

Protective Orders in Texas

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What is a Protective Order?

- A Protective Order is a civil suit seeking protection.
- An applicant may **not** be assessed a fee, cost, charge, or expense by a district or county clerk of the court or a sheriff, constable, or other public official in connection with filing, serving or entering a protective order.
- It is an order that can prevent an abuser from coming near a victim and a victim's children.
- It can be important in any safety plan.
- A respondent who violates a final protective order can be arrested and jailed immediately.

Jurisdiction and Venue

- Subject Matter Jurisdiction

- Tex.Fam.Code (TFC) §71.002 “Court means the district court, court of domestic relations, juvenile court having the jurisdiction of a district court, statutory county court, constitutional county court, or other court expressly given jurisdiction under this title

- Personal Jurisdiction

- Personal jurisdiction over Respondent required for final protective order

- Venue

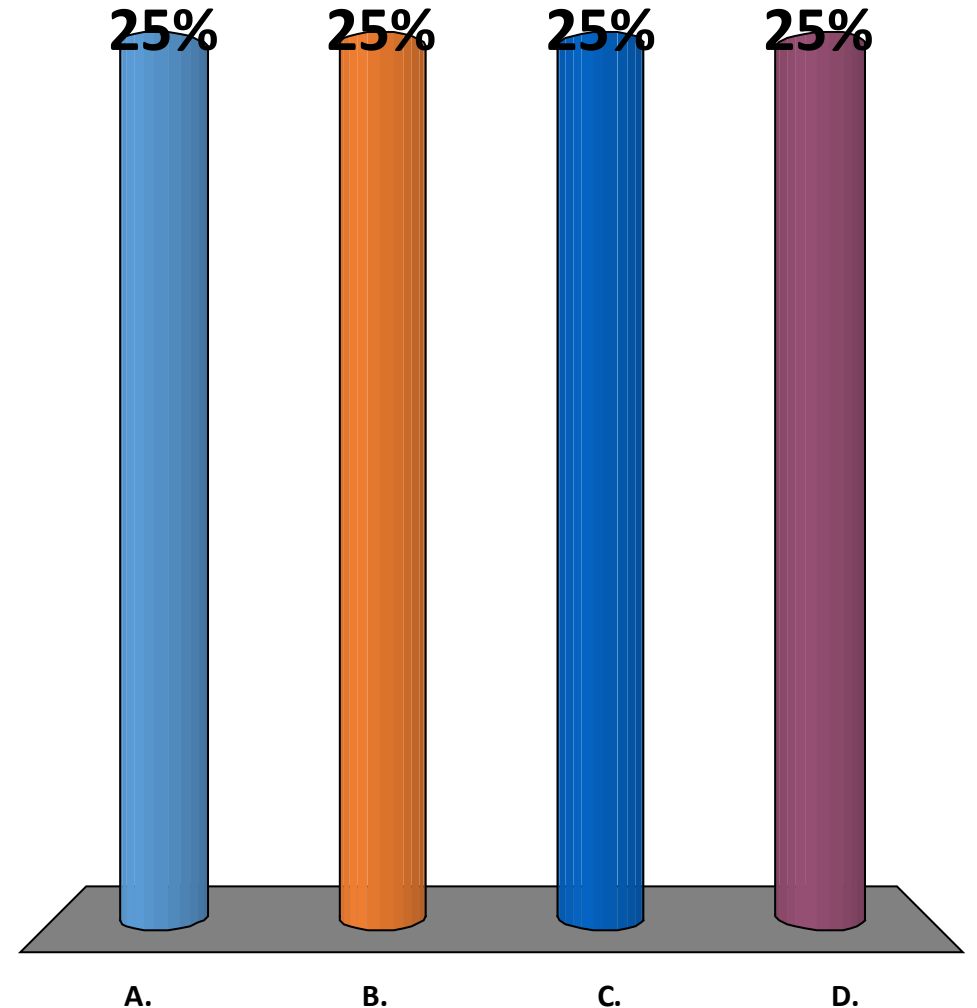
- County in which applicant resides;
- County in which respondent resides; or
- Any county in which the family violence is alleged to have occurred.

Question 1:

H is accused of murdering ex-wife. Young son's maternal grandmother files protective order to protect her family and grandson from H while case is pending.

Question 1:

- A. Granted for < 2 years
- B. Granted for > 2 years
- C. Denied because H is in jail and no finding that FV may occur in future.
- D. Denied because H has always been good to child and coaches his T-ball team.



CCP §5.04 Duties of Peace Officers

- Protect any potential victim of family violence
- Enforce the law
- Enforce protective order
- Make lawful arrests of violators
- Advise adult victim of all reasonable means to prevent further family violence including giving written notice of victim's rights & remedies & availability of shelter and other community services.
- Written notice required in English & Spanish outlined in CCP §5.04(c)

CCP §5.04 (c) Notice

“NOTICE TO ADULT VICTIMS OF FAMILY VIOLENCE

It is a crime for any person to cause you any physical injury or harm. **EVEN IF THAT PERSON IS A MEMBER OR FORMER MEMBER OF YOUR FAMILY OR HOUSEHOLD.**

Please tell the investigating officer:

If you, your child, or any other household resident has been injured; or
If you feel you are going to be in danger when the officer leaves or later.

You have the right to :

ASK the local prosecutor to file a criminal complaint against the person committing family violence; and

APPLY to a court for an order to protect you (you should consult a legal aid office, a prosecuting attorney, or a private attorney). If a family or household member assaults you and is arrested, you may request that a magistrate’s order for emergency protection be issued. Please inform the investigating officer if you want an order for emergency protection. You need not be present when the order is issued. You cannot be charged a fee by a court in connection with filing, serving, or entering a protective order. For example, the court can enter an order that:

- (1) the abuser not commit further acts of violence;
- (2) the abuser not threaten, harass, or contact you at home;
- (3) directs the abuser to leave your household; and
- (4) establishes temporary custody of the children and directs the abuser not to interfere with the children or any property

A VIOLATION OF CERTAIN PROVISIONS OF COURT ORDERED PROTECTION (such as (1) and (2) above) MAY BE A FELONY

CALL THE FOLLOWING VIOLENCE SHELTERS OR SOCIAL ORGANIZATIONS IF YOU NEED PROTECTION: _____

Types of Protective Orders in Texas

- Magistrates Order of Emergency Protection (most common in Texas)
 - Special type of protective order available to victims AFTER an arrest is made in a criminal case;
 - Lasts 31-91 days depending on severity of crime;
 - Court appearance is not required;
 - Officer may request after arrest; and
 - Creates safety zone at homes, workplaces, schools & daycares.

FAM Title 4 Protective Orders

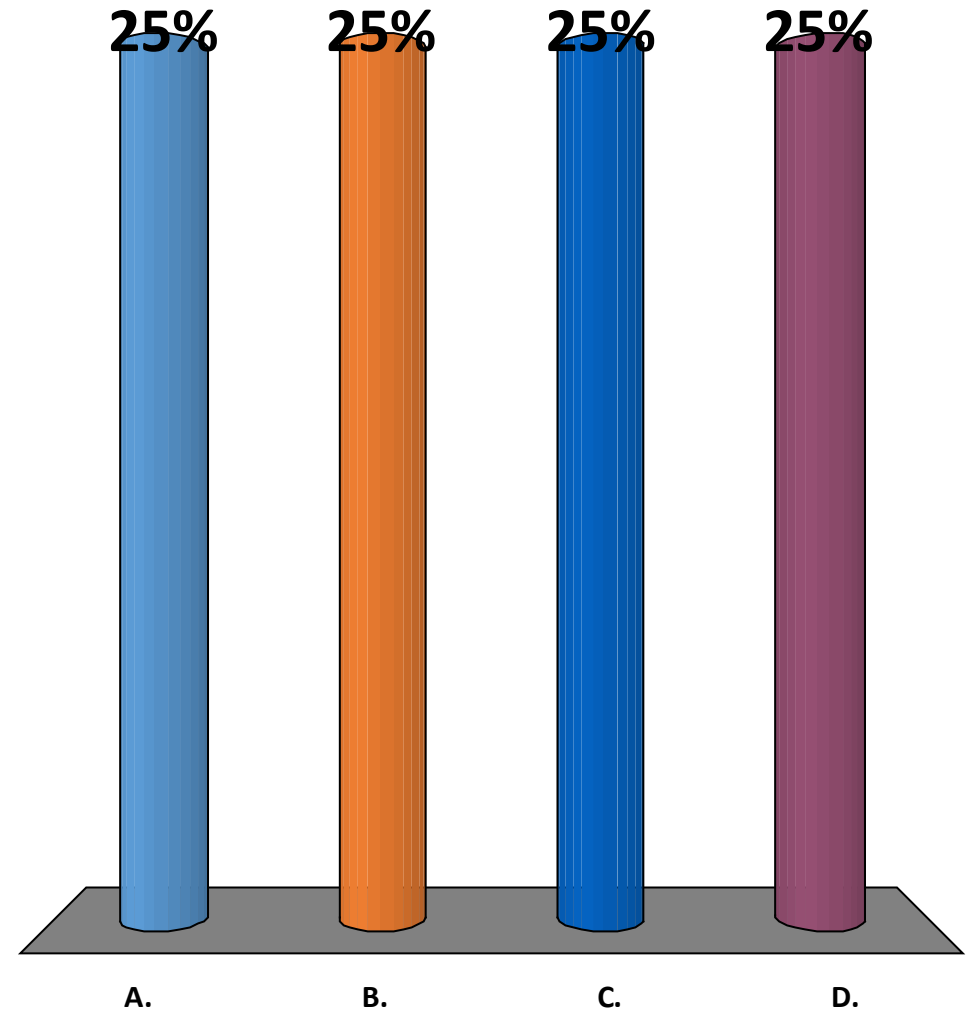
- Temporary Ex-Parte Protective Order TFC §83.001
 - Meant to keep applicant safe AFTER they have applied for final protective order but before hearing;
 - Clear and present danger of family violence;
 - Valid for 20 days but can be extended one time if respondent has not been served.

Question 2:

Bebe and Bill frequently escalate arguments to physical violence, usually by Bill. Bebe gets a temporary ex-parte protective order. Before Bill is served, they agree to extend the temporary order for 60 days. On day 54, Bebe calls police to arrest Bill.

Question 2:

- A. No authority because order has expired.
- B. Bill goes to jail.
- C. No authority because lack of service.
- D. Bebe's lawyer is sanctioned because he messed up.



Protective Order after Notice & Hearing

- Final Protective Order (quasi-criminal)
 - Generally valid for specified period up to 2 years; (TFC §85.025 exceptions)
Can stop future violence;
 - Protects children;
 - May grant child support and visitation;
 - Protects pets;
 - May restrict the abuser from access to firearms;
 - Shall suspend license to carry a handgun; and
 - May order abuser to take battering prevention/ anger management classes.

Hearing on Protective Order

- FAM § 84.001 hearing set not later than 14 days unless county is > 2 M pop. or multi county district, then up to 20 days;
- Court may grant 1 extension;
- If notice < 48 hours, court may reschedule hearing no later than 14 days;
- Legislative continuance is discretionary; and
- Hearsay statement by child 12 and younger is admissible

Required Findings and Orders

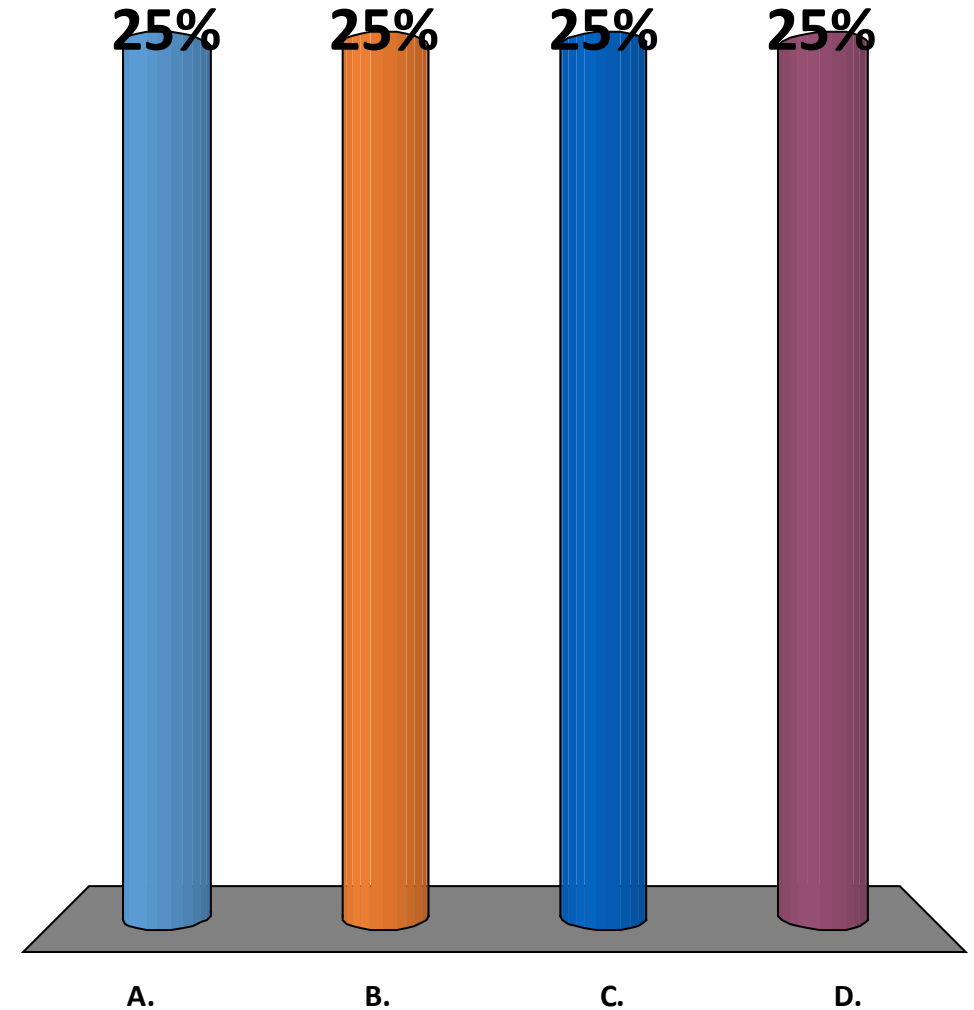
- TFC §85.001 Court SHALL find whether:
 - Family violence has occurred; AND
 - Family violence is likely to occur in the future.
- Then:
 - SHALL render protective order per TFC§85.022 applying only to a person found to have committed family violence; AND
 - MAY render per TFC §85.021 applying to both parties that is in the best interest protected person or family.
 - Findings must be in the order.
 - If court renders a protective order for > 2 years, order must include finding per TFC §85.025(a-1)

Question 3:

Jill and Joe dated three years and called 911 2-3 times per month reporting violence. Joe moves to Montana to get away. Jill files for temporary ex-parte protective order because of “violence” the evening before he moved.

Question 3:

- A. Court has no jurisdiction because Joe is in Montana.
- B. Court has no venue because Joe has moved.
- C. No clear and present danger because Joe has moved.
- D. All of the above.



Protective Order >2 Years TFC §85.025(a-1)

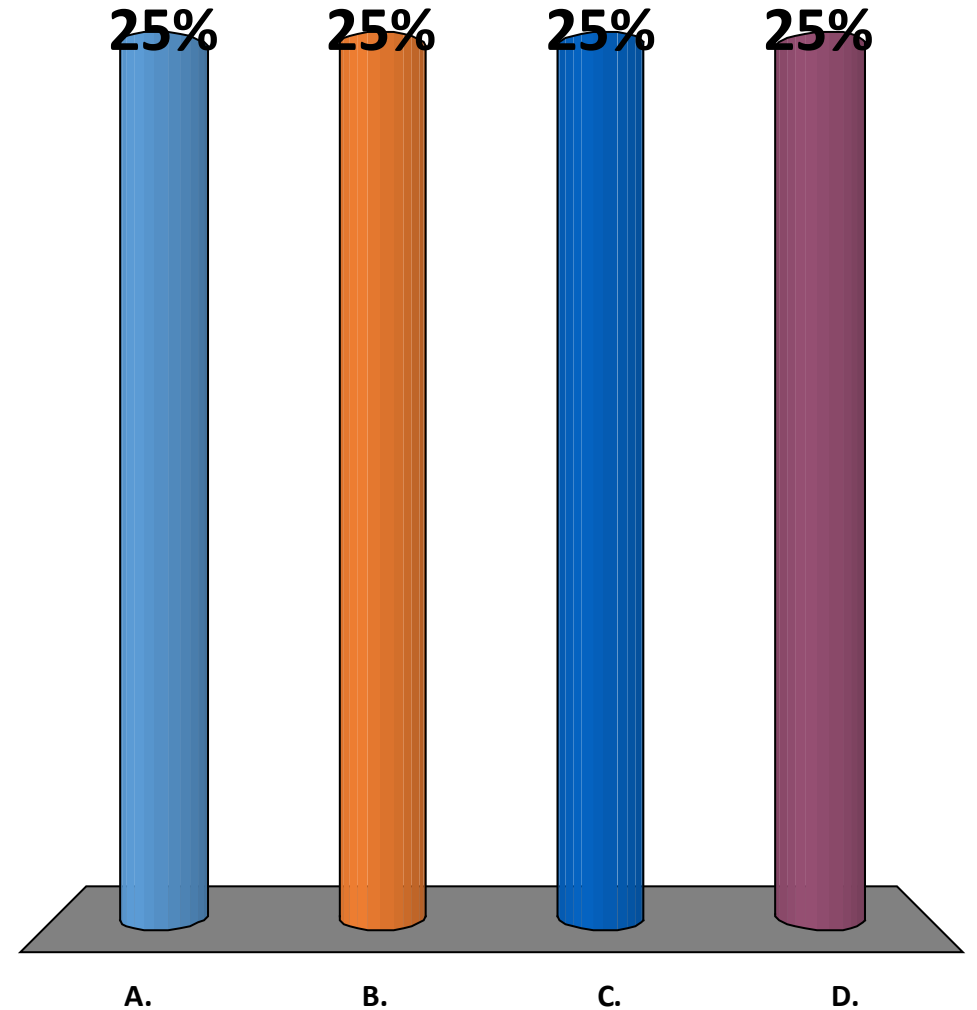
- Court MAY render order exceeding 2 years to protect applicant (and family) if subject of protective order:
 - Caused serious bodily injury; OR
 - Was subject of 2 or more previous protective orders rendered:
 - To protect person on whose behalf current protective order is sought; and
 - After a finding by the court that the subject of the protective order:
 - Has committed family violence; AND
 - Is likely to commit family violence in the future.
- Subject of protective order may request court review after 1 year, and if order exceeds 2 years may request a second court review at least 1 year after 1st.
- Times may be extended if perpetrator is confined or in prison time may be extended per TFC §85.025 (c).

Question 4:

Wife files protective orders against husband but after hearing, Judge is convinced protective order should be granted against both because of mutual danger. Can Judge do it sua sponte?

Question 4:

- A. Yes, but they will appeal (but in meantime, they are protected)
- B. No because no application by husband.
- C. Yes because husband's lawyer is absolutely incompetent.
- D. Yes because it is in best interest of family.

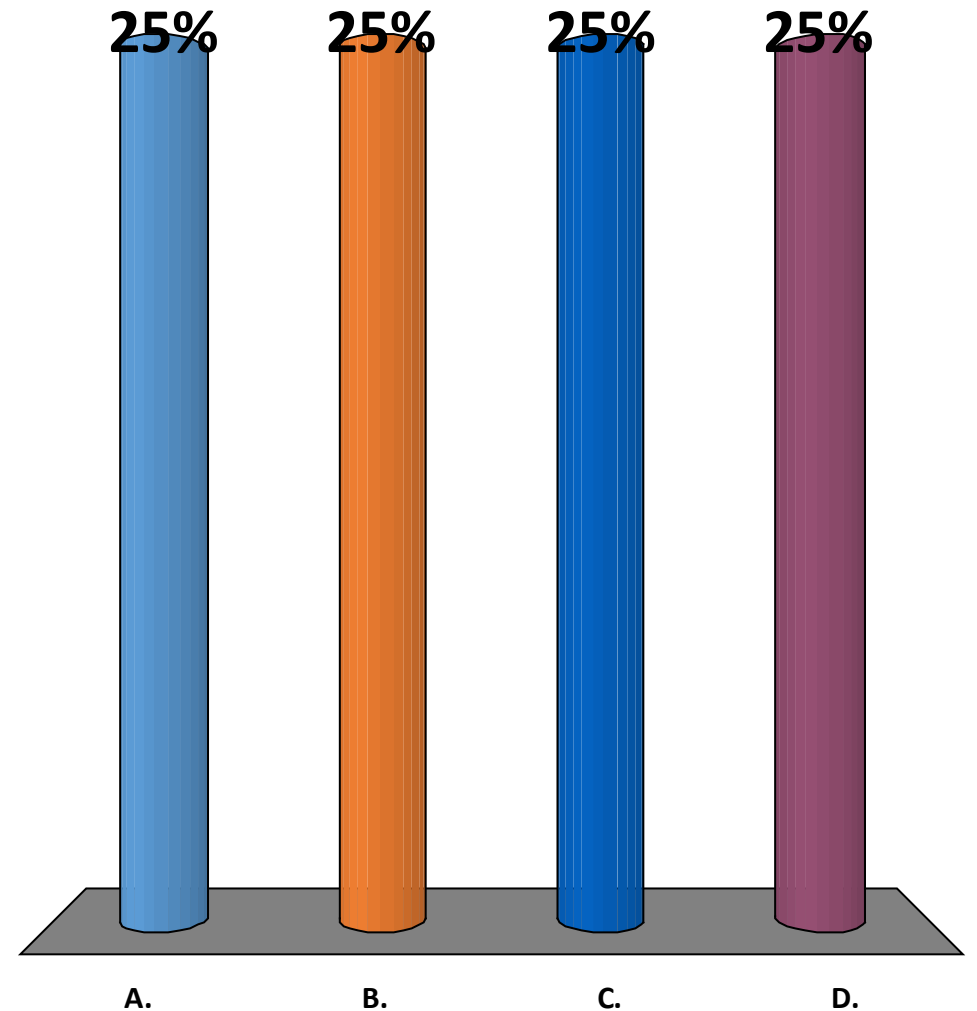


Question 5:

H was granted protective order two times 10 and 12 years ago against ex-wife who is schizophrenic. Ex-wife has now moved back to Hope City and wife #2 wants a protective order to be granted against the “crazy ex” because she poses a threat to family.

Question 5:

- A. Denied because no finding of FV.
- B. Denied because more than 10 years since last protective order granted.
- C. Yes because she has been subject to two prior protective orders.
- D. Granted only if current allegation is that serious bodily injury occurred.



Excluding Respondent from the Residence

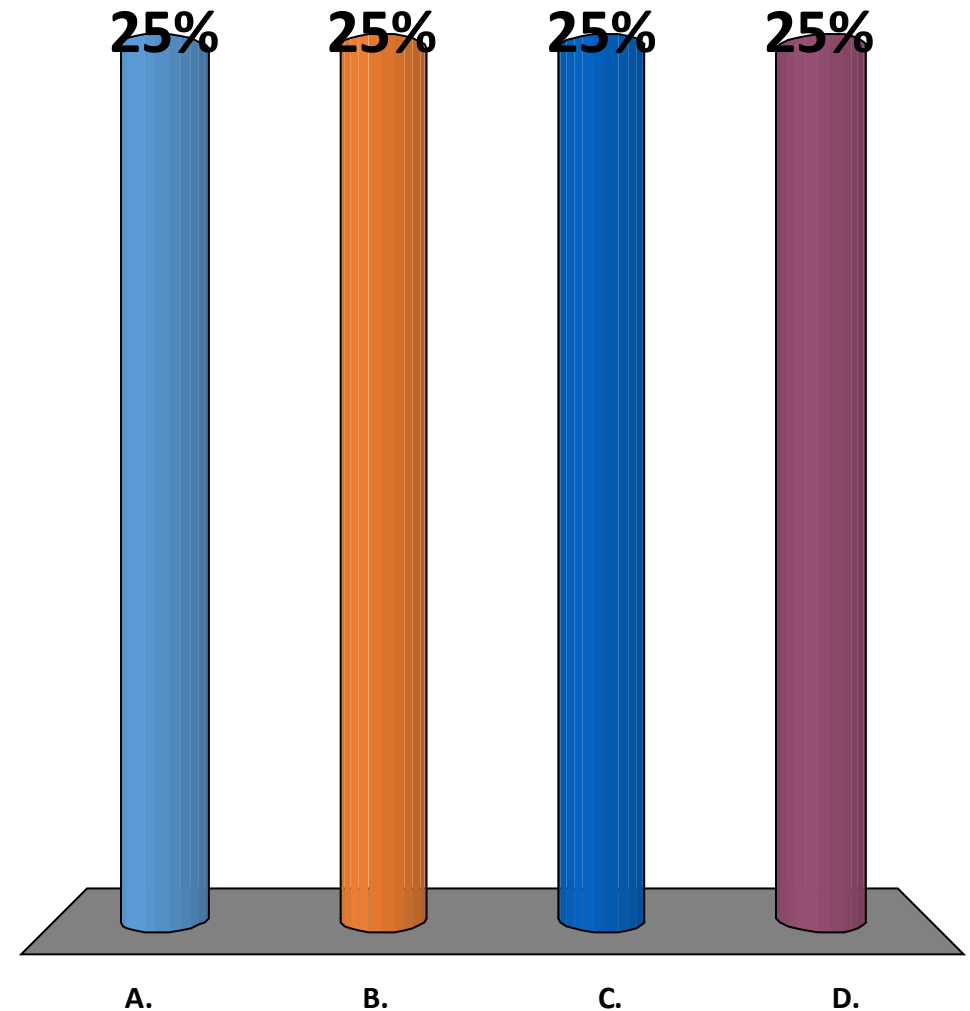
- Temporary Ex Parte Order:
 - Court shall render a written order to the sheriff, constable, or chief of police to provide a law enforcement officer to:
 - Accompany applicant to residence covered;
 - Inform respondent that court has ordered them excluded from residence;
 - Protect applicant while they take possession of residence; and
 - Protect applicant if respondent refuses to vacate the residence while applicant takes possession of necessary personal property.
- And Under a Final Order:
 - Law enforcement shall remove respondent from the residence; and
 - Arrest respondent for violating the court order.
- Protective Orders may be modified but may not extend the period of order's validity.

Question 6:

Wife files for protective order against husband citing family violence and gets a temporary ex-parte protective order with a kick out provision prior to service.

Question 6:

- A. Husband will be removed from residence.
- B. Husband will be served and removed from residence.
- C. Husband will be removed from home **only** after service and hearing.
- D. Husband will not be removed because it is his separate property home.



Violations of Protective Orders

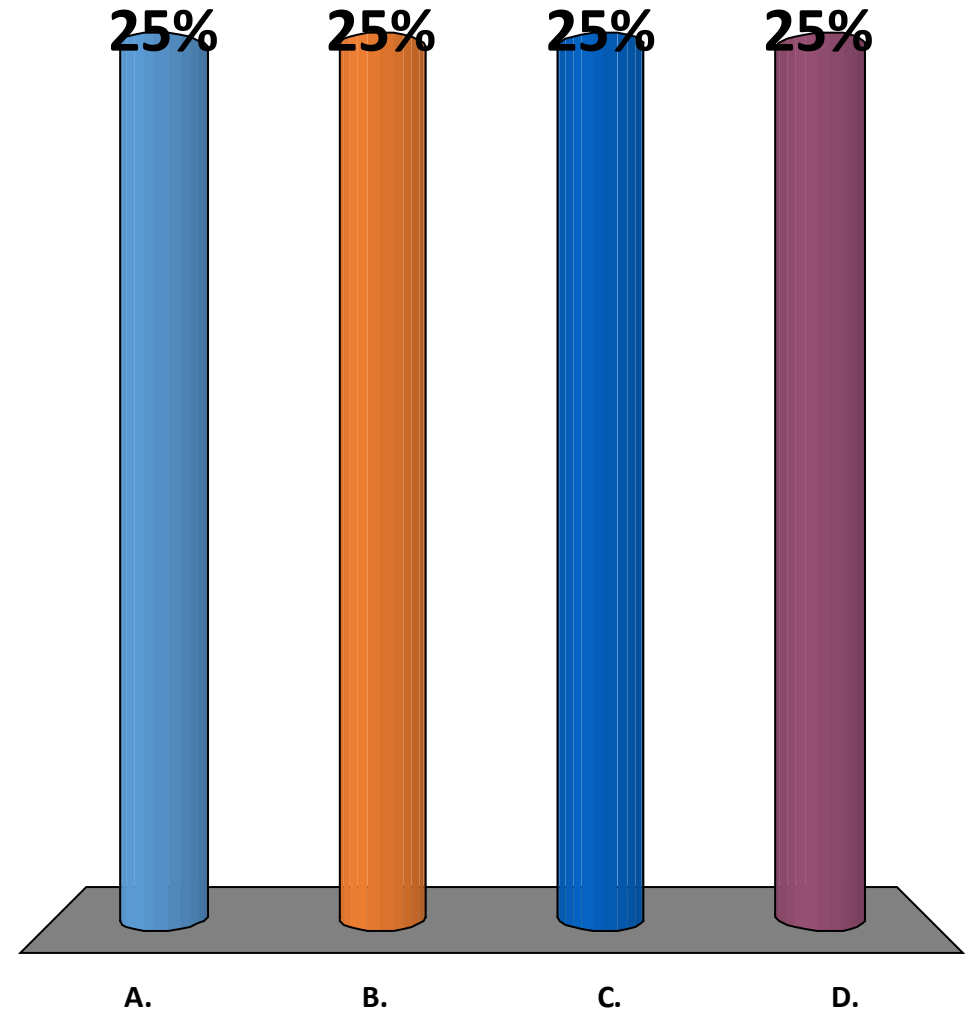
- Contempt of Court- up to \$500. or 6 months in jail.
- If commission of prohibited act up to \$4,000. or up to 1 year in jail.
- Can be prosecuted for act resulting in family violence as a separate misdemeanor or felony.
- If prohibited act is prosecuted as a felony confinement for 2 years or more.
- **NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THE ORDER MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THE ORDER DURING TIME IN WHICH ORDER IS VALID. ONLY COURT ORDER MAY CHANGE IT.**

Question 7:

Sue and Sam have lovers quarrel resulting in shoving and slapping. Sue gets a final protective order. Sue sees Sam at a local bar and invites him over for “make-up get together.” Sue’s best friend sees Sam going into Sue’s apartment and calls the police.

Question 7:

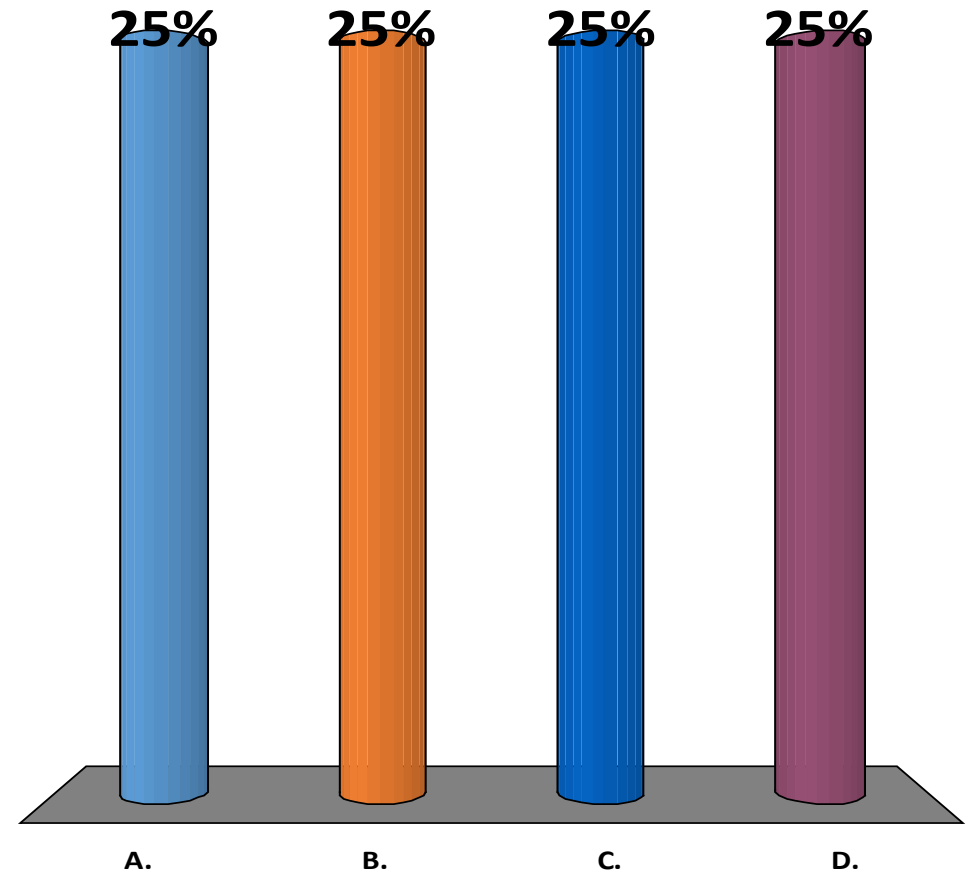
- A. Sam goes home because Sue invited him to her apartment.
- B. Sue goes to jail for violating protective order.
- C. Sam goes to jail.
- D. No harm, everyone goes home. All is fair in love and war.



Question 8:

Same scenario from previous question except Sam also has protective order against Sue.

- A. Sam goes to jail.
- B. Everyone goes home; no harm, no foul.
- C. Sue goes to jail.
- D. Both go to jail.



Things you Need to Know

- Family & Dating Violence-who qualifies?
 - TFC Ch. 71 act in which the applicant and respondent
 - Have or have had a dating relationship;
 - Involved through marriage or dating relationship or with a 3rd party who has or has had a dating or marriage relationship;
 - Former spouses;
 - Parents of same child or foster child; or
 - Members or former members of same household or dwelling.
- Mandatory language must be included in protective orders per TFC §85.026
- An Ex-Parte Protective Order may only be extended by the Court and automatically expires if no hearing occurs.

Distinguishing Protective Orders

Type of Order	Grounds	Notice	Hearing	Duration	Enforcement
Temporary ex parte order	Clear and present danger of family violence	Not required	Not required unless kick-out order requested	Up to 20 days(unless extended)	Civil and criminal Enforcement available
Final protective order	Family violence occurred and is likely to occur in the future	Required	Required	Unless otherwise specified, 2 years. Longer than 2 years if respondent (1) Caused serious bodily injury to applicant or applicant's family or (2) Has been subject to two or more earlier protective orders rendered to protect same applicant	Civil and criminal enforcement available
Magistrate's emergency order	Arrested for family violence, sexual assault, aggravated sexual assault or stalking	Not required	Not required	At least 31 days but no more than 61 days. At least 61 days but no more than 91 days if arrest for family violence also involved use or exhibition of deadly weapon.	Civil and criminal enforcement available.

LEGAL CONSEQUENCES OF FAMILY VIOLENCE

- Ground for Objection to mediation
- Requires payment of fees and costs related to issuing a protective order & gives a court discretion to assess attorney fees against the offender when issuing a protective order
- Requires suspension of license to carry a concealed handgun if protective order is issued
- Ground for issuing magistrate's order for emergency protection; ground for issuing kick-out order to remove a party from a residence; ground for issuing final protective order; and if family violence is found two or more times for the same subject of a protective order that protects the same victim, ground for issuing protective order that is effective for more than two years
- Ground for declining to enter judgment on a mediated settlement agreement
- Ground for granting spousal maintenance

LEGAL CONSEQUENCES OF FAMILY VIOLENCE

- Ground for determining whether to deny, restrict, or limit the possession of a child by a parent who is appointed as a possessory conservator
- Ground for not allowing a parent to have access to a child when a history or pattern of family violence is shown by a preponderance of the evidence
- Requires consideration when determining whether a party has a history of domestic violence for the purpose of appointing the party as sole or joint managing conservator
- Removes the presumption that the appointment of the child's parents as joint managing conservators is in the child's best interest
- Constitutes a material and substantial change sufficient to justify both a temporary order and a modification of an existing order that provides for the appointment of a conservator or that sets the terms and conditions of conservatorship of, possession of, or access to a child
- Prohibits appointment as a guardian of a proposed ward or ward who is protected by the protective order

Questions???