is necessary to protect the applicant and members of the family. The Task Force addressed this in the two ways.

Changes to Kit:

- a) **Page 5, Para. 8 of the “Application” (“Affidavit” and “Declaration”)** – expanded the question to prompt for more details on previous incidences of violence. This will help provide a basis for determining the duration of the Protective Order. Also added more lines for explanation. Please note, this moved other items on the Affidavit down making the Notary Sworn statement not fit unless it was formatted to the left column.
- b) **Page 6, Para. 15 of the “Protective Order”** – Added the basis for exceeding the two year duration of a Protective Order created by §85.025.

2) Tx. Fam. Code §82.011

SB 1242 amended parts of the Family Code related to confidentiality of certain personal information of a person protected by a Protective Order. §82.011 allows a court to render an Order that keeps the applicant’s mailing address confidential but still accessible to the court clerk. The statute requires the applicant to designate a person and mailing address to receive notices and documents on the applicant’s behalf. Confidentiality of an applicant’s information was already addressed some in the Kit.

Changes to Kit:

- a) **Page 2, Para. 3(f) of the “Temporary Ex Parte Protective Order,”** – added instructional language in italics telling the applicant they can provide an alternate contact.
- b) **Page 5, Para. 10 of the “Protective Order”** – Created a new paragraph, Para. 10, to address new statute requirements for confidentiality of Protected People

II. Non-legislative changes since last submission

- 1) **Graphic changes** – Changed the order around for some paragraphs in the explanatory pages. Revised the formatting for readability. Created cover pages for each separate pleading to help the petitioner differentiate between the sample and pleadings for filing.
- 2) **On Explanatory Pages** – Updated any resource references, including websites & phone numbers that had changed. Corrected grammatical errors. Clarified some information to be more plain language and accurate.

- 3) **On Explanatory Pages** – Changed all mentions of the alleged perpetrator to say “the other person.” The pleadings still have “Respondent.” This should address Mr. Orsinger’s concern.
- 4) **Page 2, Para. 4b of the “Application for a Protective Order”** – Added “under Number 2 ‘Children’?” to help better refer Applicant to relevant information.
- 5) **Page 4, Para. 12 of the “Application for a Protective Order”** – Moved the warning down below para. 12 for graphic reasons. It seems easier to read as belonging to para. 12 when it sits under the item rather than before. *See also notes under ‘Other’ on page 6 of this document.*
- 6) **Page 4, Para. 13 of the “Application for a Protective Order”** – Added an automatic checkmark for fees and costs in conformity with Family Code §81.003 and §81.005. These are established statutes that did not have any changes recently. The Task Force just realized per the statute it was appropriate to auto-check this request for the Applicant.
- 7) **Page 1, Para. 1 of the “Temporary Ex Parte Protective Order”** – changed wording from “The person named below must follow all Orders....” To “The person named below is ordered to follow all Orders...” Since this is an Order, the Task Force felt this language was necessary and appropriate.

III. Answers to previous questions from Mr. Orsinger

- 1) In the explanatory forms the alleged perpetrator of violence is sometimes called “the other person,” or “your partner,” and in the forms themselves he is referred to as “Respondent.” Is there a reason to be consistent in the term to apply to the alleged perpetrator?
Answer: Changed all references in explanatory forms to “the other person.” Did not want to say Respondent in explanatory forms because it is not plain language. To connect the dots to Respondent in the pleadings forms, the instructional bubble on page 1 of the “Application,” Sample Version explains who the Respondent is.
- 2) On p. 1 of the form Application for Protective Order, the applicant is asked to check the box for the AG Child Support Division case number. Since the AG doesn’t get involved in family violence orders, what is the purpose of getting this information? Does it affect where the application can be filed, or who receives notice of the protective order?
Answer: This was added in response to a change made to Tx. Fam. Code §82.004(5) during the 83rd Legislature. See original reports notes below under V(2).
- 3) On p. 2 of the form Application for Protective Order, para. 4b, the applicant is asked whether the Respondent is seeking or attempting to seek contact with this child. Should we ask whether this effort is consistent with or inconsistent with an existing order? Does that matter?

Answer: No, it does not matter. Any existing order involving a child will be attached pursuant to para. 4a on page 1 of the Application. It will be for the judge to determine whether any attempts at contact are consistent with an existing order. A *pro se* applicant should not be required to make that determination.

- 4) On p. 4 of the Application, para. 11, the form says “any information that you include available for public inspection.” It’s not clear to me what that means. Does that mean any information not kept confidential under para. 12?

Answer: Yes, it applies to information not kept confidential under para. 12. We moved the warning block down below para. 12, because it is referencing 12, not 11. We realized this was confusing. The warning block was added to give the Applicant ample warning that any contact information they include on the “Application” & “Temporary Ex Parte Order” will be given to the Respondent and available to the public. Para. 12 only applies to the Final Protective Order.

IV. Revisions in response to the 84th legislative changes

1) Tx. Fam. Code §81.0015

§81.0015 adds a presumption that family violence occurred and is likely to occur again if certain conditions are true. A presumption now exists if a respondent has been convicted or received deferred adjudication for particular offenses under Title 5 and 6 of the Penal Code and also meets other criteria under the statute.

Changes to the Kit:

- a) **Page 2, Para. 4b of the “Application of Protective Order”** – The addition of a new paragraph 4b reflects the presumption. Additionally, an instruction bubble is included on the sample “Application for Protective Order” explaining that a judge will assume family violence has occurred if any box is checked. As referenced in para. 4b, a list of the relevant offenses under Title 5 and 6 of the Penal Code is included on the last page of the Protective Order Kit.
- b) **Page 2, “Findings,” 2nd paragraph of the Protective Order** – The presumption is added to the “Findings” section of the “Final Protective Order” under “Statutory Grounds for the Protective Order have been established.”

2) Tx. Fam. Code §81.011

§81.011 now allows an applicant to use a digitized signatures to sign the application for a protective order.

Changes to the Kit:

- a) **Page 4 of the Sample “Application” only** – The ability to use a digitized signature is explained in an instruction bubble on top of the line for the Applicant’s signature.

3) Tx. Fam. Code §85.025(c)(1)-(2)

§85.025 extends the expiration date of a Protective Order if the person who is the subject of the Protective Order is confined or imprisoned and the Protective Order would expire not later than the first anniversary of the date the person is released. The statute sets out the expiration date for a Protective Order in such cases.

Changes to the Kit:

- a) **Page 6, Para. 15 of the “Protective Order”** – A clause explaining the revised expiration standards in such cases is included at the bottom of the paragraph.

4) Tx. Fam. Code §85.022

In connection with the Open Carry law passed during the 84th Legislature, §85.022 was amended to strike the word “concealed” from the requirement to suspend a license to carry a handgun for a person found to have committed family violence. The Task Force missed this statutory change when it was reviewing the kit after the 84th Legislative Session so this update has not been seen by the SCAC subcommittee.

Changes to Kit:

- a) **Page 2, Para. 6(i) of the “Application”** – Added an automatic checkmark for Applicant to request suspension of a license to carry since this is required by state law. Struck “concealed” per the statute. Modified the language from “under state law” to “by the State of Texas” to conform all language on this issue across the Kit.
- b) **Page 3, Para. 4(j) of the “Protective Order”** – Struck “concealed” per the statute. Modified the language from “under state law” to “by the State of Texas” to conform all language on this issue across the Kit. Note that this has been automatically checked since the original 2005 version pursuant with state law.

5) Tx. Fam. Code §85.042(a)

Mandates that the court clerk shall send copies of the Protective Order to all required parties no later than the next business day after the court issues the order. The Task Force missed this statutory change when it was reviewing the kit after the 84th Legislative Session so this update has not been seen by the SCAC subcommittee.

Changes to Kit:

- c) **Page 6, Para. 14 of the “Protective Order”** – Added the requirement of not later than next business day in the first sentence

6) Tx. Fam. Code §86.0011(a)

Mandates on receipt of an original or modified Protective Order from the clerk of the issuing court, a law enforcement agency shall immediately, but not later than the third business day after the date the order is received, enter the information required

by §411.042(b)(6), Government Code, into the statewide law enforcement information system maintained by the Department of Public Safety. The Task Force missed this statutory change when it was reviewing the kit after the 84th Legislative Session so this update has not been seen by the SCAC subcommittee.

Changes to Kit:

- a) **Page 6, Para. 14 of the “Protective Order”** – Added the requirement of immediately but not later than the third business day in the last sentence.

Other:

- 1) The Task Force received feedback from a county clerk about some potential problems with an applicant’s contact information remaining confidential. There was a concern that if an applicant marks the “keep information confidential” box on page 4 of the “Application for a Protective Order,” they will not realize the confidentiality only pertains to the “Final Protective Order.” An applicant’s information provided on the “Application for a Protective Order” and the “Temporary Ex Parte Protective Order” will not be kept confidential.

The Task Force added warning language above para. 12 on page 4 of the “Application for a Protective Order” to address this issue.

Oct 2017 Update: The Task Force moved this warning down below para. 12 for graphic reasons. It seems easier to read as belonging to para. 12 when it sits under the paragraph rather than above.

V. Revisions in response to the 83rd legislative changes

1) Tx. Fam. Code §82.003(3):

§82.003(3) now allows an additional venue for filing a Protective Order application. In addition to filing in the county where the applicant or respondent resides under §82.003(1) & (2), or in the county where a divorce or SAPCR is pending under §85.062(a)(1), the applicant may file in the county where the violence occurred.

Changes to the Kit

- a) **Explanatory Forms** -- This information has been added to the “Where do I file the forms?” portion on the page 1 of the instructions.
- b) **Page 5, Para. 2 of the “Affidavit” and “Declaration”** – Added a new para. 2 on both the “Affidavit” and “Declaration” forms to read: “In which county did this happen?”

2) Tx. Fam. Code §82.004(5)

§82.004(5) adds to the list of things that must be in an application for a Protective Order. The applicant must now state whether they are receiving services from a Title IV-D agency, and, if known, the agency case number.

Changes to the Kit

- a) **Page 1, Para. 4a of the “Application for Protective Order”**– This question was added to the paragraph asking about other court cases.

3) Tx. Fam. Code §85.021(1)(C) and §85.022(b)(7)

Additions to §85.021 and §85.022 expand the definition of “possession” to mean actual or constructive care of an animal. Under §85.021(1)(C), in a Protective Order, a court may prohibit any party from “removing a pet, companion animal, or assistance animal... from the possession or actual or constructive care of a person named in the order.”

Under §85.022(b)(7), in a Protective Order, the court may prohibit the person found to have committed family violence from “harming, threatening, or interfering with the care, custody, or control of a pet, companion animal, or assistance animal, ... that is possessed by or is in the actual or constructive care of a person protected by an order or by a member of the family or household of a person protected by an order.”

Changes to the Kit

- a) **Page 2, Para. 6(k) of the “Application of Protective Order”** – Added “...taking...” to the list of prohibitions regarding pets, companion animals, or assistance animals.
- b) **Page 2, Para. 3(l) of the “Temporary Ex Parte Protective Order”** – Added “Not take...” to the list of prohibitions regarding pets, companion animals, or assistance animals.
- c) **Page 3, Para 4(i) of the “Protective Order”** – Added “Not take...” to the list of prohibitions regarding pets, companion animals, or assistance animals.

4) Tx. Fam. Code §§85.042 (a)(3) and (a-1)

§§85.042(a)(3) and (a-1) extends the list of people to whom a court clerk must deliver the Protective Order. §85.042 (a)(3) to the Title IV-D agency, if applicable, and a staff judge advocate or provost marshal, if applicable.

Changes to the Kit

- a) **Page 6, Para. 14 of the “Protective Order”** – Reflects this new requirement for the Clerk

Other:

The Task Force made minor changes to page four of the kit which provides contact information for important resources.