

HOW TO MODIFY AN EMERGENCY PROTECTION ORDER IN AUSTIN, TEXAS

An existing Emergency Protection Order (EPO) contains three general prohibitions against the person arrested for an offense involving family violence (called the “Respondent”). These provisions are located at the bottom of the first page on your EPO. In brief, the three general prohibitions say that the Respondent may not 1) commit future violence against the protected person, 2) threaten or harass the victim, or 3) go within 200 yards of the victim’s specific addresses.

EPO’s are rarely cancelled because the first two provisions of the order only prohibit illegal conduct anyway. Most often, when a person requests that an EPO be “cancelled” or “revoked”, they really only want the order changed to allow the Respondent to return to a restricted address (a residence or a child care facility). A “Modification Hearing” is the process by which to make changes in your EPO. A modification may not solve your problem or address a specific concern. Do not hesitate to contact the EPO Attorneys to discuss your situation and whether a modification is appropriate in your case.

If you have an attorney representing you in a divorce or custody action, or you are the Respondent and have retained a criminal defense attorney, please inform them of your desire to modify the EPO.

As of September 1, 2003, any changes to an EPO can only be done after a judge holds a hearing. This process is explained in detail in this packet. There is no standard time frame in which this will all take place. Two factors will determine whether your modification will be processed quickly:

- 1) How quickly you receive this packet and complete the steps outlined in this packet, and
- 2) How quickly the Modification Hearing can be scheduled with the judge.

You will turn in all of your paperwork at the Judges’ offices located in the City of Austin Municipal Courthouse, located off of **North IH35 and 7th Street on the 2nd floor**. This is the same location where your hearing will take place, once a court date has been set

Please read all of the following materials carefully and complete all of the necessary steps, including the paperwork. This packet contains the following items:

- Checklist for Modification Procedures
- Blank Motion to Modify EPO (to be completed by you)
- Instructions for Obtaining the Probable Cause Affidavit
- Contact Sheet for Providing Notice to Affected Parties
- Safety Plan Brochure
- General Information for a Variety of Resources

While we are happy to guide you through the process of obtaining a modification, we cannot complete your motion or obtain documents for you. If you need special assistance or explanations for this packet, do not hesitate to call Texas Advocacy Project at (800) 374-4673.

EPO MODIFICATION CHECKLIST

- _____ Read enclosed instructions carefully
- _____ Complete Motion to Modify Emergency Protection Order
- _____ Complete Contact Information For Providing Notice to Affected Parties
- _____ Copy the Probable Cause Affidavit AND the Emergency Protection Order at the County (misdemeanors) or District (felonies) Clerk's Office
- _____ Submit the following materials to Judge's Office at Municipal Courthouse
 - _____ Motion to Modify EPO
 - _____ Probable Cause Affidavit
 - _____ Copy of Emergency Protection Order
 - _____ Contact Information Sheet
- _____ Receive Notice of Scheduled Modification Hearing
- _____ Attend Modification Hearing

INSTRUCTIONS FOR OBTAINING PROBABLE CAUSE AFFIDAVIT

The Probable Cause Affidavit contains the police officer's initial allegations against the Respondent. Lawyers, judges and police refer to it as a "Probable Cause Affidavit", but the actual title of the document will most likely read:

"AFFIDAVIT FOR WARRANT OF ARREST AND DETENTION"

The affidavit is usually one or two sheets of paper and often has writing on both sides. There is a fee for copying it. You will also need to bring the Cause Number assigned to your case, which is located at the top of your EPO. It may be possible to request and pay for the Probable Cause Affidavit online.

If your case involves a **misdemeanor** charge (i.e. Assault-Family Violence, Terroristic Threat, Criminal Trespass, Interference with an Emergency Call, Stalking, Unlawful Restraint), then the file will be located in the **County** Clerk's Criminal Division. The file room is located in the Civil Courthouse on Guadalupe, between 10th and 11th Streets, in Room 220 on the Second Floor. Please call (512) 854-9188 for more detailed information or visit the website at: <http://www.traviscountyclerk.org/eclerk/>.

If your case involves a **felony** charge (i.e. Aggravated Assault, Kidnapping, Attempted Murder, Assault-Family Violence-enhanced to a felony due to prior family violence convictions), then the file will be located in the **District** Clerk's Criminal Division. The file room is located in Room 1.400 on the first floor of the Blackwell-Thurman Criminal Justice Complex, which is just west of the Civil Courthouse on Guadalupe. Please call (512) 854-9420 for more detailed information or visit the website at: http://www.co.travis.tx.us/district_clerk/.

Please note that if the Affidavit alleges that a weapon was used or exhibited during the course of the offense involving family violence, then the judge was legally required to issue an EPO. While a modification may still be a possibility, it is less likely than in other cases.

Once you have found and copied the Probable Cause Affidavit in your case, attach it to your Motion to Modify. This will provide the judge with the background information on your case. Many judges refuse to consider an EPO Modification without seeing the allegations the officers made against the Respondent.

CONTACT INFORMATION FOR PROVIDING NOTICE TO AFFECTED PARTIES

As of September 1, 2003, a hearing must be held to determine the appropriateness of modifying an EPO. In order to have a hearing, everyone affected by the EPO must be notified of the scheduled hearing in order to give them a chance to participate. An affected person is the Respondent, the Protected Person and the Prosecutor. It does not include minor children of the parties, children listed in the EPO, or anyone not listed by name in the EPO. When a hearing is scheduled, the EPO Attorneys will notify the Respondent, the County or District Attorney and the Protected Person. Please fill out the following information, especially the opposing party's information, if you know it.

DO NOT PLACE YOURSELF OR ANYONE ELSE IN ANY DANGER TRYING TO LOCATE AN OPPOSING PARTY. IF YOU DO NOT KNOW THIS INFORMATION, SIMPLY LEAVE THE SECTION BLANK.

Respondent: _____

Address: _____

Phone #'s: Home _____ Work _____ Cell _____

Attorney for Respondent: _____
Attorney's Phone: _____

Protected Person: _____

Address: _____

Phone #'s: Home _____ Work _____ Cell _____

Is it safe to leave a message at these numbers? _____ Safe alternate number _____

Attorney for Protected Person: _____
Attorney's Phone: _____

CAUSE NO. _____

THE STATE OF TEXAS

IN THE _____ COURT
[EPO Issuing Court]

V.

_____ COUNTY, TEXAS

Motion to Modify Emergency Protection Order

I, _____, the Respondent or Protected Person, undersigned, hereby move to modify the Magistrate's Order of Emergency Protection (MOEP) issued on _____, 20____ by Judge _____. In support of this motion, I submit the following facts:

1. The following changes have occurred since the issuance of the MOEP:

2. The MOEP, as originally issued, is unworkable because:

3. The requested modification will not place the victim of the offense at greater risk than did the MOEP because:

4. The requested modification will not, in any way, endanger a person protected under the MOEP because:

5. The following additional information is provided in support of this motion:

Respectfully submitted,

CONTACT NUMBERS AND RESOURCES

Austin, Texas

Municipal Court—

Court Contacts: Olga Delgado - (512) 974-4842
 Lynn Kostelnik - (512) 974-4628
 Lien Nguyen - (512) 974-4841

Please call for questions regarding your request for a modification hearing.

County Attorney's Office (512) 854-9415

This office can assist you in obtaining a 2-year Protection Order, if you are trying to extend your EPO or include additional addresses. The CA's office also sponsor a course titled "Project Options."

County Attorney's Office, Project Options Hotline (512) 854-4423

Project Options is a free 2-hour discussion to increase a person's understanding of the criminal justice system, issues regarding violence, patterns of abuse, resources and options for leaving an abusive partner. Additionally, the County Attorney will not consider dismissing a misdemeanor family violence assault case without a certificate of completion from Project Options.

County Clerk, Criminal Division (512) 854-9188

District Clerk, Criminal Division (512) 854-9420

Family Violence Protection Team (512) 974-8535

This number will reach detectives and counselors assigned to APD family violence cases.

SafePlace—Memorize this number! (512) 267-SAFE (7233)

This is a 24-hour hotline for the battered women's shelter and rape crisis center. If you ever feel alone, scared or just need to talk with someone immediately, call this number. Obviously in an emergency, call 911.

Texas Advocacy Project Legal Hotlines 1-800-374-4673

Legal questions and referrals on family law matters, including divorce and custody.

VINE—Victim Notification Hotline 1-800-TX4-VINE or 1-800-894-8463

Provides basic information on jailed suspects/offender and their scheduled court events. Notifies registered users of changes in jail status and court events. Free service for crime victims and other concerned citizens. Available 24 hours a day, 7 days a week in English or Spanish.