

# BEST PRACTICES

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FOR LAWYERS  
REPRESENTING SURVIVORS  
OF

- DOMESTIC VIOLENCE
- SEXUAL ASSAULT
- STALKING
- TRAFFICKING

IN THE STATE OF TEXAS

## ACKNOWLEDGEMENT

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**Report from Family Law Task Force Committee on  
Best Practices for Lawyers Representing Survivors of**

**Domestic Violence, Sexual Assault, Stalking, and Trafficking in the State of Texas**

***Background***

In 2011 Texas law enforcement agencies received 18,088 reports of sexual assault and 177,983 reports of domestic violence.<sup>1</sup> Unfortunately, victim safety varies widely across Texas' 254 counties.<sup>2</sup> Protective Orders are an important tool in preventing future violence. Therefore, in cases involving domestic violence, sexual assault, and stalking, disparate Protective Order practices by courts and prosecutors contribute significantly to the inequity. Non-statutory policies defining when, which, and how many victims may apply for Protective Orders can shut the courthouse doors to victims in urgent need of protection.

The Texas Constitution guarantees to all crime victims the right to reasonable protection from the accused.<sup>3</sup> Further, the right to life, liberty, and security of person is universally recognized as a basic human right.<sup>4</sup> However, for domestic violence, sexual assault, and stalking victims, criminal prosecution alone is insufficient to ensure safety before charges are brought, while charges are pending, after a decision not to prosecute, or after a sentence is served.

For these reasons, the Texas Family Code and the Texas Code of Criminal Procedure enable county and district attorneys to file civil actions for Protective Orders to prevent future acts of violence. Civil Protective Orders address not only the immediate need to protect victims and their families, but also the need for economic and family stability to ensure that the victim can survive independently from the abuser.

In 2011 the State Bar of Texas Legal Services Support Division's Family Law Task Force commissioned this report to establish best practices for keeping people safe from interpersonal violence. Following are these best practices.

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<sup>1</sup> TEX. DEP'T OF PUB. SAFETY, CRIME IN TEXAS 2011 35, 50 (2012), *available at* [http://www.dps.texas.gov/administration/crime\\_records/pages/crimestatistics.htm](http://www.dps.texas.gov/administration/crime_records/pages/crimestatistics.htm).

<sup>2</sup> *See* TEX. COUNCIL ON FAMILY VIOLENCE, TEX. ASS'N AGAINST SEXUAL ASSAULT, TEX. RIOGRANDE LEGAL AID & TEX. ADVOCACY PROJECT, PROTECTIVE ORDERS IN TEXAS: A STATEWIDE STUDY OF POLICIES AND PRACTICES (2013), *available at* <http://texaslawhelp.org/resource/protective-orders-in-texas-a-state-wide-study>.

<sup>3</sup> TEX. CONST. art. 1, § 30(a)(2).

<sup>4</sup> Universal Declaration of Human Rights, G.A. Res. 217 (III) A, UN Doc A/RES/217(III), art. 3s (Dec. 10, 1948).

## ***Best Practices***

### **1. Texas attorneys, whether prosecutors or private practitioners, should adhere to the standards adopted by the American Bar Association House of Delegates in 2007.<sup>5</sup>**

The goals of the ABA Standards are:

(1) to improve the quality of legal representation of victims of domestic violence, sexual assault and stalking; (2) to enable lawyers to effectively, ethically, and holistically represent victims in civil protection order cases; and (3) to raise awareness about the need for high-quality representation for victims of domestic violence, sexual assault and stalking in civil protection order cases.<sup>6</sup>

The drafting of these standards took place over the course of a year with the help of numerous lawyers from all over the country with expertise in Protective Orders. The ABA Standards are well-reasoned and applicable in Texas. This Committee saw no purpose in re-inventing the wheel, and wholeheartedly proposes adherence to the ABA Standards.

In addition to the issues addressed in the ABA Standards, Texas presents unique opportunities and challenges for victims seeking Protective Orders. Therefore, the Committee proposes adoption of additional best practices to enhance victim safety in Texas.

### **2. All prosecutors' offices should have staff assigned to obtain Protective Orders on behalf of victims of domestic violence, sexual assault, and stalking.**

A victim's access to Protective Orders through a prosecutor's office varies greatly across Texas' 254 counties.<sup>7</sup> Some counties have prosecutors assigned specifically to assist victims in applying for Protective Orders, while others do not. The Texas Family Code provides, "The county attorney or the criminal district attorney is the prosecuting attorney responsible for filing applications [for Protective Orders] . . . unless the district attorney assumes the responsibility by giving notice of that assumption to the county attorney."<sup>8</sup> Additionally, the Texas Code of Criminal Procedure expressly authorizes prosecuting attorneys to file applications for Protective Orders for victims of sexual assault and stalking.<sup>9</sup> It is apparent that the Texas legislature sees the importance of a uniform system for victims across the state to obtain Protective Orders, no matter what county they live in. Due to the vast size of the state, and because every Texas county

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<sup>5</sup> STANDARDS OF PRACTICE FOR LAWYERS REPRESENTING VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT AND STALKING IN CIVIL PROTECTION ORDER CASES (2007), *available at* [http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/0908/Standards\\_of\\_Practice\\_for\\_Lawyer\\_s\\_Representing\\_Victims\\_of\\_DV\\_SA\\_Stalking.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/0908/Standards_of_Practice_for_Lawyer_s_Representing_Victims_of_DV_SA_Stalking.authcheckdam.pdf).

<sup>6</sup> *Id.* at ix.

<sup>7</sup> See TEX. COUNCIL ON FAMILY VIOLENCE, ET AL., *supra* note 2.

<sup>8</sup> TEX. FAM. CODE § 81.007(a) (West 1997).

<sup>9</sup> TEX. CODE CRIM. PROC. ANN. art. 7A.01(a)(4) (West 2003) (amended 2013).

is served by a District or County Attorney, prosecutors are essential to uniformly providing this service for the safety of Texans.<sup>10</sup>

**3. Prosecutors should apply for Protective Orders on behalf of all victims statutorily eligible for Protective Orders, and should not refuse to assist someone based on a non-statutory policy.**

Victims do not have access to Protective Orders through prosecutors in some Texas counties.<sup>11</sup> Denying victims access to the justice system compromises the safety of the victim and the community at large. This inequity is particularly problematic for victims who do not have the resources to hire a private attorney or the ability to navigate *pro se* representation.<sup>12</sup>

Even in counties where prosecutors are assisting with Protective Orders, some prosecutors adhere to internal written or unwritten policies which determine whether they will assist a victim with a Protective Order. These policies deny representation to statutorily eligible victims.<sup>13</sup> Examples of non-statutory internal policies in some counties include but are not limited to the following: (1) the victim must have reported an incident to the police; (2) the victim must cooperate with the prosecution of the respondent; (3) the victim must apply within a certain number of days or weeks of the last incident of violence; (4) the applicant must be an adult; (5) there cannot be a divorce or custody suit pending;<sup>14</sup> (6) there cannot be a pending criminal prosecution of the alleged abuser; (7) limits on the number of people assisted with Protective Orders by the prosecutor's office; and (8) there cannot be an open child abuse or neglect investigation by the Texas Department of Family and Protective Services.<sup>15</sup>

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<sup>10</sup> Studies show that Protective Orders are effective in stopping or reducing partner violence, and therefore improving the safety of those protected by them. T.K. Logan & Robert Walker, *Civil Protective Orders Effective in Stopping or Reducing Partner Violence: Challenges Remain in Rural Areas with Access and Enforcement*, CARSEY INST. Spring 2011, 1–3 (2011), available at <http://www.carseyinstitute.unh.edu/publications/IB-Logan-Civil-Protective-Order.pdf>.

<sup>11</sup> See TEX. COUNCIL ON FAMILY VIOLENCE, ET AL., *supra* note 2.

<sup>12</sup> Despite the fact that the Texas Supreme Court has approved forms for Protective Orders and there are online systems such as [texaslawhelp.org](http://texaslawhelp.org) that assist *pro se* filings of Protective Orders, some potential applicants do not have safe access to computers and/or do not have the skills to properly complete the forms, properly file them, serve the respondent, set the hearing, and represent themselves in court.

<sup>13</sup> See TEX. COUNCIL ON FAMILY VIOLENCE, ET AL., *supra* note 2, at 13–14, 19, 21–22, 24.

<sup>14</sup> *E.g., infra* Appendix 1. (presenting a letter from Hays County declining to assist with Protective Order because a Divorce/SAPCR was pending).

<sup>15</sup> Section 81.0075 of the Texas Family Code was amended in 2013 to clarify that prosecutors are not conflicted out of assisting an applicant with a Protective Order when there is or has been an investigation for child abuse or neglect. 2013 Tex. Sess. Law Serv. Ch. 393 (S.B. 130) § 1 (West).

**4. All lawyers, including prosecutors, should advocate for all of the relief allowed by the Protective Order statute, including but not limited to the following: child support, spousal support, possession of children, and possession of property.**

Victims who return to their abusive partners often report that their return is for financial reasons.<sup>16</sup> Simply stated, they did not have the support they needed to get on their feet while trying to separate from their abusive partner, who oftentimes has control of the family finances. By allowing courts to make decisions regarding the possession of and access to children, the possession of property, child support, and spousal support, the Texas legislature recognized the importance of these issues in keeping victims and their children safe.<sup>17</sup> Even in counties where prosecutors assist victims in obtaining Protective Orders, some offices will only seek a Protective Order with basic provisions requiring the respondent to stay away from the victim and prohibiting threatening and harassing behavior. While these orders are essential to victim safety, to help the victim completely escape, it is important to seek orders regarding use of property, support, and access to children. These additional orders minimize the respondent's use of the children or finances to coerce the victim into returning.

**5. Prosecutors should not use bond conditions as substitutes for Protective Orders.**

When a criminal case is pending against the abuser, prosecutors sometimes opt for court-ordered bond conditions specifying that the defendant have no contact with the victim in lieu of obtaining a Protective Order.<sup>18</sup> The reason most frequently given for this practice is the concern that putting the victim on the witness stand during a Protective Order hearing will compromise the criminal prosecution. This practice can compromise victim safety because bond conditions terminate when the criminal case ends; whereas, Protective Orders continue for the period specified in the order and are automatically extended for one year if the order expires while an offender is incarcerated. The one-year automatic extension of a Protective Order provides a valuable safety net for a victim whose abuser is being released. Therefore, a best practice in situations where a criminal case is pending is to give victims the option of obtaining a Protective Order before the criminal case is closed. This practice would provide the maximum protection possible for victims.

**6. Prosecutors should not deny victims Protective Orders because the evidence may be insufficient to meet the beyond-a-reasonable-doubt burden of a criminal case.**

The burden of proof in a criminal case is greater than in a Protective Order case, regardless of whether the Protective Order is filed under title IV of the Texas Family Code or chapter 7A of

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<sup>16</sup> See *Domestic Violence and Housing*, NAT'L COALITION AGAINST DOMESTIC VIOLENCE, [http://www.ncadv.org/files/Housing\\_.pdf](http://www.ncadv.org/files/Housing_.pdf) (last visited Feb. 4, 2014) (providing statistics that illustrate if viable housing is not available, domestic abuse victims often return to their batterers).

<sup>17</sup> See TEX. FAM. CODE § 85.021 (West 1997) (amended 2013).

<sup>18</sup> Paula Pierce & Brian Quillen, *No Contest: Why Protective Orders Provide Victims Superior Protection to Bond Conditions*, 40 AM. J. CRIM. L. 227, 228 (2012–13).

the Texas Code of Criminal Procedure. Even when there is not enough evidence to pursue criminal charges, the prosecutor should evaluate whether the evidence supports the lower burden of proof required for a domestic violence, sexual assault, or stalking Protective Order.<sup>19</sup> Therefore, for the safety of the victims and their families, the best practice is to seek a Protective Order regardless of whether a criminal case is pursued for the underlying crime.

#### **7. Criminal and civil provisions of Protective Orders should be enforced.**

Although the best current research indicates that Protective Orders are effective safety interventions, studies also show that assailants violate Protective Orders at unsettling rates.<sup>20</sup> In order for Protective Orders to be a deterrent there must be a coordinated community response by the civil and criminal legal community to hold batterers accountable. Therefore, enforcement of Protective Order violations, both civil and criminal, is essential in keeping victims and their families safe.<sup>21</sup>

#### **8. Lawyers, including prosecutors, should refrain from using letters of warning to potential Protective Order respondents prior to or in lieu of applying for Protective Orders on behalf of victims.**

One of the most effective attributes of Protective Orders is the ability to obtain a Temporary Ex Parte Protective Order prior to the respondent being aware that the victim has sought assistance.<sup>22</sup> Statistically, a victim is most likely to be killed by the batterer upon separation.<sup>23</sup> Some prosecutors have a practice of writing a letter to the batterer advising that the victim has made a complaint to them and warning that if the behavior continues criminal charges may be filed.<sup>24</sup> Alerting abusers that their victims sought assistance without a Protective Order in place jeopardizes the safety of victims and their families.

#### **9. Legislation should be passed requiring the development of firearm-surrender protocols for respondents subject to Protective Orders in all Texas counties.**

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<sup>19</sup> TEX. FAM. CODE § 85.001(b) (West Supp. 2012)(Requiring a court to render a protective order if it “finds that family violence has occurred and that family violence is likely to occur in the future.”); TEX. CODE CRIM. PROC. Art. 7A.03(b) (West Supp. 2012)(Requiring a court to issue a protective order if it “finds reasonable grounds to believe that the applicant is the victim of sexual assault or abuse, stalking, or trafficking.”)

<sup>20</sup> See, e.g., Judith McFarlane et al., *Protection Orders and Intimate Partner Violence: An 18-Month Study of 150 Black, Hispanic, and White Women*, 94 AM. J. PUB. HEALTH 613 (2004), available at <http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.94.4.613>.

<sup>21</sup> See Logan & Walker, *supra* note 10, at 3 (noting the “weak link” of Protective Orders is enforcement).

<sup>22</sup> TEX. FAM. CODE § 83.001(a) (West 1997) (amended 2001).

<sup>23</sup> See Susan G.S. McGee, *20 Reasons Why She Stays: A Guide for Those Who Want to Help Battered Women*, NAT’L CENTER ON DOMESTIC AND SEXUAL VIOLENCE, 3 <http://www.ncdsv.org/images/20ReasonsWhySheStays.pdf> (last visited Feb. 4, 2014).

<sup>24</sup> E.g., *infra* Appendix 2 (presenting letters from Bexar County DA’s Office to Applicant and Respondent (Mar. 27, 2009)).

Keeping guns out of the hands of family violence perpetrators saves lives. Female intimate partners are more likely to be murdered with a firearm than all other means combined.<sup>25</sup> In 2012, 114 Texas women were killed by intimate partners, 60% of them murdered with a firearm.<sup>26</sup> This is even higher than the most current national average of 51%.<sup>27</sup> Access to firearms increases risk of intimate partner femicide more than five times.<sup>28</sup>

Protective Orders prohibit respondents (except peace officers) from possessing firearms in Texas,<sup>29</sup> and federal law prohibits respondents subject to Protective Orders involving intimate partner violence (except peace officers and military personnel) from possessing, transporting, shipping, or receiving firearms or ammunition.<sup>30</sup>

According to state law, firearm-prohibition language should be on every Temporary Ex Parte and final Protective Order.<sup>31</sup> Upon being served with an ex parte Protective Order, respondents are provided notice to appear and an opportunity to be heard.<sup>32</sup> These provisions ensure that Texas Protective Orders are “valid Protective Orders” under federal law, to ensure full faith and credit.<sup>33</sup> The concept of “full faith and credit” under federal law requires that any valid Protective Order entered in any state, Indian tribe, or territory must be enforced by all other states, Indian tribe, or territory, as if it were the order of that enforcing jurisdiction.<sup>34</sup> Firearms prohibitions in Protective Orders have been upheld in federal courts.<sup>35</sup>

The best practice is to develop a community-wide, multi-disciplinary protocol to enforce federal and state prohibitions against firearm possession by perpetrators of family violence.<sup>36</sup> This

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<sup>25</sup> VIOLENCE POLICY CTR., *WHEN MEN MURDER WOMEN: AN ANALYSIS OF 2010 HOMICIDE DATA 1* (2012), available at <http://www.vpc.org/studies/wmmw2012.pdf>.

<sup>26</sup> TEX. COUNCIL ON FAMILY VIOLENCE, *HONORING TEXAS VICTIMS: FAMILY VIOLENCE FATALITIES 2012, 11* (2013), available at [http://www.tcfv.org/wp-content/uploads/2013/10/HonoringTexasVictims\\_FullReport\\_8.5X11.pdf](http://www.tcfv.org/wp-content/uploads/2013/10/HonoringTexasVictims_FullReport_8.5X11.pdf).

<sup>27</sup> VIOLENCE POLICY CTR., *WHEN MEN MURDER WOMEN: AN ANALYSIS OF 2011 HOMICIDE DATA 3* (2013), available at <http://www.vpc.org/studies/wmmw2013.pdf>.

<sup>28</sup> JOHNS HOPKINS BLOOMBERG SCH. PUB. HEALTH CTR. FOR GUN POLICY AND RESEARCH, *INTIMATE PARTNER VIOLENCE AND FIREARMS, 2* (2003), available at [http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/publications/IPV\\_Guns.pdf](http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/publications/IPV_Guns.pdf).

<sup>29</sup> TEX. PENAL CODE ANN. § 46.04 (West 1973) (last amended 2009).

<sup>30</sup> 18 U.S.C. § 922(g)(8) (1968). Federal law differentiates between family violence and intimate partner violence.

<sup>31</sup> TEX. FAM. CODE § 85.026 (West 1997) (last amended 2011). See also Supreme Court Protective Order Taskforce, *Protective Order Kit*, <http://texaslawhelp.org/resource/protective-order-kit?ref=6c7OW> (last visited Feb. 4, 2014) (providing Protective Order information and step-by-step filing instructions approved by the Supreme Court of Texas by order in Misc. Docket No. 12-9078 (May 8, 2012)).

<sup>32</sup> TEX. FAM. CODE § 82.043 (West 1997).

<sup>33</sup> 18 U.S.C. §§ 2265(a)–2265(b) (1994).

<sup>34</sup> 18 U.S.C. § 2265(a).

<sup>35</sup> *United States v. Emerson*, 270 F.3d 203, 263–64 (5th Cir. 2001), cert. denied, 122 S. Ct. 2362 (U.S. June 10, 2002).

<sup>36</sup> See, e.g., Amy Karan, *Procedures for Firearm, Ammunition and/or Concealed Weapons Permit Surrender*, BATTERED WOMEN’S JUSTICE PROJECT, [http://www.bwjp.org/files/bwjp/files/Firearms\\_Forms.pdf](http://www.bwjp.org/files/bwjp/files/Firearms_Forms.pdf) (last visited Feb. 5, 2014); See also, *infra* Appendix 3 (providing examples of firearm checklists prepared by the Battered Women’s Justice Project for advocates, law enforcement, judges, and prosecutors).

protocol should include, but not be limited to, developing and implementing specific orders regarding when, where, to whom, and for how long the surrender will last, affidavits of compliance, and notice of the penalties for failure to surrender.<sup>37</sup> Additionally, this protocol should include admonitions to the third parties taking possession of firearms from respondents about their responsibilities regarding these firearms and penalties for noncompliance.<sup>38</sup> Most importantly, compliance must be monitored to ensure that offenders do not possess firearms, thus eliminating a critical lethality risk to family violence victims.

**10. Lawyers, including prosecutors, should seek a finding of family violence, sexual assault, or stalking in all Protective Orders.**

Currently, some lawyers regularly waive findings of family violence, sexual assault, or stalking in Protective Orders to facilitate agreements. While the reasons for such policies are complex and varied, it is imperative that lawyers secure orders for victims of family violence, sexual assault, and stalking that keep them safer, hold offenders accountable, and minimize the likelihood that victims will return to their abusers. Findings in Protective Orders have significant implications for victims in many areas, as outlined below. Including findings validates the experiences of victims and sends a powerful message to the community that crimes against women will not be tolerated.

Section 85.022 of the Texas Family Code, which is referenced in several provisions of title 4 of the code, sets forth the criminally enforceable provisions a court may order regarding “the person found to have committed family violence.” Some interpret this language to mean that findings are required in order for a Protective Order to be criminally enforceable. Unenforceable Protective Orders pose a danger to the victim and undermine offender accountability. Following are some further examples of how articulating a finding that family violence occurred and is likely to occur again in a Protective Order is a best practice.

**Agreed Protective Orders:** Section 85.005 of the Texas Family Code provides that the parties “may agree in writing to the terms of a Protective Order . . . subject to the approval of the court . . . [and] the agreed order is enforceable criminally and civilly.” However, the statute is silent as to whether agreed Protective Orders require findings, so other parts of the statute are necessary for guidance. Section 85.022 requires findings as a condition for criminal enforcement.

Stalking and Sexual Assault Protective Orders are governed by chapter 7A of the Texas Code of Criminal Procedure (CCP), which does not include a provision allowing for agreed Protective Orders. Rather, chapter 7A.03 of the code states, “at the close of a hearing on an application for sexual assault or stalking protective order, the court shall find whether there are reasonable

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<sup>37</sup> See, e.g., *id.*

<sup>38</sup> 18 U.S.C. § 922(d)(9); See, e.g., Andrew R. Klein, *Enforcing Domestic Violence Firearms Prohibitions, A Report on Promising Practices*, OFFICE ON VIOLENCE AGAINST WOMEN AND NATIONAL CENTER ON FULL FAITH AND CREDIT (Sept. 2006).

grounds to believe that the applicant has been a victim of sexual assault or stalking.” The directives of the Protective Order statutes should be followed and findings should not be waived.

Both the Texas Family Code and the CCP state that the judge shall issue a Protective Order after finding that family violence, sexual assault, or stalking occurred.<sup>39</sup> Because Protective Orders restrict the respondent’s activities and constitutional rights, there must be a statutory basis for issuance of a Protective Order. Victims whose Protective Orders are found to be unenforceable due to a lack of findings are at greater risk.

**Enforcement:** Confusion about the requirement of a finding of family violence in a Protective Order can lead to a refusal to enforce the order. Some officers will not act on their legal authority to arrest without a finding of family violence.<sup>40</sup> Findings in Protective Orders provide guidance and context for officers at the scene who are trying to determine which party is the predominant aggressor.

Valid Protective Orders are enforceable in all fifty states, U.S. territories, and on tribal lands.<sup>41</sup> But without a finding, Texas Protective Orders may not be considered valid in other jurisdictions, and may not be enforced. Lack of consistent enforceability is especially problematic since not all Texas counties fulfill their statutory obligation to enter Protective Orders into the Texas Department of Public Safety’s Texas Crime Information Center (TCIC) database which feeds into the National Crime Information Center (NCIC) database for law enforcement. This can lead to arbitrary enforcement of Texas orders locally and in other states.

**Firearms:** Texas law mandates that a person (other than a peace officer) who is subject to a family violence, sexual assault, or stalking Protective Order may not possess firearms while the order is in place.<sup>42</sup> Federal law also prohibits a respondent (excluding law enforcement officers and military members) from shipping, transporting, possessing, or receiving firearms or ammunition while subject to a “qualified Protective Order”<sup>43</sup> issued by any state.

In addition to jurisdiction and other requirements, a qualified order must include *either*:

- a finding that the person subject to the order presents a credible threat to the physical safety of an intimate partner or child *or*
- a prohibition against the use, attempted use or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.<sup>44</sup>

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<sup>39</sup> To issue a family violence Protective Order, a court must also find that family violence is likely to occur again. TEX. FAM. CODE § 85.001 (West 1997).

<sup>40</sup> Anecdotal information provided by Protective Order applicants and advocates to the Texas Council Family Violence.

<sup>41</sup> 18 U.S.C. § 2265.

<sup>42</sup> TEX. PENAL CODE ANN. § 46.04.

<sup>43</sup> 18 U.S.C. 922(g)(8).

<sup>44</sup> *Id.* (emphasis and formatting added).

Thus, under federal law, inclusion of an explicit finding is not necessary for firearms prohibitions. Without findings on the face of the order, officers may be forced to determine, at the scene, if the order is criminally enforceable. Placing officers in this position may lead to inconsistent results, compromise victim and officer safety, and leave guns in the hands of violent offenders.

**Crime Victims' Compensation:** Victims of family violence, sexual assault, or stalking are eligible for Crime Victims' Compensation (CVC) funds to help with relocation, medical costs, counseling, childcare, and other expenses. Victims using a Protective Order to substantiate that a crime occurred cannot obtain CVC funds without a finding of family violence, sexual assault, or stalking.<sup>45</sup> When victims are unable to access CVC funds to relocate, they often reunite with their abusers due to a lack of resources. Immigrant victims may be particularly vulnerable because they are not eligible for most forms of public assistance, including subsidized housing. The assistance that CVC may provide, particularly through rent and relocation, may be critical to their safety and self-sufficiency.

**Immigration:** Immigrant victims of family violence often believe they must rely on their abusers to file the paperwork necessary for their legal residency. Federal law provides three options for victims to file for legal residency without involving their abusers in the process.

1. U Visa—for victims of qualifying crimes, including family violence, sexual assault, and stalking;
2. Self-petition under the Violence Against Women Act (VAWA)—specifically for victims of domestic violence; and
3. T Visa—for victims of human trafficking.<sup>46</sup>

Findings of family violence, sexual assault, or stalking demonstrate that the applicant is a victim of a qualifying crime. A VAWA self-petition requires proof that the applicant is a victim of family violence. A valid Protective Order is a persuasive element of the victim's case, and the inclusion of a finding can be evidence of the "battery or extreme cruelty" element of VAWA self-petition.

## **11. State agencies should collect and share accurate data regarding Protective Orders.**

Accurate data is vital to our state's ability to improve victim safety, promote offender accountability, and make sound policy changes on behalf of survivors of domestic violence and sexual assault. Current data on Texas Protective Orders comes from two principle sources: the

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<sup>45</sup> TEX. CODE CRIM. PROC. ANN. art. 56.32 (West 1985).

<sup>46</sup> 8 U.S.C.A. § 1011 (a)(15)(U) (1994); Violence Against Women Act, Pub. L. No. 103-322, tit. IV, 108 Stat. 1902 (1994) (codified as amended in scattered sections of 8, 16, 18, 28, and 42 U.S.C.) (reauthorized, S.47 2013); 8 U.S.C.A. § 1011 (a)(15)(T).

Office of Court Administration (OCA) and the TCIC. Neither agency is able to generate an accurate assessment of the total number of Protective Orders rendered by Texas courts. Nor does the data allow accurate comparisons among jurisdictions. The following recommendations will enhance the accuracy and usefulness of the statewide data about Texas Protective Orders:

- a. The OCA should be given additional resources to enhance its ability to collect and analyze data on Protective Orders rendered by the justice, municipal, county, and district courts in Texas.
- b. The OCA should be given statutory authority to collect information on the different types of Protective Orders rendered by Texas courts.<sup>47</sup>
- c. The Texas Judicial Council's Official District and County Court Monthly Reports should be revised to differentiate among the various types of Protective Orders (Magistrate's Order for Emergency Protection, Sexual Assault Protective Order, Stalking Protective Order, Family Violence Protective Order, and Trafficking Protective Order).<sup>48</sup>
- d. The OCA should have a meaningful enforcement mechanism to ensure that courts comply with reporting needed for the Texas Judicial Council's Official District and County Court Monthly Report.
- e. Chapter 194 of the Texas Health and Safety Code and chapter 108 of the Texas Family Code should be amended to clarify that information related to Protective Orders shall be collected by the Texas Department of State Health Services Vital Statistics Unit and shared with the Office of Court Administration and the Title IV-D, child support agency.<sup>49</sup>
- f. Form VS-165, Information on Suit Affecting the Family Relationship (Excluding Adoptions), which is required when an order is rendered in all divorces and all suits affecting parent child relationship, should be revised to include information on Protective Orders, including whether a court has made a finding of family violence pursuant to section 85.001 of the Family Code.<sup>50</sup>

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<sup>47</sup> *E.g.*, The civil case information sheet required by rule 78a of the Texas Rules of Civil Procedure does not differentiate among the types of Protective Orders and should be revised. See TEX. R. CIV. PRO. 78(a). The Office of Court Administration should create a Magistrate Court Information Sheet to report the different types of Protective Orders created by the Texas Code of Criminal Procedure. Additionally, article 17.292 of the code should be amended to require that a magistrate complete a Magistrate Court Information Sheet upon issuance of a Magistrate's Order for Emergency Protection and submit that form to the Office of Court Administration. The current case information sheet, Order Adopting Texas Rule of Civil Procedure 78a, Misc. Docket No. 10-9133, 3-4 (Aug. 10, 2010), is available at: <http://www.supreme.courts.state.tx.us/miscdocket/10/10913300.PDF>.

<sup>48</sup> The current Office of Court Administration Texas Judicial Council Official District Court Monthly Report form is available at: <http://www.txcourts.gov/tjc/forms/districtform2011.pdf>.

<sup>49</sup> See TEX. HEALTH & SAFETY CODE ANN. §§ 192.0051, 194.002 (West 1993); TEX. FAM. CODE ANN. §§ 108.001-.002, .004, .008 (West 1997) (providing the statutory basis for this reporting).

<sup>50</sup> The current reporting form, Form VS-165, Information on Suit Affecting the Family Relationship (Excluding Adoptions), is available at: <http://www.dshs.state.tx.us/vs/sapcr/>.

- g. The OCA, the Department of Public Safety’s Crime Records Service, the Office of the Attorney General Child Support Division, and the Texas Department of State Health Services Vital Statistics Unit should form an interagency task force to promote the use of uniform language and uniform definitions for reporting domestic violence data generally and with regard to Texas Protective Orders specifically. The proposed task force’s findings should be delivered to the Office of the Governor and the Texas Council on Family Violence within six months of the taskforce’s first meeting.<sup>51</sup>

The TCIC gives law enforcement officers and agencies immediate access to the status of Protective Orders and protected persons. Accordingly, the TCIC database is essential to victim, officer, and community safety. The current system in which TCIC must rely on over 450 unique law enforcement agencies spread across 254 counties to accurately input data into the TCIC database results in inconsistent compliance and accuracy.<sup>52</sup> The Committee recommends the following best practices to improve the TCIC database:

- a. The TCIC Data Entry Form and the TCIC database itself should be modified to create new fields<sup>53</sup> that:
  - 1. differentiate among types of Protective Orders;
  - 2. allow Temporary Ex Parte Protective Orders issued pursuant to chapter 83 of the Texas Family Code and article 7A.02 of the Texas Code of Criminal Procedure to be entered in TCIC; and
  - 3. capture information on specific weapons known to be owned by or accessible to the respondent.<sup>54</sup>
- b. Article 17.292(k) of the Texas Code of Criminal Procedure should be amended to clarify that a Magistrate’s Order for Emergency Protection is required to be input into the TCIC database.
- c. The Texas Department of Public Safety’s Crime Records Service should report on the number of each type of Protective Order entered in each county. County-

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<sup>51</sup> The Office of the Governor, Criminal Justice Division is Texas’s administering agency for the Office on Violence Women “STOP Violence Against Women Formula Grant Programs.” The Texas Council of Family Violence collaborates with shelters, law enforcement, the legislature, and the judiciary to ensure that the needs of victims are met.

<sup>52</sup> According to Office of Court Administration, only 8% of Magistrate’s Orders for Emergency Protection were entered into the TCIC database and only 81% of Protective Orders issued by county and district level courts were entered into the TCIC database.

<sup>53</sup> See, *infra* Appendix 4 (providing a recommended form for capturing this data).

<sup>54</sup> Section 85.022(b)(6) of the Texas Family Code provides statutory authority for the court to prohibit possession of a firearm by someone subject to a Protective Order. Pursuant to sections 25.07(a)(4) and 46.04(c) of the Texas Penal Code, a person who has received notice that they are subject to a Protective Order commits an offense if they possess a firearm. 18 U.S.C. § 922(g)(8) is the federal legislation that prohibits possession of a firearm or ammunition by a person subject to a Protective Order.

specific Protective Order information should be updated annually, posted on the Texas Department of Public Safety website, and accessible to the public.

**12. The Family Law Task Force should establish a permanent Committee on Best Practices for Lawyers Representing Survivors of Domestic Violence, Sexual Assault, Stalking, and Trafficking to periodically review, revise, and add best practices in this evolving area of the law.**

At the end of this project, members of this committee agreed that there are other categories of best practices in domestic violence work that could be considered, as domestic violence laws and their enforcement continue to evolve.

## *Acknowledgements*

Those who participated on the Family Law Task Force Committee on Best Practices for Lawyers Representing Survivors of Domestic Violence, Sexual Assault, Stalking, and Trafficking in the State of Texas are:

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# APPENDIX 1

**SHERRI TIBBE**  
Criminal District Attorney  
Hays County Justice Center  
110 E. Martin Luther King  
San Marcos, Texas 78666  
(512) 393-7600 FAX (512) 393-7619

The District Attorney's Office will often not accept or continue involvement in protective orders when there is a divorce or suit affecting parent-child relationship pending or filed during the application process or the hearing of the temporary ex-parte or the final application for the protective order. In fact, similar issues are often being heard by the Family Court Associate Judge in the divorce and temporary orders proceeding(s), which will affect both orders and can potentially result in conflicting orders. Further, we will be unable to litigate many of the issues involved in the divorce, which are also at issue in the protective order. Moreover, the protective order could potentially be transferred to the Family Court to be heard together with the divorce and its orders.

In the event that the respondent has hired an attorney for the divorce or suit affecting parent-child relationship, the District Attorney's Office will be unable to represent you on those matters. In fact, separate representation will be required to aid you with the divorce matters.

Applicant

# APPENDIX 2



Susan D. Reed  
Criminal District Attorney  
Bexar County, Texas

March 27, 2009

Dear Mr. \_\_\_\_\_

A complaint has been made to this office by \_\_\_\_\_ . She is alleging that you have been harassing her.

Please be advised that it would be to your best interest to stop any harassing behavior towards \_\_\_\_\_ Ms. \_\_\_\_\_ as indicated that she desires that you leave her alone in the future.

If any incidents of harassment continue please be aware that criminal charges may be filed with our office. This letter is to advise you that this complaint has been made to our office and is now on file.

Sincerely,

Advocate/Paralegal  
District Attorneys Office  
Family Justice Center  
527 N. Leona  
San Antonio, Texas 78207  
210-208-6839

Bexar County Justice Center | 300 Dolorosa, Fifth Floor | San Antonio, Texas 78205-3030  
(210) 335-2311

For Victim Assistance call (210) 335-2105



Susan D. Reed  
Criminal District Attorney  
Bexar County, Texas

March 27, 2009

Enclosed please find a copy of the Warning Letter that was mailed to . The letter states that he needs to stop any harassing behavior and to leave you alone. If you have any new incidents please contact the police immediately. If you have any questions please call our office at (210) 208-6839.

Victim Advocate/Paralegal  
District Attorneys Office  
Family Justice Center  
527 N. Leona  
San Antonio, TX 78207

Bexar County Justice Center 1 300 Dolorosa, Fifth Floor 1 San Antonio, Texas 78205-3030

(210) 335-2311

For Victim Assistance call (210) 335-2105

# APPENDIX 3

# Firearm Checklist for Judges

The federal Gun Control Act prohibits 10 particular classes of individuals from purchasing, possessing and/or receiving firearms and ammunition. People who are subject to certain orders of protection and those who have been convicted of misdemeanor crimes against select individuals may fall under two of these prohibitions.

## Protection Orders

The federal law prohibits persons subject to a “qualifying” protection order from purchasing or possessing firearms and ammunition. 18 U.S.C. §922(g)(8).

### Under 18 U.S.C. § 922(g)(8):

- The person subject to the order must have notice and an opportunity to be heard; *and*
- The order must restrain the person from harassing, stalking, or threatening an intimate partner of the person or a child of the person or the intimate partner; *or* engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; *and*
- The order must include *either* a finding that the person subject to the order represents a credible threat to the physical safety of an intimate partner or child *or* a prohibition against the use, attempted use or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

### 18 U.S.C. §921(a)(32):

An intimate partner is defined as “a current or former spouse, a current or former cohabitant with the person subject to the protection order” or an individual who is a parent of a child of the person against whom the order was issued.

A judge should provide the petitioner and respondent with information about the “official use exemption” under 18 U.S.C. §925(a)(1) for certain federal, state and local government employees who must possess and utilize a firearm or ammunition in their employment. The judge should direct the “exempt” respondent to surrender all personally owned or possessed firearms to the appropriate repository for the duration of the order.

## Facilitating Enforcement

- Indicate the relationship of the parties on the protection order.
- Specify any prohibition related to firearms on the protection order, e.g. directives against, purchase, sale, possession or control of firearms, ammunition or permits.
- Otherwise, to remove firearms, use the “catch all” provision in the state protection order statute that permits the court to issue additional relief to enhance protection of the petitioner and any protected minor children.
- Provide information that it is unlawful under federal law to purchase, possess or have control over a firearm, including a rifle, pistol or revolver or ammunition, while subject to the civil or criminal protection order.

## Misdemeanor Crime of Domestic Violence

The federal law prohibits anyone who has been convicted of a “qualifying” misdemeanor crime of domestic violence (MCDV) from purchasing or possessing firearms and ammunition. 18 U.S.C. §922(g)(9).

### Under 18 U.S.C. § 921(a)(33) a “misdemeanor crime of domestic violence” is defined as:

- The misdemeanor is a crime under state, tribal or federal law.
- The crime for which the offender was convicted contained one of the following elements: the use or attempted use of physical force or the threatened use of a deadly weapon.
- The defendant was represented by counsel or knowingly and intelligently waived the right to counsel.
- In jurisdictions where the defendant was entitled to a jury trial, the case was tried by a jury or the defendant knowingly and intelligently waived the right to a jury trial by guilty plea or otherwise.
- The misdemeanor must have been committed by a person who, at the time of commission of the crime, was a current or former spouse, parent, or guardian of the victim, or was a parent of a child of the victim, or had cohabited or formerly cohabited with the victim as a spouse, parent or guardian, or was similarly situated to a spouse, parent, or guardian of the victim.
- The prohibition is permanent unless the defendant has had the conviction set aside or expunged, was pardoned, or had civil rights restored (i.e., the right to sit on jury, the right to vote, and the right to hold public office) if the convicting jurisdiction

took these civil rights away from the misdemeanant. Civil rights cannot be restored if they were not removed initially due to the conviction. Further, the convicting jurisdiction must not impose any lingering firearm restriction on the defendant after the above post-conviction relief (any one of the four -pardon, set aside, expungement or civil rights restoration) has been obtained. For example, does the state still restrict the defendant from obtaining concealed weapons permit or restrict the right to carry handguns outside the home or place of business or obtain machine guns?

### **Surrender/Transfer/Return of Firearms**

- Require the surrender of all firearms before the defendant is released from custody and upon conviction of a MCDV.
- Establish a compliance mechanism for surrender of firearm (i.e., specify the place where the firearm should be surrendered, the date and time the surrender should be completed, and a description of the firearm(s) to the extent possible).
- Direct the Sheriff or other appropriate agency to destroy any surrendered firearm absent proof of lawful ownership (if authorized under state law). If lawfully owned, a judge may approve a plan for sale/transfer of a firearm.
- Establish a procedure for return of firearms:
  - Conduct a hearing prior to returning firearms to determine the respondent/defendant's eligibility to possess under state and federal law.
  - Provide the victim with the opportunity to be heard in all proceedings related to the return of firearms and ammunition to the respondent/defendant and notify the victim.
- When the respondent/defendant seeks to transfer their firearms to a third party:
  - Determine whether or not the third party is prohibited from possessing firearms under state or federal law.
  - Hold a hearing to determine whether the respondent/defendant would retain access (constructive possession) to the firearm(s).
  - Have both the respondent/defendant and the transferee sign a form that acknowledges that firearms may not be transferred to a prohibited party. Signing should be witnessed by court staff or under penalty of perjury as a court order.
  - Inform the respondent/defendant and the transferee that they may be subject to federal prosecution if they knowingly transfer or return any firearm to a prohibited person. 18 U.S.C. §922(d)(8),(9).

### **Judicial Notification**

As required by the STOP Violence Against Women Formula Grant Program certification in VAWA, in order for grantees within a state to be eligible for STOP grant funding, judicial officers are required to have practices and policies in place to inform domestic violence offenders regarding 18 U.S.C. §922(g)(8) and (9) and applicable Federal, State and local laws. The following is suggested language from the U.S. Department of Justice:

#### **Person subject to protection order.**

“As a result of this order, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition pursuant to federal law under 18 U.S.C. §922(g)(8) and/or state law. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.”

#### **Person convicted of MCDV.**

“If you are convicted of a misdemeanor crime involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition, pursuant to federal law under 18 U.S.C. 922(g)(9) and/or state law.”



National Center on Protection Orders and Full Faith & Credit  
(800) 903-0111, prompt 2  
NCFFC@bwjp.org  
www.fullfaithandcredit.org

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## Firearm Checklist for Advocates

**The federal Gun Control Act prohibits 10 particular classes of individuals from purchasing, possessing and/or receiving firearms and ammunition. People who are subject to certain orders of protection and those who have been convicted of misdemeanor crimes against select individuals may fall under two of these prohibitions.**

### Facilitating the Firearms Discussion

- Discuss federal, tribal, state, and local firearm prohibitions with the survivor.
- Elicit the survivor's concerns and experience about the use, possession and ownership of firearms by the abuser.
- Advise the survivor of the provisions in their jurisdiction for search and seizure, removal, transfer, retention, return, and destruction of firearms owned or possessed by their abuser.
- Work with your client to devise a survivor-centered strategy (based on safety planning and the laws) using tools such as the S.A.F.E TOOL - Strategic Assessment of Firearms Enforcement (available from NCPOFFC).

### Firearms Removal during Issuance of Protection Orders

- If the survivor is filing for a protection order and wants firearms removed from the abuser:
  - Suggest that the survivor request a prohibition against firearm possession and ownership in the order if state law authorizes firearm prohibitions.
  - If removal of a firearm under state law is discretionary, inform the survivor of the circumstances in which the court is likely to issue a firearm prohibition. The survivor should be prepared to describe the need for such a prohibition.
- Assist the survivor in obtaining a qualifying protection order consistent with 18 U.S.C. § 922(g)(8) that prohibits possession of firearms and ammunition for the duration of the order by ensuring that the court:
  - explicitly describes the relationship between the petitioner and respondent (or victim and offender in a criminal protection order);
  - recites that the order was entered after a hearing in which the respondent had notice and an opportunity to be heard;
  - restrains the respondent from harassing, stalking or threatening an intimate partner of the respondent, or a child of the respondent or the intimate partner, or from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, and;
  - includes a finding that respondent represents a credible threat to the physical safety of an intimate partner or child, OR the order explicitly prohibits the use, attempted use, or threatened use of physical force against an intimate partner or child that would reasonably be expected to cause bodily injury.
- Recommend that the survivor ask the court to articulate a compliance mechanism for surrender of the firearm(s) (i.e., specify the place where the firearm should be surrendered, the date and time the surrender should be completed, and a description of the firearm(s) to the extent possible).
- Suggest that the survivor ask the court to give clear notice to the respondent that purchase or possession of a firearm may violate provisions of the federal Gun Control Act. 18 U.S.C. § 922(g)(8) and (9) and/or state or local law.
- Discuss the concept of “constructive possession” with the survivor. Inquire if the abuser has ready access to firearms from friends/family members even if the court orders surrender or law enforcement seizes personal firearms. If so, request the court advise the abuser that possession is broader than “ownership” and that he may not borrow, rent or have ready access to another's firearms if he is prohibited or ordered not to possess firearms.

## Enforcement of Firearms Prohibitions

- Explain enforcement procedures if the abuser violates the firearm prohibition. Describe how the survivor can initiate enforcement.
- Inform the survivor that the firearm prohibitions in the protection order are entitled to enforcement in other jurisdictions. Advise that the methods of enforcement may be different from those in the issuing jurisdiction.
- Work with the court and the survivor to ensure the order includes required data elements for entry into National Criminal Information Protection Order File (NCIC POF), including at least one numeric identifier - such as the respondent's birth date, social security number or driver's license number.
- If the abuser has been convicted of a misdemeanor crime of domestic violence, assist the survivor in contacting ATF to determine if the conviction would qualify as firearm prohibition under 18 U.S.C. § 922(g)(9). ATF contact: \_\_\_\_\_. Note: The survivor may find ATF more responsive to the inquiry if made by local law enforcement or prosecutors.

## Transfer/Return of Firearms

- Assist the survivor in preventing their abuser from illegally obtaining or transferring firearms or ammunition to a person prohibited by state or federal law as follows:
  - Anticipating that the respondent may ask the judge at a protection order hearing to permit transfer of firearms or ammunition to a third party, inform the survivor that they may request that the court evaluate the third party's eligibility for transfer and require that both the respondent and the third party sign a form that acknowledges that firearms may not be transferred to a prohibited party. Signing should be witnessed by court staff. *See Third Party Acknowledgement Form* (available from NCPOFFC).
  - Suggest that the survivor ask the court to determine whether or not the abuser retains access to and/or control over a firearm despite a purported transfer to a friend or relative.
  - Advocate that the court establish victim notification procedures that provide victims with notice and/or the opportunity to be heard prior to the return of firearms to the abuser.
  - Inform the survivor that, upon expiration of a protection order, the firearm prohibition will terminate unless state or federal law otherwise prohibit possession or ownership. Remind the survivor that the protection order must be current to enforce any firearm prohibition in the order or pursuant to 18 U.S.C. §922(g)(8).

**Establish a relationship with federal, tribal, state, local and community actors involved in the enforcement and prosecution of firearm laws in your jurisdiction.**



National Center on Protection Orders and Full Faith & Credit  
(800) 903-1110, prompt 2  
NCFFC@bwjp.org  
www.fullfaithandcredit.org

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# Firearm Checklist for Prosecutors

The federal Gun Control Act prohibits 10 particular classes of individuals from purchasing, possessing and/or receiving firearms and ammunition. People who are subject to certain orders of protection and those who have been convicted of misdemeanor crimes against select individuals may fall under two of these

## Protection Orders

The federal law prohibits anyone who is subject to a “qualifying” protection order from purchasing or possessing firearms and ammunition. Only certain protection orders trigger the federal prohibition. Emergency or ex parte orders do not qualify under the federal law, however, a state prohibition may apply.

- Be aware that only certain relationships will trigger federal law.
- There is an “official use exemption” for law enforcement or military personnel for “duty” weapons.
- This firearms disability applies during the duration of the protection order.
- A procedure for the transfer or return of firearms is advisable.

## Misdemeanor Crime of Domestic Violence

The federal law prohibits anyone who has been convicted of a “qualifying” misdemeanor crime of domestic violence (MCDV) from purchasing or possessing firearms or ammunition.

- Misdemeanor crime under state, tribal or federal law.
- The crime must have as an element the use or attempted use of physical force or the crime must have as an element the threatened use of a deadly weapon.
- Review whether there is an extant, qualifying conviction. Things to consider are whether the offender:
  - Has had their conviction vacated?
  - Has been pardoned or had the conviction expunged or set aside?
  - Has had their civil rights restored? If the convicting jurisdiction removed civil rights pursuant to the misdemeanor conviction (i.e., the right to vote, right to sit on a jury and the right to hold public office) if the these rights (or any one of three) were not removed, they cannot be restored.
  - Has the convicting jurisdiction placed any lingering firearm restrictions on the misdemeanant, such as restrictions on the ability to obtain a concealed weapons permit, the ability to possess a machine gun, possess a handgun outside the home or business, possess a firearm for other than hunting, etc.?

Note: This firearm disability is long lasting and there is no exemption for government employees.

## Federal Law Applies to Certain Relationships Only

For protection orders, a qualified relationship includes a person:

- With whom the abuser is married or was married at the time the order issued.
- With whom the abuser lived at the time the order issued or previously.
- With whom the abuser had a child at the time the order issued.
- Who was the abuser’s child at the time the order issued.
- Note: Other relationships, such as dating partners, people who did not live together or have a child together, such as grandparents, siblings, neighbors, etc., will not trigger the federal firearm prohibition. These relationships may trigger state firearm prohibitions.

For MCDVs, an offender must be a person, who at the time of the offense:

- Was married or formerly married to the victim.
- Was the parent or guardian of the victim.
- Had a child together with the victim.
- Lived or formerly lived with the victim.
- Was a person “similarly situated” to a spouse, parent, or guardian of the victim.

## Considerations for Prosecutors

- Know your state and local laws and determine which state firearm prohibitions may be applicable to your case.
- Provide complete information regarding the relationship between the victim and the defendant in the charging documents and to the court.
- Be specific with your charging documents. It is important that the charge is clearly indicated on the charging documents.
- If your jurisdiction has a multi-prong statute, it is important to clearly identify the prong(s) under which the defendant is being charged.
- Be prepared to argue for surrender of the defendant's firearms during pretrial and sentencing hearings.
- Conduct thorough interviews with domestic violence, sexual assault, stalking, and dating violence victims that include questions regarding the presence or use of weapons.
- After consulting with the victim, charge the defendant with the appropriate firearm related offenses.
- In plea bargains, fully document the final convicting statute, subsection or prong the defendant is pleading to, and include an agreed upon statement of facts supporting the elements of the convicting statute.

## Coordinate Community Efforts for Successful Prosecutions

- Participate in your local jurisdiction's firearm working group or task force to help facilitate enforcement of firearm laws. If necessary, train the group members on the applicable laws that relate to the domestic violence firearm prohibitions.
- Be a leader in your jurisdiction by training law enforcement officers and advocates on the firearm prohibitions in your jurisdiction, laws regarding search and seizure of weapons, and the applicability of the federal law.
- Create relationships with your federal partners prior to referring a case for federal prosecution. Familiarize yourself with your local FBI, ATF and the Assistant United States Attorney who play a key role in the prosecution of firearm crimes in your district.
- Determine what your jurisdiction is doing to comply with the judicial notification provisions of VAWA 2005 and work with the Court to ensure that the proper information is being given to all domestic violence offenders as is required by the statute. (To receive STOP funds from OVW, a state, territory or local unit of government must certify that local courts have policies and practices to provide notification to domestic violence offenders regarding laws that restrict possession of firearms.)

For additional information on what notification language should be included, please contact the National Center on Protection Orders and Full Faith & Credit.



National Center on Protection Orders and Full Faith & Credit  
(800) 903-0111, prompt 2  
NCFFC@bwjp.org  
www.fullfaithandcredit.org

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# APPENDIX 4

**Data Entry Form for  
TEXAS CRIME INFORMATION CENTER (TCIC)  
PROTECTIVE ORDERS**

**(includes family violence, sexual assault, stalking, trafficking, hate crimes, magistrate's order for emergency protection, and ex parte protective orders)**

The intent of this form is to aid court clerks with the collecting and providing to local law enforcement agencies pertinent information regarding protective orders for the purpose of entry into TCIC.

To be filled out by Criminal Justice/Law Enforcement Official: ORI: \_\_\_\_\_ OCA: \_\_\_\_\_

PROTECTIVE ORDER NO: \_\_\_\_\_ COURT IDENTIFIER: \_\_\_\_\_

ISSUE DATE: \_\_\_\_\_ DATE OF EXPIRATION: \_\_\_\_\_ DATE OF DISMISSAL: \_\_\_\_\_

**TYPE OF PROTECTIVE ORDER:**       Family Violence       Sexual Assault       Stalking  
(check all that apply)       Trafficking       Hate Crimes  
    Ex Parte       Magistrate's Order for Emergency Protection  
    FINAL       LIFETIME

**\*\*\* RESPONDENT INFORMATION \*\*\***

*Items in ALL UPPERCASE LETTERS must be answered to allow entry into TCIC.*

**NAME OF RESPONDENT:** \_\_\_\_\_ **SEX:** (circle one) M F

**RACE:** (circle one) Indian Asian Black White Unknown      **Ethnicity:** (circle one) Hispanic Non-Hispanic Unknown

**Place of Birth:** \_\_\_\_\_ **CTZ:** \_\_\_\_\_ **DATE OF BIRTH:** \_\_\_\_\_ **HEIGHT:** \_\_\_\_\_ **WEIGHT:** \_\_\_\_\_

**Skin:** (circle one) Albino Black Dark Dk Brown Fair Light Lt Brown Medium Med Brown Olive Ruddy Sallow Yellow

**EYE COLOR:** \_\_\_\_\_ **HAIR COLOR:** \_\_\_\_\_ **Scars, Marks and/or Tattoos:** (please describe in detail): \_\_\_\_\_

**RELATIONSHIP TO PROTECTED PERSON:** \_\_\_\_\_

(PLEASE INCLUDE THE FOLLOWING NUMERIC IDENTIFIERS, IF AVAILABLE):

Texas I.D. No: \_\_\_\_\_ Misc I.D. No: \_\_\_\_\_ Social Security No: \_\_\_\_\_

Driver's License No: \_\_\_\_\_ Driver's License State: \_\_\_\_\_ Date of Expiration: \_\_\_\_\_

Respondent's Address:

**STREET:** \_\_\_\_\_ **CITY:** \_\_\_\_\_ **STATE:** \_\_\_\_ **ZIP:** \_\_\_\_ **COUNTY:** \_\_\_\_\_

**Respondent's Vehicle Information:**

**License Plate No:** \_\_\_\_\_ **L.P. State:** \_\_\_\_\_ **L.P. Year Of Expiration:** \_\_\_\_\_ **L.P. Type:** \_\_\_\_\_

**Vehicle I.D. #:** \_\_\_\_\_ **Year:** \_\_\_\_\_ **Make:** \_\_\_\_\_ **Model:** \_\_\_\_\_ **Style:** \_\_\_\_\_ **Color:** \_\_\_\_\_

**List weapons known to be owned by or accessible to the respondent:** \_\_\_\_\_

**Officer Safety Concerns:** (circle all that apply) 00 – Armed and Dangerous 05—Violent Tendencies 10—Martial Arts Expert 15—Explosive Expertise 20—Known to abuse drugs 25—Escape risk 30—Sexually violent predator 50—Heart condition 55—Alcoholic 60—Allergies 65—Epilepsy 70—Suicidal 80—Medication Required 85—Hemophiliac 90—Diabetic 01--Other

**PROTECTIVE ORDER CONDITIONS (PCO):** (circle all that apply)

01—Respondent is restrained from assaulting, threatening, abusing, harassing, following, interfering with or stalking the protected person and/or child of the protected person.

02—Respondent may not threaten a member of the protected person's family/household.

03—The protected person is granted exclusive possession of the residence/household.

04—Respondent is required to stay away from the residence, property, school or place of employment of the protected person or other family or household member.

05—Respondent is restrained from making any communication with the protected person including, but not limited to, personal, written, or phone contact, or their employers, employees or fellow workers, or other whom the communication would be likely to cause annoyance or alarm.

06—Respondent is awarded temporary custody of the children named.

07—Respondent is prohibited from possessing and/or purchasing a firearm or other weapon.

08—See miscellaneous field for comments regarding terms and conditions of the protection order.

09—The protected person is awarded temporary exclusive custody of the child(ren) named.

**BRADY DISQUALIFIERS:** (Pursuant to 18 U.S.C. 922(g)(8), a "yes" response to all three Brady questions disqualifies the subject from purchasing or possessing any firearms, including a rifle, pistol, revolver, or ammunition.)

Does Order protect an intimate partner or child(ren)?       YES       NO

Did subject have opportunity to participate in hearing regarding Order?       YES       NO

Does Order find subject a credible threat or explicitly prohibit physical force?       YES       NO

PROTECTIVE ORDER DATA ENTRY FORM-TCIC      RESPONDENT'S NAME \_\_\_\_\_

Initial TCIC Form

Modification of Previous Form

\_\_\_ of \_\_\_ pages

\*\*\* PROTECTED PERSON INFORMATION \*\*\* (use additional pages if necessary)

NAME OF PROTECTED PERSON: \_\_\_\_\_ SEX: (circle one) M F

RACE: (circle one) Indian Asian Black White Unknown Ethnicity: (circle one) Hispanic Non-Hispanic Unknown

DATE OF BIRTH: \_\_\_\_\_ SOCIAL SECURITY NO. (PSN): \_\_\_\_\_

Street: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ COUNTY: \_\_\_\_\_

Place of Employment Name: \_\_\_\_\_ Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Place of Employment Name: \_\_\_\_\_ Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

NAME OF OTHER PROTECTED PERSON: \_\_\_\_\_ SEX: (circle one) M F

RACE: (circle one) Indian Asian Black White Unknown Ethnicity: (circle one) Hispanic Non-Hispanic Unknown

DATE OF BIRTH: \_\_\_\_\_ SOCIAL SECURITY NO. (PSN): \_\_\_\_\_

Street: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ COUNTY: \_\_\_\_\_

Place of Employment Name: \_\_\_\_\_ Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Place of Employment Name: \_\_\_\_\_ Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

\*\*\* PROTECTED CHILD INFORMATION \*\*\* (Use additional pages if necessary)

Name of Protected Child: \_\_\_\_\_ Sex: (circle one) M F

Race: (circle one) Indian Asian Black White Unknown Ethnicity: (circle one) Hispanic Non-Hispanic Unknown

Date of Birth: \_\_\_\_\_ Child Care or School Facility Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of Protected Child: \_\_\_\_\_ Sex: (circle one) M F

Race: (circle one) Indian Asian Black White Unknown Ethnicity: (circle one) Hispanic Non-Hispanic Unknown

Date of Birth: \_\_\_\_\_ Child Care or School Facility Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of Protected Child: \_\_\_\_\_ Sex: (circle one) M F

Race: (circle one) Indian Asian Black White Unknown Ethnicity: (circle one) Hispanic Non-Hispanic Unknown

Date of Birth: \_\_\_\_\_ Child Care or School Facility Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of Protected Child: \_\_\_\_\_ Sex: (circle one) M F

Race: (circle one) Indian Asian Black White Unknown Ethnicity: (circle one) Hispanic Non-Hispanic Unknown

Date of Birth: \_\_\_\_\_ Child Care or School Facility Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of Protected Child: \_\_\_\_\_ Sex: (circle one) M F

Race: (circle one) Indian Asian Black White Unknown Ethnicity: (circle one) Hispanic Non-Hispanic Unknown

Date of Birth: \_\_\_\_\_ Child Care or School Facility Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_