

PROTECTIVE ORDERS

Overview. Soldiers and their family members sometimes seek legal assistance with questions and concerns regarding protective orders. This information paper is designed to give interested parties information about protective orders and how to proceed with obtaining one.

First. If you are a victim of sexual assault, stalking, or family (domestic) violence, know that you are not alone, and help is available. You should have a safety plan in place to help you survive until you can safely leave your situation. You should call 9-1-1 if you are in imminent danger. You or a victim advocate may contact the alleged abuser's command if you feel you need a military protective order. If you feel you need a civilian protective order, you may apply online at www.epcounty.com/ca/protectiveorders.htm. For questions, you may contact the [El Paso County Attorney's](mailto:ElPasoCountyAttorney@gmail.com) office at (915) 546-2153 or ProtectiveOrderApplications@gmail.com. There is no charge for their services.

Military Protective Orders. Military Protective Orders are short-term orders issued by a commander against a Soldier under his command upon request of a victim or victim's advocate. No hearing is involved in the process. MPOs are generally issued in writing on a DD Form 2873. Violations are punishable under the UCMJ. While they may presumptively be enforced in the civilian arena, they typically are not. Therefore, if you are a victim and an MPO is issued against your alleged abuser, you may still want to seek a civilian protective order.

Texas law says a protective order is a legal document signed by a judge that prohibits the person against whom it is issued from: (1) committing further acts of family violence, sexual assault, or stalking; (2) harassing or threatening a victim, either directly or indirectly, or by communicating a threat through another person; (3) going to or near a school or daycare center that a child protected under the order attends; or (4) going to or near a victim's residence or place of employment.

Three types of protective orders exist under Texas law: An Emergency Protective Order, Temporary Ex Parte Protective Order, and Final Protective Order.

An Emergency Protective Order is generally issued immediately after an act of family violence (e.g., in cases where the police arrive on the scene). It can last for a maximum of 91 days. During this time, the victim should consider whether to apply for a Final Protective Order, which generally lasts up to two years. In cases of sexual assault, serious bodily injury, or death, Final Protective Orders can last longer than two years.

When applying for a Final Protective Order, one may also ask for a Temporary Ex Parte Protective Order, which lasts for a maximum of 20 days. A Temporary Ex Parte Protective Order is generally not needed when an EPO is in place. This is because adding an additional protective order does not necessarily better protect the victim. Practically speaking, an application for Temporary Ex Parte Protective Order is filed with an application for Final Protective Order in cases where no protective orders exist.

Two types of Temporary Ex Parte Orders exist - one has a kick-out order, which orders the law enforcement to remove the alleged abuser from the home, and one does not have a kick-out order. In either case, the victim's sworn affidavit must be attached to the application that is filed with the district clerk's office.

The alleged abuser is not given notice of the application, affidavit, or any hearing until after the judge grants or denies a Temporary Ex Parte Protective Order.

In cases where a kick-out order is not requested, a hearing is not required. The judge reviews the paperwork and approves or denies the Temporary Ex Parte Order. If the victim requests a kick-out order, certain conditions must be met such as the victim and alleged abuser must live together, and the violence must have happened fairly recently. In cases where a kick-out order is requested, Texas law requires a hearing. Again, no notice is given to the alleged abuser before the hearing.

No matter the type of Temporary Ex Parte Protective Order, once the judge makes a decision on that order, the judge sets a final hearing date for the Final Protective Order, and the alleged abuser is served with notice of the final hearing date along with a copy of the Temporary Ex Parte Protective Order, if any. If the Temporary Ex Parte Protective Order contains a kick-out order, law enforcement may escort the alleged abuser to the home to collect his or her belongings before removing the individual from the property.

Texas law requires the final hearing date for a Final Protective Order be held within 14 days from the date the initial application is filed. Texas law also provides that free copies of protective orders be provided to the victim.

Interaction with Family Law Cases. Both Temporary Ex Parte Protective Orders and Final Protective Orders can have orders regarding child support and visitation. If a court order is in effect for custody and visitation, the Temporary Ex Parte Protective Order and Final Protective Order trump the visitation order. If there has never been a court order regarding the children, then the protective order may be used to support a finding of family violence in a Texas divorce case or in a suit affecting the parent-child relationship. A finding of family violence means that the judge may order sole managing conservatorship (or sole custody), and may order restricted or supervised visitation.

Interaction with Landlord/Tenant Laws. If you obtain a protective order, you are entitled to break your lease under Texas law. You will not be liable for future rents due, but may be held liable for prior damages. You must give written notice to your landlord of your intent to terminate along with a copy of your protective order.

Interaction with Service. Once a protective order is entered against an individual, that person is prohibited by federal law from owning, possessing, or transporting guns or ammunition. If you are a service member, and a protective order has been entered against you, you may be non-deployable.

How to Make a Legal Assistance Appointment. Members of the Active Duty U.S. Armed Forces and their family members, retired military personnel and their family members, and Reserve Component personnel on Active Duty for 30 or more days are eligible to receive services at the [Fort Bliss Legal Assistance Office](#) and can make an appointment to speak with an attorney by either calling (915) 568-7141 during LAO hours of operation or by e-mailing: usarmy.bliss.hqda-otjag.mesq.bliss-legal-assistance-office@army.mil at any time. The e-mail must include the following information: 1) Name and Rank; 2) DoD ID #; 3) Spouse's Name (if applicable); 4) Spouse's DoD ID # (if applicable); 5) Contact Information (i.e., phone and e-mail); and 6) a general description of legal issue or what is being sought.