

TITLE 4. PROTECTION OF THE FAMILY

*Commentary by Leota H. Alexander**

Introductory Commentary

The 1983 and 1985 Texas Legislatures amended six sections and added one new section to Title 4 of the Texas Family Code. These same legislatures also made changes to the Texas Penal Code and Code of Criminal Procedure which pertain to family violence prevention. Although this Commentary is intended to cover only the legislative changes to Title 4, it also is necessary to discuss the changes to the Penal Code and Code of Criminal Procedure in order to understand the legal protection now provided to the family.

§ 71.01. Definitions

(a) Except as provided by Subsection (b) of this section, the definition in Section 11.01 of this code apply to terms used in this chapter.

(b) In this chapter:

(1) "Court" means the district court, court of domestic relations, juvenile court having the jurisdiction of a district court, or other court expressly given jurisdiction of a suit under this subtitle or a county court.

(2) "Family violence" means the intentional use or threat of physical force by a member of a family or household against another member of the family or household, but does not include the reasonable discipline of a child by a person having that duty.

(3) "Family" includes individuals related by consanguinity or affinity, individuals who are former spouses of each other, individuals who are the biological parents of the same child, without regard to marriage or legitimacy, and a foster child and foster parent, whether or not those individuals reside together.

(4) "Household" means a unit composed of persons living

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together in the same dwelling, whether or not they are related to each other.

(5) "Member of a household" includes a former member of a household who has filed an application or for whom protection is sought as provided by Subsection (c) of Section 71.04 of this code.

Commentary

The definitions in section 11.01 of title 2, dealing with the parent-child relationship, are applicable to Chapter 71, except as provided in section 71.01(b).

The only change in the definitions in subsection (b) made by the 1985 Legislature was to expand the definition of a "family" in subsection (b)(3). "Family" is redefined effective September 1, 1985 to include parents of illegitimate children. This amendment was contained in Senate Bill 869¹ which also created chapter 5 of the Code of Criminal Procedure which will be discussed later in the Commentary.

Since the purpose of Title 4 is to protect persons from interpersonal or domestic abuse, it is logical to extend this protection to persons who have been intimate enough to have had a child born to the relationship, regardless of their legal status.

§ 71.04. Application for Protective Order

(a) An application under this chapter is entitled "An application for a protective order."

(b) An application may be filed by:

(1) an adult member of a family or household for the protection of the applicant or for any other member of the family or household;

(2) any adult for the protection of a child member of a family or household; or

(3) any prosecuting attorney who serves the county in which the application is to be filed and who represents the state in a district or statutory county court for the protection of any person alleged to be a victim of family violence.

(c) A person who was a member of a household at the time the

1. Act of June 13, 1985, ch. 583, § 4, 1985 Tex. Gen. Laws 4460, 4465.

alleged family violence was committed is not barred from filing an application or from protection under this chapter even if the person no longer resides in the same household with the person who is alleged to have committed the family violence.

(d) The fee for filing an application is \$16 and is to be paid to the clerk of the court in which the application is filed. If the applicant files a sworn statement that the applicant is unable to pay the filing fee and other court costs, the court, on a finding that the statement is true, shall waive the fee and costs that may be due or become due from the applicant. A hearing on the issue of the waiver of the fee and cost, if requested by a party or if required by the court, must be held within three days of the request by a party or of the court's requirement.

(e) If the application is filed by a prosecuting attorney under Subdivision (3) of Subsection (b) of this section, the court may assess a reasonable attorney's fee as compensation for the services of the prosecuting attorney. The attorney's fee may be assessed against the party represented by the attorney or against any other party who is found to have committed family violence. In setting the amount of the fee, the court shall consider the income and ability to pay of the person against whom the fee is assessed. The amount of fees collected under this section shall be paid to the credit of the county fund from which the salaries of employees of the prosecuting attorney are paid or supplemented.

Commentary

This section was amended by the 1983 Legislature to provide victims of family violence increased access to the courts. Protective orders have been available in Texas for over four years but there have been relatively few applications for this remedy. One explanation for the limited use of this procedure may have been the inability of the victim to pay for costs and attorney's fees.

This section now provides a means for the victim to file who does not have the nominal filing fee. Many victims of family violence are not employed outside the home or have extremely low incomes. If the victim's affidavit of inability to pay is contested by a party or the court, a hearing must be held within three days. This timely requirement is crucial because delay could result in a continuation of the violence for an unconscionably long period of time.

Authorization for the prosecuting attorney to seek Title 4 protec-

tive orders also should help victims with limited financial means. If the prosecuting attorney does file the application, a reasonable attorney's fee may be assessed against the party represented by the attorney or against the abuser.

§ 71.05. Contents of Application

(a) An application must state:

(1) the name and county of residence of each applicant and the name, address, and county of residence of each individual alleged to have committed family violence;

(2) the facts and circumstances concerning the alleged family violence;

(3) the relationships between the applicants and the individuals alleged to have committed family violence; and

(4) a request for one or more protective orders.

(b) If an application requests a protective order for a spouse and alleges that the other spouse has committed family violence, the application must state that no suit for the dissolution of the marriage of the spouses is pending.

(c) If an applicant is a former spouse of an individual alleged to have committed family violence:

(1) a copy of the decree dissolving the marriage must be attached to the application; or

(2) the application must state that the decree is unavailable to the applicant and that a copy of the decree will be filed with the court before the hearing on the application.

(d) If an application requests a protective order for a child who is subject to the continuing jurisdiction of a court under Subtitle A, Title 2, of this code or alleges that a child who is subject to the continuing jurisdiction of a court under Subtitle A, Title 2, of this code has committed family violence:

(1) a copy of the court orders affecting the conservatorship, possession, and support of or the access to the child must be filed with the application; or

(2) the application must state that the orders affecting the child are unavailable to the applicant and that a copy of the orders will be filed with the court before the hearing on the application.

(e) If the application requests the issuance of a temporary ex parte order under Section 71.15 of this code, the application must:

- (1) contain a detailed description of the facts and circumstances concerning the alleged family violence and the need for immediate protective orders; and
- (2) be signed by each applicant under an oath that the facts and circumstances contained in the application are true to the best knowledge and belief of each applicant.

Commentary

Subsection (a)(1) was amended in 1983 to eliminate the requirement that the address of the applicant be included in the pleadings. This amendment permits the victim to maintain secrecy about his or her place of residence. A similar amendment was made to subsection 71.11(b)(3) in 1985 and section 71.111 was added in 1985 in order to allow the court to exclude the victim's address from a protective order.

§ 71.06. Dismissal of Application

If a suit for the dissolution of marriage has been filed before the date on which an application for a protective order is filed and that suit is pending on the date that the application is filed, no application or portion of an application involving the relationship between the spouses or their respective rights, duties, or powers may be considered, and the application or portion of the application relating to those parties shall be dismissed.

Commentary

This section was amended in 1983 to clarify situations where a victim had applied for a protective order before a dissolution suit was filed. Some authorities had interpreted the former provision as requiring that the application for protective order be nullified if the alleged abuser subsequently filed for divorce. If this interpretation were correct, it forced the abuse victim to choose between continuing with the Title 4 protective order or starting over in a divorce proceeding with the standard requests for injunctive relief. Thus, the abused victim would be required to pay two fees for the same result. This amend-

ment now makes it clear that the protective order will remain in effect until superseded by the divorce court.

§ 71.11. Protective Order

- (a) In a protective order the court may:
- (1) prohibit a party from:
 - (A) removing a child member of the family or household from the possession of a person named in the court order or from the jurisdiction of the court; or
 - (B) transferring, encumbering, or otherwise disposing of property mutually owned or leased by the parties, except when in the ordinary course of business;
 - (2) grant exclusive possession of a residence to a party and, if appropriate, direct one or more other parties to vacate the residence if:
 - (A) the residence is jointly owned or leased by the party receiving exclusive possession and by some other party denied possession;
 - (B) the residence is owned or leased by the party retaining possession; or
 - (C) the residence is owned or leased by the party denied possession but only if that party has an obligation to support the party granted possession of the residence or a child of the party granted possession;
 - (3) provide for possession of and access to a child of a party;
 - (4) require the payment of support for a party or for a child of a party if the person required to make the payment has an obligation to support the other party or the child;
 - (5) require one or more parties to counsel with a social worker, family service agency, physician, psychologist, or any other person qualified to provide psychological or social guidance;
 - (6) award to a party use and possession of specified property that is community property or jointly owned or leased; or
 - (7) prohibit a party from doing specified acts or require a party to do specified acts necessary or appropriate to prevent or reduce the likelihood of family violence.

(b) In a protective order the court may prohibit a party from:

(1) committing family violence;

(2) directly communicating with a member of the family or household in a threatening or harassing manner;

(3) going to or near the residence or place of employment or business of a member of the family or household. The court shall specifically describe the prohibited locations and the minimum distances therefrom, if any, that the party must maintain unless Section 71.111 of this code applies, in which case, the court order need not disclose the place of the protected party's residence.

(c) A protective order or an agreement approved by the court under this chapter does not affect the title to real property.

(d) A protective order made under this section that conflicts with any other court order made under Subtitle A, Title 2, of this code is to the extent of the conflict invalid and unenforceable.

Commentary

Subsection (b)(3) was amended effective August 26, 1985 by House Bill 2160.² Ordinarily, in a protective order under section 71.11 the court must describe the prohibited locations which necessarily would include the victim's residence. However, in some situations it may be appropriate to exclude this information in order to protect the victim. This amendment was necessary to correlate subsection (b)(3) with the new section 71.111 discussed below.

§ 71.111. Confidentiality Of Certain Information

On the request of a member of a family or household, the court may exclude from any protective, agreed, or temporary order under this chapter the address and telephone number of a person protected by the order and order the clerk to strike that information from the public records of the court, and, if necessary, make a confidential record of that information for use only by the court.

Commentary

This is a new statute added by the 1985 Texas Legislature, effec-

2. Act of June 11, 1985, ch. 469, § 2, 1985 Tex. Gen. Laws 3168, 3169.

tive August 26, 1985.³

The ordinary protective order under section 71.11 must include a specific description of the locations that the party is prohibited from going to or being near. But certainly there are situations where the residence of the victim should be kept out of the public records for further protection.

§ 71.13. Duration of Protective Orders

(a) An order made under Section 71.11 of this code is effective for the period specified in the order, not to exceed one year.

(b) An order of a court having jurisdiction of a suit for divorce or annulment prevails, to the extent of conflict only, over a conflicting portion of an order made under this title and relating to the parties to the suit for divorce or annulment.

Commentary

Only those portions of a protective order in direct conflict with a divorce or annulment order are nullified by a subsequent order by the divorce court. Portions of the order not in conflict remain in force until superseded.

§ 72.001. Definitions

In this chapter:

(1) "Child" means an individual under 17 years of age.

(2) "Delinquency" includes doing any act that tends to debase or injure the morals, health, or welfare of a child; drinking intoxicating liquor; using narcotics; going into or remaining in any bawdy house, assignation house, disorderly house, or road house, hotel, public dance hall where prostitutes, gamblers, or thieves are permitted to enter and ply their trade; going into a place where intoxicating liquors or narcotics are kept, drunk, used, or sold; or associating with thieves and immoral persons, causing a child to leave home or to leave the custody of his parents, guardian, or persons standing in lieu of his parent or guardian without first receiving their consent or against

3. Act of June 11, 1985, ch. 469, § 1, 1985 Tex. Gen. Laws 3168, 3168-69.

their will; and doing any other act that would constitute delinquent conduct or cause him to become a delinquent by committing the act.

§ 72.002. Offense

(a) A person commits an offense if, in any case in which a child is caused to become a delinquent or a dependent and neglected child, the person encourages by any act, causes, acts in conjunction with, or contributes to the delinquency, dependency, or neglect of the child.

(b) An offense under this section is punishable by a fine of not more than \$500, by confinement in jail for not more than one year, or by both.

§ 72.003. Excluded Defense

The fact that a child has not been declared a delinquent child or a dependent or neglected child is not a defense to the offense defined by Section 72.002 of this code.

§ 72.004. Conflicting Offenses

To the extent of any conflict, the offenses defined by the Penal Code or other law enacted subsequent to Chapter 488, Acts of the 51st Legislature, Regular Session, 1949, prevail over the offense defined by this chapter.

Commentary

This chapter was added to Title 4 by the 1983 Texas Legislature. It is essentially a reenactment of the provisions of article 2338-1a of the Civil Statutes. The 1983 Legislature did not reevaluate the usefulness of article 2338-1a in our present day society. It merely changed wording where needed to conform to the definitions and terms in the Family Code.

**CONFORMING AMENDMENTS TO CODE OF CRIMINAL
PROCEDURE AND PENAL CODE RELATING TO
TITLE 4, PROTECTION OF THE FAMILY**

CODE OF CRIMINAL PROCEDURE

Chapter 5. Family Violence Prevention

Introductory Commentary

Although Title 4 of the Family Code became effective on September 1, 1979, many law enforcement agencies were not eager to discharge their responsibilities under this Title. They still tended to take the position that family violence was a civil rather than a criminal matter and continued their practice of non-interference. The 1985 Texas Legislature amended the Code of Criminal Procedure by adding chapter 5, entitled "Family Violence Protection," effective September 1, 1985.⁴ This chapter was part of Senate Bill 869 which also amended article 14.03 of the Code of Criminal Procedure,⁵ section 25.08(a) and (b) of the Penal Code,⁶ and section 71.01 (b)(3) of the Family Code.⁷

The purpose of Senate Bill 869 was to clarify the seriousness of crimes of family violence and to emphasize that the victim is entitled to the maximum protection afforded by law regardless of any relationship with the abuser.

This legislation mandates law enforcement officers to investigate family violence and to give notice to the victim of available legal remedies and community services. The officers are required to prepare written reports of incidents and to maintain organized records of these reports.

Article 5.01. Legislative Statement

(a) Family violence is a serious danger and threat to society and its members. Victims of family violence are entitled to the maximum protection from harm or abuse or the threat of harm or abuse as is permitted by law.

(b) In any law enforcement, prosecutorial, or judicial response

4. Act of June 13, 1985, ch. 583, § 1, 1985 Tex. Gen. Laws 4460. 4460-63.

5. *Id.* § 2, 1985 Tex. Gen. Laws at 4463-64.

6. *Id.* § 3, 1985 Tex. Gen. Laws at 4464-65.

7. *Id.* § 4, 1985 Tex. Gen. Laws at 4465.

to allegations of family violence, the responding law enforcement or judicial officers shall protect the victim, without regard to the relationship between the alleged offender and victim.

Commentary

The legislature recognized the seriousness of crimes of family violence and the fact that many law enforcement officers were reluctant to interfere in these situations.

This article states the legislature's intent that family violence victims are entitled to the maximum protection provided by law, without regard to the relationship between the offender and victim.

Article 5.02. Definitions

In this chapter, "family violence," "family," "household," and "member of a household" have the meanings assigned by Section 71.01, Family Code.

Commentary

The definitions as referred to in the Code of Criminal Procedure have the same meaning as those in section 71.01 of the Family Code.

Article 5.03. Family or Household Relationship Does not Create an Exception to Official Duties

A general duty prescribed for an officer by Chapter 2 of this code is not waived or excepted in any family violence case or investigation because of a family or household relationship between an alleged violator and the victim of family violence. A peace officer's or a magistrate's duty to prevent the commission of criminal offenses, including acts of family violence, is not waived or excepted because of a family or household relationship between the potential violator and victim.

Commentary

Official duties are not waived because of a relationship between the victim and alleged offender.

Article 5.04. Duties of Peace Officers

(a) The primary duties of a peace officer who investigates a family violence allegation or who responds to a disturbance call that may involve family violence are to protect any potential victim of family violence, enforce the law, and make lawful arrests of violators.

(b) A peace officer who investigates a family violence allegation or who responds to a disturbance call that may involve family violence shall advise any possible adult victim of all reasonable means to prevent further family violence, including giving written notice of a victim's legal rights and remedies and of the availability of shelter or other community services for family violence victims.

(c) A written notice required by Subsection (b) of this article is sufficient if it is in substantially the following form with the required information in English and in Spanish inserted in the 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 OF FORMER MEMBER OR YOUR FAMILY OR HOUSEHOLD.

"Please tell the investigating peace 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). 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) IS A CRIMINAL OFFENSE.

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

“_____”
“_____”

Commentary

The primary duties of the peace officer are to protect the potential victim of family violence, to enforce the law and to make lawful arrests.

Another duty of the peace officer who investigates allegations of family violence is to advise any possible adult victim in writing, of their legal rights and the availability of shelter or other community services. This written notice must be in English and in Spanish and must be in substantial compliance with the form set out in this article. Each law enforcement agency will have to furnish information in this form regarding the availability of shelters or other agencies which offer services.

This requirement that officers furnish a written form notice to abuse victims serves several purposes. It places the burden of distribution of information on the persons most likely to recognize abuse and upon whom victims are most likely to rely. Further, the officers' level of recognition of the problem should be raised by placing this duty on them. Finally, informing the victim about the duties of the law enforcement agency makes it difficult for officers to avoid their responsibilities.

Article 5.05. Reports and Records

(a) A peace officer who has reason to believe that an offense involving family violence has occurred shall make a written report, including but not limited to:

- (1) the names of the suspect and complainant;
- (2) the date, time, and location of the incident;
- (3) any visible or reported injuries; and
- (4) a description of the incident and a statement of its disposition.

(b) Each local law enforcement agency shall establish a departmental code for identifying and retrieving family violence reports as outlined in Subsection (a) of this section. A district or county attor-

ney or an assistant district or county attorney exercising authority in the county where the law enforcement agency maintains records under this section is entitled to access to the records.

(c) In order to ensure that officers responding to calls are aware of the existence and terms of protective orders, each municipal police department and sheriff shall establish procedures within the department or office to provide adequate information or access to information for law enforcement officers of the names of persons protected by a protective order and of persons to whom protective orders are directed.

(d) Each law enforcement officer shall accept a certified copy of a protective order as proof of the validity of the order and it is presumed the order remains valid unless the order contains a termination date or is more than one year old from its execution date.

Commentary

Each peace officer having reason to believe that family violence has occurred shall make a written report detailing the incident. Each law enforcement agency shall establish procedures for filing these reports so that they may be retrieved. Police departments and sheriff's departments must establish procedures to ensure that officers responding to calls are aware of protective orders.

These record keeping requirements are important for several reasons. Obviously, it is helpful to an officer to have access to prior reports involving the same families in order to evaluate the seriousness of the situation. Further, the officer needs to be aware of any protective orders in effect in order to determine if there has been a violation of the order.

These records also will be useful in determining the scope of family violence and whether it is increasing or decreasing. Family violence, like rape, is far less likely to be reported than other crimes. Any reported statistical incidence rate probably represents only a fraction of the actual number of cases. Since law enforcement agencies are usually the first to learn of family violence cases, record keeping should begin at that level.

Article 5.06. Duties of Prosecuting Attorneys and Courts Having Jurisdiction of Crimes

Neither a prosecuting attorney nor a court may:

(1) dismiss or delay any criminal proceeding that involves a prosecution for an offense that constitutes family violence because a civil proceeding is pending or not pending; or

(2) require proof that a complaining witness, victim, or defendant is a party to a suit for the dissolution of a marriage or a suit affecting the parent-child relationship before presenting a criminal allegation to a grand jury, filing an information, or otherwise proceeding with the prosecution of a criminal case.

Commentary

This article prohibits prosecutors and courts from dismissing or delaying criminal prosecutions for family violence because a civil proceeding is pending or not pending, or making prosecution contingent upon pursuit of civil remedies.

CODE OF CRIMINAL PROCEDURE**Chapter 14. Arrest Without Warrant****Article 14.03. Authority of Peace Officers**

(a) Any peace officer may arrest, without warrant:

(1) persons found in suspicious places and under circumstances which reasonably show that such persons have been guilty of some felony or breach of the peace, or threaten, or are about to commit some offense against the laws;

(2) persons who the peace officer has probable cause to believe have committed an assault resulting in bodily injury to another person and the peace officer has probable cause to believe that there is danger of further bodily injury to that person; or

(3) persons who the peace officer has probable cause to believe have committed the offense defined by Section 25.08, Penal Code (violation of Court Order), whether or not the offense is committed in the presence of the peace officer.

(b) If necessary to verify an allegation of a violation of a protective order, a peace officer shall follow the procedures established under Section 71.18, Family Code, without leaving the scene of the

investigation if there is a possibility of the further commission of family violence.

Commentary

This section of the Code of Criminal Procedure also was amended in 1985 by Senate Bill 869 to provide more effective means for prevention of family violence.

Subsection (a) sets out situations in which a peace officer may make an arrest without a warrant. Subsection (a)(1) was not changed but subsection (a)(2) was changed in that the word "immediate" was deleted. The prior subsection required that there be immediate danger of further bodily injury before an arrest without a warrant could be made.

This prior requirement of "immediate" danger was unrealistic in situations involving family violence. An officer responding to a family dispute where the violence is over prior to his arrival may find the abuser is not even there. In that situation, there certainly is no immediate danger. Also, if the abuser is still present when the officer arrives but contends that he will not continue the abuse, the officer may decide that there is not probable cause to believe that immediate danger of further bodily injury exists.

Subsection (a)(2) now gives the officer more authority to make a warrantless arrest in situations involving family violence.

Subsection (a)(3) allows the officer to arrest a person who he has probable cause to believe has violated a protective order, whether or not the offense is committed in the officer's presence.

Subsection (b) directs the officer to verify an allegation of a violation of a protective order by checking with the police or sheriff's department. Section 71.18 of Title 4 requires each police or sheriff's department to establish procedures to provide information to officers regarding the names of persons protected by orders and persons to whom orders are directed. While the officer is checking with the department regarding the existence of an order, he is not to leave the scene if there is a possibility of further violence.

TEXAS PENAL CODE

§ 25.08. Violation of Court Order

(a) A person commits an offense if, in violation of an order is-

sued under Section 3.581, Section 71.11, or Section 71.12, Family Code, he knowingly or intentionally:

- (1) commits family violence;
- (2) directly communicates with a member of the family or household in a threatening or harassing manner; or
- (3) goes to or near the residence or place of employment or business of a member of the family or household as specifically described in the protective order.

(b) For the purposes of this section, "family violence," "family," "household," and "member of a household" have the meanings assigned by Section 71.01, Family Code.

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either or under both sections.

(d) An offense under this section is a Class B misdemeanor.

Commentary

This section was added to the Penal Code by the 1983 Legislature. The original subsection (b) enumerated the definitions set out in section 71.01 of the Family Code. The 1985 Legislature amended subsection (b) by deleting the definition, referring instead to the definitions in section 71.01.

Also, in 1985, subsection (a) was amended to include persons who violate an order issued under section 71.12 of the Family Code.

This section was intended to strengthen the enforcement of protective orders and temporary restraining orders pertaining to family violence. The Senate Committee on Human Resources heard testimony from abused women, law enforcement officers and judges that protective orders often were ineffectual in preventing further abuse because peace officers had no authority to arrest someone for violation of a civil court order unless the person also had committed a crime.

Further, victims of family violence who had obtained a protective order failed to realize that the police had no authority to enforce the order itself. If the abuser violated the order, the victim had to file a contempt action and obtain an order of contempt before any action could be taken by the law enforcement officer.

This section makes the violation of certain orders a criminal offense. Therefore, an officer arriving on the scene now has probable cause to arrest the alleged abuser found at the prohibited premises if a

section 3.581, section 7.11 or section 71.12 order has banned him from the area.

The 1983 Legislature also added section 3.581 to the Family Code which provided that once a showing is made that family violence has occurred in the past, the orders permitted under section 71.11 may be made in any divorce or annulment proceeding. Although the kinds of temporary orders that may be issued under section 3.58 are basically the same as those in section 71.11, the violation of an order issued under section 3.581 is specifically made a criminal offense.

An offense under this section is a Class B misdemeanor. However, if conduct constituting an offense under section 25.08 also constitutes another criminal offense, the offender may be prosecuted for the other offense.