Law Enforcement’s Response to Family Violence

2003
To Protect and Serve:

ACKNOWLEDGEMENTS

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Please take a few minutes to fill out the evaluation and fax back! Your feedback is important!

The following identifying information is for TCFV’s use only and is completely optional.

________________________________________  ______________________________________  ____________
Name             Agency                Date

A=Excellent  B=Good  C=Needs Improvement  D=Terrible

1. Overall impression of To Protect and Serve: Law Enforcement’s Response to Family Violence
   A                                   B       C       D

2. After reviewing To Protect and Serve: Law Enforcement’s Response to Family Violence, rate the likelihood of using the information in your public education efforts.
   A                                   B       C       D

3. Likelihood of using some or all of To Protect and Serve: Law Enforcement’s Response to Family Violence in your work with victims of family violence
   A                                   B       C       D

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   A                                   B       C       D

Additional comments?

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Please complete and fax back to Debbie Carter at 512-685-6396 at your earliest convenience, but no later than September 10, 2003
TO PROTECT AND SERVE:
Law Enforcement’s Response To Family Violence

Table of Contents

Introduction, Objectives, Purpose 1
Responding to the Call 2
Initial Contact with Involved Parties 3
Preliminary Investigation at the Scene 3
Interviewing: The Victim, Suspect, Children, Other Witnesses 5
When The Victim is an Immigrant 7
To Arrest Or Not? 8
Requesting an Additional Hold 9
Protective Orders 10
Full Faith and Credit of Out Of Jurisdiction Protective Orders 12
Civil Standby Assistance 14
Victim Notification 14
Family Violence Reports and Records 15
Uniform Crime Reporting 16
Determining the Predominant Aggressor 16
Family Violence and Firearms: A Deadly Combination 18
Federal Firearms Laws 18
Texas Family Violence Related Firearms Laws 19
Seizure Of Firearms 19
New Law Enforcement Related Bills of the 78th Legislative Session (2003) 20
Follow-up Investigation 22
Law Enforcement Liability 22
When The Suspect or Victim is a Law Enforcement Agency Employee 24
Thank You 24

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Attachments:

A) Strangulation Assessment in Family Violence Cases
B) Lethality Assessment in Family Violence Cases
C) Head Injury Assessment in Family Violence Cases
D) Notice to Adult Victims of Family Violence (English/Spanish)
E) Family Violence Incident Interview Questions
F) Articles on issues affecting battered immigrants, by Gail Pendleton, National Immigration Project, Boston, MA; updated by Krista DelGallo, TCFV
G) Application for Further Detention
H) Standardized Protective Order (with attachments A-D)
I) Request for a Magistrates Order For Emergency Protection
J) Magistrates Order for Emergency Protection (English/Spanish)
K) Enforcing Out-Of-Jurisdiction Protective Orders: Tips for Texas Law Enforcement
L) Crime Victims Rights (English/Spanish)
   Crime Victims Compensation Application (English/Spanish)
   Crime Victims Compensation Materials Order Form
M) Domestic Violence Offense/Incident Report Form
N) DPS Family Violence Report Form
O) Determining The Predominant Aggressor at a Family Violence Call
P) Misdemeanor Crimes of Domestic Violence and Federal Firearms Prohibitions
   Questions and Answers from the ATF
   Protection Orders and Federal Firearms Prohibitions
   Open Letter To All State And Local Law Enforcement Officials From The ATF
   U.S. Attorney VAWA Points of Contact
Q) Case Law on Law Enforcement Liability
R) Quick Reference to Criminal Charges Applicable to Family Violence
   Texas Family Violence Laws
S) Family Violence Call Dispatchers List
T) Family Violence Statistics in Texas
   Article: Protecting Battered Women Saves The Lives Of Men
U) Dynamics Of Family Violence
   • Progressive Effects of Abuse
   • Excuses and Tactics Used by Batterers
   • Some Barriers to Leaving an Abusive Relationship
V) Victim’s Assistance
   • Five Things to Say To a Victim of Family Violence
   • Personal Safety Plan (English/Spanish)
W) Model Policy on Police Officer Domestic Violence (IACP)

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To Protect and Serve:
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Family Violence

Introduction

When law enforcement officers are asked what type of call they least like to respond to, they almost always say “family violence calls.” Reports of family violence are one of the most frequent and least predictable calls to law enforcement. Officers never know what to expect when they arrive and their safety and the safety of the victims is especially compromised because of this unpredictability.

Objectives of Protocol

• to promote officer safety;
• to reduce family homicides;
• to provide for victim safety;
• to hold offenders accountable;
• to reduce the incidence and severity of family violence;
• to clarify law enforcement’s authority and responsibility when responding to family violence; and
• to apprise victims of family violence of their rights and services available.

Purpose

The primary purpose of To Protect and Serve: Law Enforcement’s Response to Family Violence is to provide sample procedures, guidelines and tools to be used by law enforcement agencies when responding to family violence calls. It includes information for officers, dispatchers and victims services personnel and is designed to be user friendly and easily reproduced. Any laws referenced are current through the 78th (2003) legislative session.

Law Versus Policy

Law

Law is derived from a variety of sources including: the U.S. Congress, state legislatures, and appellate courts. Law may define a particular role that an agency will play, determine an agency’s primary goals and objectives, and allocate funding to accomplish those goals and objectives. When legislative bodies create law, they usually do not describe methods for carrying out the intent. It is up to individual agencies to implement processes and procedures that will accomplish the legislative intent. Those processes and procedures constitute policy.
Policy

Policy interprets the law by describing specific duties required to carry out the law. Law enforcement agencies can always have policies that are stricter than the law, but not vice versa. Agency chiefs and department heads have wide discretion when establishing the policy to carry out the intent of the law. Policies regarding specific laws often vary widely from county to county and city to city.

Responding To The Call:

Approaching the Scene

As with any other potential crime scene, officers responding to a family violence call should use extreme caution when approaching the scene and should always approach it as a criminal investigation.

In order to increase the safety of officers and involved parties, law enforcement agencies are encouraged to use the following guidelines:

1. At least two officers should respond to the scene of a family violence incident.
2. The officers should obtain all available information from the dispatcher before arriving at the scene and should notify the dispatcher upon arrival.
3. The officers should avoid the use of sirens and emergency lights in the vicinity of the scene unless it is apparent from the information available that the victim is in imminent danger of serious bodily injury.
4. The officers should park in a “safe” zone, not directly in front of the residence. The officers should be alert for assailants leaving the scene.
5. Prior to knocking on the door, officers should pause outside to observe and to listen. This will help officers determine additional information such as the layout of the premises, number of persons present, potential risk from weapons, etc.
6. The officers should identify themselves as law enforcement officers, give an explanation as to why they are there, and request entry. If entry is refused, the officers should again request entry and explain the desire to enter the location to ensure there are no injured persons inside.

Article 14.05 of the Code of Criminal Procedure authorizes an officer to enter a residence if:

- a person who resides in the residence consents to the entry; or
- exigent circumstances require that the officer making the arrest enter the residence without the consent of a resident or without a warrant.

**Exigent** means *requiring immediate aid or action*. In some instances the 911 call itself may support a determination of exigent circumstances or include an invitation to enter without force. *(Merriam-Webster’s Collegiate Dictionary, 2001)*
Initial Contact with Involved Parties

Upon arriving at the scene, the officer(s) should:

1. Determine the location and condition of all victims, witnesses, and suspects.
2. Provide for the appropriate level of aid to any injured parties.
3. Separate the victim(s), the alleged perpetrator and any witnesses.
4. Determine if the suspect is still at the scene.
5. Determine if any weapons are involved or in the home and secure them if necessary.
6. Make contact with every occupant of the residence and check their well-being.
7. Take positions that allow them to monitor one another’s safety.
8. Photograph the victims, suspects, children and scene as appropriate.

Preliminary Investigation at the Scene

Responding officers should:

1. Interview all victims, suspects, children, and other witnesses separately; out of sight and hearing of each other. Children should be interviewed in a manner appropriate for their ages.
2. Avoid interviewing parties in locations that might provide access to weapons.
3. Contact the dispatcher or local family violence program to locate an interpreter if anyone speaks a language other than English.

NEVER ask the bi-lingual suspect to interpret for the non-English speaking victim and do not use children as interpreters unless absolutely necessary.

4. For deaf or hearing impaired individuals, agencies can use Relay Texas:
   - Non-TTY Users (hearing persons) 1-800-735-2988
   - TTY Users (deaf, or speech-impaired) 1-800-735-2989
   - ASCII Users (deaf, or speech-impaired) 1-800-735-2991
   - VCO users (hard-of-hearing), use your own voice 1-877-VCO1RTX

For additional information contact:
Public Utility Commission of Texas
512-936-7136 (TTY)
1-800-782-8477 (v)
Email: relaytx@puc.state.tx.us
FAX: 512-936-7138

5. Ask all victims and suspects if they have injuries and any pain, whether or not there are visible injuries.

6. Document the condition and demeanor (calm, crying, angry, etc.) of the victim, suspect and children. This will include, but is not limited to: torn clothing, disheveled appearances, evidence of injury, and a disarray in the house or lack of any of the above.

7. Officers should be familiar with the following signs and symptoms of strangling. Officers should look for and ask about:
Scratches that may have been inflicted by the assailant or the victim who is trying to release the choke-hold.

Bruises that may be delayed in presentation.

Spots on the face and/or neck due to blood vessels that may have burst from the pressure of a choke-hold. These may appear as small red spots similar to freckles.

Blood-red eyes due to capillary rupture in the white portion of the eyes.

Rope or cord burns or other linear injuries caused by an object used to throttle the victim.

Neck swelling/stiff neck

Raspy breath

Complaints of sore throat

Difficulty speaking

Signs of head injuries include:

- Headaches
- Dizziness
- Depression
- Memory loss or poor memory
- Difficulty concentrating
- Difficulty reading
- Difficulty writing
- Difficulty performing other tasks

Routinely ask victims:

“Were you hit in the head or slammed into a wall?”

If the answer is yes, continue with the following questions:

- “Were you hit with an object, hit with a fist or pushed into something?”
- “How many times were you struck in the head?”
- “Did you pass out?”
- “How often has this happened?”

Strangulation should be taken very seriously. It is a substantial sign of the potential lethality of the suspect. It takes very little pressure and time to cause death or serious injury. The victim should always be encouraged to seek medical treatment even if there are no visible signs of injury.

Key Points

- Family violence assaults should be handled as criminal incidents.
- Reconciliation, divorce, or marriage counseling should not be suggested to the parties involved.
• **Officers should never tell a couple that they are common-law married at the scene.** Only a judge can make that determination. Officers, may, however, note in the report that “the couple reports being common-law married,” if appropriate.

• Texas law requires that a written “Notice to Adult Victims of Family Violence” in English and Spanish be provided to adult victims at every family violence call.

By law, officers are not required to ask the victim if he/she wants to file charges. If a victim states that he/she does not want the offender to be prosecuted, inform the victim that the decision to prosecute will be made by the District or County Attorney’s Office and that victims do not make that decision.

The officer’s duty is to enforce state law regardless of whether the victim wishes to cooperate. Unlike other crimes, the officer only needs to establish probable cause that a criminal act occurred. The officer should always sign the complaint affidavit.

**If Suspect Has Left The Scene**

If the suspect has left the scene, all reasonable attempts to locate and arrest the suspect should be made. A description should be disseminated to other officers and locations known to be frequented by the suspect should be checked. The officers should encourage the victim to go to a safe location until the suspect is arrested. If the suspect cannot be located, a warrant should be sought in accordance with the law and departmental policy.

**INTERVIEWING**

**The Victim**

Officers should make sure to document anything the victim says. The following questions may be used as a guideline:

- Can you tell me what happened?
- Were you hit, hurt, slapped, punched or pushed?
- If yes, who hurt you?
- When were you hurt?
- Did anyone put their hands around your neck?
- Were you hit in the head?
- Where (house, car, alley, street, etc) were you hurt?
- How were you hurt?
- Did you feel any pain?
- Are you in pain now?
- Where does it hurt?
- Do you have a protective order?
- Was anyone else present who might have witnessed the assault?
- Would you like me to call an ambulance, friend, etc to take you to the hospital?
- Was anything used to scare you? For example guns, knives, pots, pans, other items?
- Are there any weapons in the house? Where are they?
- Has the suspect been abusive in the past? Can you tell me about it?
- Do you have a safe place to stay?
- Would you like to go to a family violence shelter?
- Would you like to speak to our Crime Victims Assistance Coordinator?
• Can I get several names and phone numbers of people who will always know where you are in case we need additional information or need to contact you if the suspect bonds out?

**The Suspect**

Befriending the suspect and acknowledging the injustice of the situation is an accepted practice in eliciting information from a family violence offender and may very well result in numerous statements against interest that can later be used in court.

Officers may use the following questions as a guideline for interviewing the suspected perpetrator of family violence:

• Did you hit, hurt, slap, punch or push ______________(victim’s name)?
• Did ______________make you mad?
• Can you tell me what happened?
• Is there anything else you want to add?

Batterers will often deny and minimize their behavior, but may admit some level of guilt during the course of the denial. For example, a suspect might say, “Yeah, I hit her, but I warned her to stop nagging me or I would do it and she kept on and made me do it!” or “I didn’t punch her, I only slapped her with an open hand.” These types of statements are known as “statements against interest” or incriminating statements and can be instrumental to the prosecutor’s case.

**The Children**

If children are present at the scene of a family violence incident, their welfare and safety must be a major consideration. Always interview the children away from both parents. Children do not have to be in the same room as the incident to have witnessed the abuse. Children may have heard something that will clarify what actually occurred. When interviewing children, use the following information as a guideline:

• Get down to the child’s eye level by either sitting or bending down.
• Using a pleasant tone of voice, explain your role.
• Begin with several non-threatening “warm-up” questions like, “How old are you?,” “What grade are you in?,” “What school do you go to?” etc.
• Reflect the child’s feelings with statements like “it must have been scary.”
• LISTEN and WRITE, LISTEN and WRITE.
• With children under 8 years of age, use the basics: seeing, hearing, smelling, and feeling.
• Ask very simple questions.
• **Always** take a picture of the child, whether crying in a corner and refusing to talk with you or seemingly unaffected.
• **Always** tell the child the violence is not his/her fault.
• Always reassure the child that you are there to help.

In accordance with Texas Family Code, Sec. 262.104, the officer may take possession of a child in an emergency situation where the health and safety of the child is in question.

Regardless of whether an arrest is made, officers should notify the Texas Department of Protective and Regulatory Services (DPRS) when child abuse is suspected.

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**Child Abuse Hotline**

800-252-5400
**Safety Note:** If a child cannot be located immediately, he or she might be hiding in a closet, under a bed, etc.

Officers should approach areas where a child might be hiding with extreme caution. Never open a door without first identifying yourself. The child could be hiding with a weapon and may think the batterer has found her/him.

**Other Witnesses**

Family violence is a crime usually committed without the benefit of additional witnesses. Officers should be diligent and ask the victim about who might have heard or seen something. Good detective work includes talking to the neighbors. If officers locate other witnesses, the following questions can be used as guidelines:

- Did you see or hear anything?
- How long have you known the family?
- Do you know anything else that might help in the investigation?
- Has the suspect ever been threatening or violent to you or your family?

Explain to reluctant witnesses that family violence is a community problem and that it is everyone’s business. If the suspect has threatened or been violent to other witnesses, take a report and consider filing additional criminal charges.

**When the Victim is an Immigrant**

Immigrants experiencing family violence often have additional barriers to leaving the abusive relationship. This is especially true if they are undocumented. The batterer often tells the victim, “if you leave I will call INS or the police and have you deported.” This threat, combined with language, cultural, religious and economic barriers makes it unlikely that immigrant victims of family violence will approach law enforcement for help. Immigrant women may also fear and distrust law enforcement because the police in their country of origin were abusive and corrupt. The combination of all of these factors means that if an immigrant victim of family violence does reach out to law enforcement, the situation is most likely severe and requires an expedited and informed response.

The Violence Against Women Act (VAWA) of 1994 and 2000, included provisions to allow an immigrant woman who has been “battered or subject to extreme cruelty” to obtain immigration status without having to rely on her abuser. These provisions were specifically created to ensure that battered immigrants could report abuse without the fear of being deported.

**Attachment (E) Family Violence Incident Interview Questions**

Local law enforcement and courts have no authority to enforce the non-criminal provisions of the Immigration and Nationality Act. (Gonzales v. City of Peoria, 722 F. 2d 468 (9th Cir., 1983).

There is also no requirement that a victim or witness state their place of birth, or immigration status when filing a complaint or a police report. Under federal law, law enforcement has no duty to ask about a victim’s immigration status. In addition, the victim’s immigration status is legally irrelevant to obtaining:

- Protective orders
- Shelter services
- Child custody/child support
- Law enforcement assistance
- Emergency medical care
Despite these facts, some law enforcement officers and judges do ask about immigration status in family violence cases. This practice will nearly always result in the immigrant victim not asking for help in the future and may mean the difference between an assault case and a felony homicide.

The batterer essentially uses the law enforcement and the criminal justice system as a tool to continue to abuse and control the victim.

### Evidence

Many prosecutors are moving towards evidence-based prosecution and relying less on victim’s testimony or even presence at trial. Collecting and documenting evidence is the essential key to a successful prosecution with or without victim testimony. In addition to extensive notes taken during the interview process, evidence collection should include the following:

- Written documentation of the condition of the crime scene (disarray or lack of disarray of the physical surroundings).
- Photographing the crime scene.
- Ensuring that the victim's and the suspect's visible injuries are photographed.
- Instructing the victim to contact the department in a day or two if additional bruises or injuries become visible.
- Impounding and/or photographing weapons, torn/bloody clothing and other evidence.
- Collecting the 911 tapes.

### Medical Treatment

If anyone at the scene is in obvious need of or requests medical treatment consider the following:

- Obtain authorization for release of medical records from victim, if possible.
- Document extent of injuries/treatment, if known.
- Obtain names, addresses, and phone numbers of fire, ambulance or paramedic personnel treating the victim, if possible.
- Transport or call for transport of victim and children to a hospital for treatment when necessary, or stand by until victim or children can safely leave.

### To Arrest or Not?

The responding officers should determine what crimes they have probable cause to believe were committed and who committed them. The preferred law enforcement response to family violence is to arrest the perpetrator of violence.

If probable cause exists that an assault resulting in bodily injury has occurred, a warrantless arrest should be made.

Officers should not consider the following when determining whether to make an arrest:

- the intimate or legal relationship of the parties or the fact that the crime occurred in a private place;
- the verbal assurances by either or both parties that violence has not occurred when evidence suggests otherwise;
- the claim by the alleged perpetrator that the victim provoked the assault;
- the alleged injury is minor or not visible;

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• the officer feels that the victim may not cooperate in subsequent proceedings;
• the victim’s request that no arrest be made;
• promises by any party that there will be no further violence;
• that adverse financial consequences may occur to either party as a result of arresting the alleged perpetrator;
• the influence of alcohol or drugs on either party;
• the suspect is a law enforcement official; or
• the racial, cultural, social, political, professional position, or sexual orientation of either the victim or the alleged perpetrator.

If the officer decides not to make a lawful arrest in a family violence incident, the officer should include in the report a detailed explanation of the reasons why an arrest was not made.

**If Suspect Taken into Custody**

Arresting officers should:

1. Document spontaneous statements (res gestae).
2. Prevent communications between suspect and victim/witnesses.
3. Advise suspect of Miranda rights.
4. Request an additional hold if suspect’s behavior is abusive.
5. Request a Magistrates Order for Emergency Protection.

**Requesting an Additional Hold**

*Article 17.291 of the Code of Criminal Procedure* authorizes anywhere from a 4 to a 48 hour additional hold after bond is posted for persons arrested for family violence offenses if there is probable cause to believe the violence will continue if the person is immediately released.

- **Up to a 4-hour hold:** the head of the agency arresting or holding such a person may hold the person for a period of not more than four hours after bond has been posted.
- **Up to a 24-hour hold:** a magistrate must conclude that the violence would continue if the person were released and authorize the additional hold time in writing to the person having custody of the detained person.
- **Over 24-hour and up to a 48-hour hold:** If the additional period exceeds 24 hours, the magistrate must conclude that probable cause exists to believe that the person committed the instant offense and that, during the 10-year period preceding the date of the offense, the person has been arrested:
  - on more than one occasion for an offense involving family violence; or
  - for any other offense, if a deadly weapon was used or exhibited during the commission of the offense or during immediate flight after commission of the offense.

**Procedure When Arrest is not Possible Or is not Made**

The preferred law enforcement response to family violence is to arrest the perpetrator of the violence. However, there may be situations where probable cause for a warrantless arrest does not exist.
If the suspect is still present and a warrantless arrest cannot be made, officers should attempt to create a calm environment while conveying the message that family violence is criminal behavior and that the officer is concerned for the victim’s safety. It is extremely important that the officers assess the dangerousness of the situation, convey the results to the victim, and document the findings in the report. Some of the factors to consider are:

- the suspect has threatened to kill the victim or him/herself;
- the victim has told the suspect she/he is leaving or filing for divorce;
- weapons are present;
- there is a history of family violence with the same parties;
- the suspect has threatened to harm or abduct the children; and/or
- the suspect is a repeat offender or has a prior history of violence.

Temporary separation may be the only option to suggest in these situations. The officers should encourage one party to leave, providing protection while essential property is collected in preparation for leaving, and providing assistance with transportation when possible.

**Protective Orders**

There are three types of protective orders available in Texas. Numbers 1 and 2 are for victims of family violence and number 3 is for victims of family violence or stalking.

1. **Temporary Ex Parte Protective Order (not arrestable)**
2. **Final Protective Order (arrestable)**
3. **Magistrates Order for Emergency Protection (MOEP) (arrestable)**

**Enforcing Protective Orders**

1. **Temporary Ex Parte Protective Order:**
   A violation of a “Temporary Ex Parte Protective Order” is **not** a criminal offense and an officer cannot arrest for a violation of the order. Although enforcement must be done by civil action, officers should still make a report and document the violation. In addition, an officer may arrest for other criminal offenses and is encouraged to do so when appropriate. Other potential offenses include, but are not limited to:
   - assault
   - stalking
   - harassment
   - criminal mischief
   - criminal trespass
   - public intoxication
   - terroristic threat
   - deadly conduct

Regardless of whether or not an arrest for another criminal act occurs, officers should inform the respondent that he or she is in violation of a Temporary Ex Parte Protective Order and tell the respondent to refrain from committing any further violations.

2. **Final Protective Order:**
   Violation of a final protective order carries both civil and criminal consequences. Article 14.03(4)(b) of the Code of Criminal Procedure states:

   “A peace officer **shall** arrest, without a warrant, a person the peace officer has probable cause to believe has committed an offense under Section 25.07, Penal Code (Violation of Protective Order), if the offense is committed in the presence of the peace officer.”
Article 14.03(3) of the Code of Criminal Procedure states:

“A peace officer may arrest, without warrant, persons who the peace officer has probable cause to believe have committed the offense defined by Section 25.07, Penal Code (Violation of Protective Order), if the offense is not committed in the presence of the peace officer.”

Section 25.07(d), Penal Code states:

“Reconciliatory actions or agreements made by the protected person (applicant) and/or the perpetrator (respondent) do not affect the validity of the order or the duty of the officer to enforce the order.”

Even if the applicant invited the respondent over to the protected location the order must be criminally enforced against the respondent only.

Section 25.07(e), Penal Code states:

“An officer investigating conduct that may constitute a violation of a protective order may not arrest a person protected by that order for a violation of that order.”

This means that the protective order is not criminally enforceable against the applicant no matter what the officer thinks about the applicant.

If a respondent has committed some other offense in addition to violating the protective order, officers should arrest and file charges for the additional offense(s).

“Unless a law enforcement officer knows that the protective order has expired, the officer shall rely on: (1) a copy of a protective order provided to the officer by any source.” (Family Code, Section 86.005)

Magistrates Order for Emergency Protection (MOEP):

Violation of a MOEP carries criminal consequences.

“A peace officer shall arrest, without a warrant, a person the peace officer has probable cause to believe has committed an offense under Section 25.07, Penal Code (Violation of Protective Order), if the offense is committed in the presence of the peace officer.”

“A peace officer may arrest, without warrant, persons who the peace officer has probable cause to believe have committed an offense under Section 25.07, Penal Code (Violation of Protective Order), if the offense is not committed in the presence of the peace officer.”

Requesting a Magistrates Order for Emergency Protection (MOEP)

The Magistrates Order for Emergency Protection was specifically created to provide short-term, criminally enforceable protection to victims of family violence and stalking.

A Magistrates Order for Emergency Protection can be requested by:

- the magistrate
- the victim
- the victim’s guardian
- a peace officer
- the prosecuting attorney.

Attachment (I) Request for a Magistrates Order for Emergency Protection and (J) Magistrates Order for Emergency Protection (English/Spanish)
Conflicting Protective Orders

What happens when officers arrive at the scene and are presented with two protective orders containing conflicting provisions? How does the officer determine which order to enforce if any? Although this situation may not occur often, if it does, officers must be prepared to thoroughly read both orders in order to determine which one should be enforced and how to enforce it.

The 78th Legislature (2003) addressed this with the passing of H.B. 297. Effective September 1, 2003, this bill amends Article 17.292, Code of Criminal Procedure and clarifies that when there are conflicting provisions in a Protective Order issued subsequent to a Magistrate’s Order for Emergency Protection (MOEP), the conditions in the protective order prevail. When a Temporary Ex-parte Protective Order is issued subsequent to a MOEP, the conditions in the MOEP prevail unless the court specifically notes and authorizes that the provisions in the Temporary Ex-parte Protective Order prevail.

Even if there is no protective order in effect, any peace office may make a warrantless arrest if:

- an offense is committed in the presence or view of the officer;
- there is probable cause to believe that a felony has been committed and the offender is about to escape;
- there is probable cause to believe that an assault with bodily injury occurred and probable cause to believe that the victim is in danger of further injury;
- there is probable cause to believe that an assault resulting in bodily injury to a family member or member of the household has been committed, or other circumstances have occurred which merit a warrantless arrest under Texas law. (Code of Criminal Procedure, Article 14.01-14.03)

Full Faith and Credit of Out of Jurisdiction Protective Orders

Both Texas and federal law require that protective orders from other jurisdictions be enforced as if they were issued in the enforcing jurisdiction. In other words, enforce the order as if it were a Texas order.

In summary, Texas law specifies the following:

- Law enforcement agencies shall have procedures in place to make sure that all officers are aware of existing protective orders and whom the orders protect. (Family Code, Section 86.005)

Family Code Section 88.004:

- A protective order from another jurisdiction will be enforced as if it was issued in the enforcing jurisdiction.
- If there is probable cause that a valid foreign protective order exists and that it has been violated, the officer shall enforce it as if it were a Texas order.
- Probable cause is definitely established if the officer sees a copy of the order, it identifies the protected person(s) and the respondent and it is still in effect.
- An officer may determine that there is probable cause to believe that a valid protective order exists by “relying on any relevant information.” This is a big change to the law that allows for a large amount of officer discretion.
- The copy of the protective order can either be a hard copy or in some type of electronic format if it is retrievable in a perceivable form.
• A certified copy of the protective order is not required for enforcement.

• Registration or filing the protective order is not required for enforcement. Procedures for optional registration of the order by the victim are specified in (Family Code Section 88.005).

• Law enforcement officers are immune from civil and criminal liability if their act or omission was done in good faith in an effort to comply with the law (Family Code Section 88.006).

• Mutual orders (one order that names both parties as applicants and respondents) are not enforceable (Family Code, Section 88.003).

In summary, federal law specifies the following:

• Valid protection orders issued by one state or Indian tribe are to be enforced by another state or Indian tribe as if it were an order issued by the enforcing state or Indian tribe.

• A protection order is valid if the State or tribal court that issued it had jurisdiction over the parties and matter under the law and the respondent was given reasonable notice and opportunity to be heard sufficient to protect the respondent’s right to due process.

• Mutual orders are generally not enforceable unless a separate petition for an order was filed or if a separate order was filed, the court made specific findings that each party was entitled to the order.

• A state or Indian tribe is not allowed to notify the respondent that an order has been filed or registered in a new state unless requested to do so by the protected person.

• A state or Indian tribe must enforce a valid protection order whether or not the order is registered in that state. The state or tribe may not require registration or filing as a prerequisite to enforcement.

• Tribal courts have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands and other appropriate mechanisms.

(United States Code § 2265 Full Faith and Credit Given to Protection Orders)

• “Protection order” is defined as any injunction or other order issued for the purpose of preventing violent or threatening acts, harassment, contact or communication, towards another person. This includes any temporary or final order issued by a civil or criminal court.

(United States Code § 2266 Definitions)

A Protective Order by any Other Name

What is known in Texas as a protective order, may be known in other states by a different name. Although the order may be called something else and look different than a Texas protective order, it is still enforceable. The following are some other common names for out-of-state protective orders:

• Order of Protection
• No Contact Order
• Temporary Restraining Order
• Restraining Order
• Protection from Abuse Order
• Stay Away Order
• Agreed Protective Order

The critical element of an enforceable order is that the order is designed to protect the victim from the batterer’s violent, threatening or harassing behavior. Even if the order is from Arkansas and is called a “temporary restraining order,” it is enforceable under Texas and federal law if it orders the respondent to refrain from committing violence or acting in a threatening or harassing manner towards the protected person(s).

**Civil Standby Assistance**

*Article 5.045, Standby Assistance; liability, Texas Code of Criminal Procedure*

“In the discretion of a peace officer, the officer may stay with a victim of family violence to protect the victim and allow the victim to take the personal property of the victim or of a child in the care of the victim to a place of safety in an orderly manner.”

A peace officer providing standby assistance is not liable for any wrongful appropriation of property or any act or omission that occurs in connection with providing the assistance.

**Victim Notification**

*Texas Code of Criminal Procedure, Art. 5.04, “Notice to Adult Victims of Family Violence”, requires that officers give victims of family violence immediate and adequate notice of their rights in writing, both in English and Spanish. Information on how to contact the nearest family violence program should be included.*

**Completing Crime Report**

• Maintain objectivity in reporting. Avoid personal opinions regarding comments from victim/suspect. Rely on good, clear descriptions of demeanor and behaviors.

• Ensure that elements of all involved crimes are included in the report.

• Document:
  • any injuries victim/suspect have sustained;
  • past history of violence;
  • prior domestic violence incidents at that address involving the alleged abuser or victim;
  • statements of victim, suspect, and all witnesses including children;

TCFV encourages law enforcement agencies to provide civil standby assistance for victims of family violence. It may be one of the few times when family violence can be prevented.
• physical evidence obtained;
• probation or parole status;
• whether alcohol or drugs were involved;
• names and ages of children who were present and/or residing in the home at the time the offense occurred;
• whether any weapons were involved.

**Attachment (M) Domestic Violence Offense/Incident Report**

**Family Violence Reports and Records**

*Article 5.05 of the Texas Code of Criminal Procedure* requires a peace officer who investigates a family violence incident or who responds to a disturbance call that may involve family violence to prepare a written report, that includes, but is not limited to:

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

It should also include:

- information provided by dispatch;
- descriptive information regarding the victim and suspect, including demeanor of each;
- written and oral statements obtained from the victim and suspect (including excited utterances* and their approximate time frame) and an explanation if written statements were not obtained;
- a list of witnesses and their statements (including excited utterances and their approximate time frame) and the identities of all officers on the scene;
- a description and location of observed injuries, description of medical treatment rendered and statement about whether an offer of medical treatment was refused;
- the name of the medical treatment provider and the names of any other health care providers, including EMS personnel;
- a description of all other physical evidence including photographs taken and of what;
- a description of steps taken to locate the suspect if he/she was not at the scene;
- a list of indicators of threats to future victim and child safety (e.g., threats made, including history of abuse, animal abuse, use of substances, and other unusual behavior);
- information regarding whether children were present and how they were cared for;
- information regarding whether a protective order is in effect;
- victim receipt of the “Notice to Adult Victims of Family Violence”;
- any information relevant to the assessment of bond;
- notice that the victim(s) was made aware of their rights as crime victims and their right to seek crime victims compensation.
- an indication as to whether the victim requested a Magistrates Order for Emergency Protection; and
the name and phone number of a person who can contact the victim.

*Excited utterance is a legal term that means a statement that concerns a startling event (like an assault) and that is made by a person while under stress caused by the event. Excited utterances are an exception to the hearsay rule and may be admitted as evidence in a trial even if the victim is unavailable to testify.

**Uniform Crime Reporting:**

Section 411.042(b)(2), Texas Government Code requires the Texas Department of Public Safety’s Bureau of Identification and Records to: “collect information concerning the number and nature of offenses known to have been committed in this state and the legal steps taken in connection with the offenses, and other information useful in the study of crime and the administration of justice, including a statistical breakdown of those offenses in which family violence was involved.”

Any peace officer responding to a family violence call must complete the DPS “Family Violence Report,” a single-page form with instructions on the reverse side. The form is designed to be completed rapidly.

**Determining the Predominant Aggressor**

Law enforcement officers often arrive at a family violence call only to find that both parties appeared to have assaulted each other and it is not clear who is the alleged offender and who is the victim. An increasingly popular response to this problem is to arrest both parties. Some officers report, “If I can’t figure it out, I arrest them both and let the judge figure it out.” If the officer cannot determine who the suspect is at the scene, a judge will not be able to make this determination, possibly several hours, days or months later. Frequently, charges against both parties are dropped when dual arrests are made.

Determining the predominant aggressor starts with a thorough investigation. The following are issues to investigate prior to making this determination:

- Who poses the most danger to the other?
- Was one party in actual fear of the other?
- Was the amount of force used appropriate and reasonable? For example, did one party react to a slap by beating the other party?
- The relative severity of the injuries inflicted on each person.
- Was one party physically larger and stronger than the other?
- Was there a history of violence by one of the parties against the other? Against other people?
- Was one party usually the aggressor?
- Who is at most risk for future harm or injury?
- Did any injuries appear to be the result of self-defense?
- Is the party with less serious injuries demanding that the other party be arrested too?

Above all…..LISTEN to the stories and ask yourself:
- Do the stories make sense?
• Can anyone else (children, witnesses, 911 tapes) corroborate either story?

By law, self-defense includes actions that are reasonable and necessary to protect oneself.

**Self-defense is not a crime.**

Typical indications of self-defense include injuries left by the victim on the body of the attackers such as:

• scratches on the attacker’s arms, face and hands, and/or
• bite marks on the attackers arms, chest, ankles or legs.

Defensive injuries on the victim typically appear as:

• bruises on the back of arms, legs, or hands, and/or
• bruises on the back of buttocks and lower back because the victim will often curl into a fetal position to escape injury.

Texas law does not require the arrest of both parties simply because they both have injuries resulting from each other.

**If a dual arrest is made, the officer should document in the report why the dominant aggressor could not be identified.**

• The children will remain with one parent.
• The person abusing power in the relationship is removed.
• The person who is the serious threat in the home is removed.
• It stops the re-victimization of the victims of family violence.
• It reduces law enforcement liability for making an inappropriate or unlawful arrest.

**Negative Consequences of Arresting the Victim**

Many law enforcement agencies are increasingly pro-active in response to family violence incidences and have instituted strict pro-arrest policies. When officers respond to a family violence call they may be required to arrest someone. Ideally, this would always be the predominant aggressor or the batterer. At first, it may be difficult to determine who is the predominant aggressor.

Some negative consequences of arresting the victim include the following:

• The victim will probably be disqualified for Crime Victim’s Compensation, public assistance (housing, TANF, food stamps) and emergency shelter. All of these may be needed to make a permanent break from the batterer.
• The batterer may have told the victim, “If you call the cops, I’ll tell them you hit me too. If I am going to jail, so are you!” An inappropriate arrest reinforces this threat and guarantees the victim will not call law enforcement again.
• An arrest of the victim further traumatizes the children and sends them the message that the police don’t help
you. If a child has called, chances are she/he won’t call you again.

- Victims learn that it is never okay to defend yourself against an attack.
- Arresting the victim almost guarantees that law enforcement will make repeated responses to the same house, increasing the likelihood of responding to increasingly severe injuries including the possibility of homicide, suicide or both.

**Family Violence and Firearms: A Deadly Combination**

Having a gun in the home makes it three times more likely that a family member or intimate partner will murder you or someone you care about. In addition, a firearm in the home may be a key factor in the escalation of nonfatal spouse abuse to homicide. In one study, firearm-associated family violence assaults were 12 times more likely to result in death than non-firearm associated family violence assaults. Family violence incidences are volatile and unpredictable. Access to firearms by either party may be the difference between a class A assault and an aggravated assault or homicide.

**Federal Firearms Law**

Federal law prohibits anyone who has ever been convicted of a misdemeanor family violence assault (in Texas, this includes a Class A but does not include a Class C offense) or who is a respondent in a protective order, MOEP or restraining order to possess a firearm or ammunition. The Bureau of Alcohol, Tobacco and Firearms defines possession as “care, custody and control.”

There is an “official use exemption” for military and law enforcement personnel who are respondents in protective orders, but there is no exception for those personnel who have been convicted of a family violence related offense. The Bureau of Alcohol, Tobacco and Firearms has interpreted the “official use exemption,” to include:

- Receipt or possession of a firearm for use in performing “official duties” on behalf of a Federal, State, or local law enforcement agency.
- The officer must be authorized or required to receive or possess that firearm in his or her official duties and the authorization must be by statute, regulation or official departmental policy.
- The firearm must either be a government issued firearm or a firearm purchased by an officer if the officer is authorized or required to purchase his or her own service weapon (and the firearm is possessed for use in performing official duties).
- For officers who are never “off-duty” and are authorized or required to carry their service weapon at all times, the exception applies to their service weapon at all times; and
- The exception does not apply to officers who are “off-duty” at the end of a shift and are not authorized by statute, regulation or official departmental policy to possess their duty weapons for the purpose of performing official duties.
- The exception does not apply to officer’s personal firearms. If an officer is a respondent in a protective order, he or she is violating federal law if in possession of a personal firearm.
Texas Family Violence Related Firearms Laws (current through 78th legislative session-2003)

- Texas Penal Code § 46.04 Unlawful Possession of a Firearm
  
  (b) a person who has been convicted of a Class A assault involving a person’s family or household commits an offense if he/she possesses a firearm during the five-year period after the person’s release from confinement or community supervision following conviction.
  
  (c) a person who is a respondent in a final protective order or a magistrates order for emergency protection is prohibited from possessing a firearm for the duration of the order.

Texas law also provides for an “official use exemption” for law enforcement personnel who are respondents in protective orders, but there is no exception to the five year ban for those personnel who have been convicted of a family violence related offense.

- Texas Family Code § 85.022 Requirements of Order Applying to Person Who Committed Family Violence
  
  (b) In a protective order, the court may prohibit the person found to have committed family violence from:
  
  (6) possessing a firearm
  
  (d) in a protective order, the court may suspend a license to carry a concealed handgun issued under Section 411.177, Government Code, that is held by a person found to have committed family violence.

Note: Penal Code § 46.04 (c) and Family Code § 85.022 provide for an “official use exemption” for sworn, full-time paid peace officers actively engaged in employment by a state agency or political subdivision.

- Texas Penal Code § 46.06 Unlawful Transfer of Certain Weapons
  
  (5) a person commits an offense if the person sells, rents, leases, loans, or gives a handgun to any person knowing that the person is a respondent in an active protective order; or
  
  (6) knowingly purchases, rents, leases or receives as a loan or gift from another a handgun while a respondent in a protective order.

- Texas Code of Criminal Procedure Article 17.292 Magistrate’s Order for Emergency Protection
  
  (L) …the magistrate may suspend a license to carry a concealed handgun issued under Section 411.177, Government Code, that is held by the defendant.

Seizure of Firearms

Texas Code of Criminal Procedure-Chapter 18-Search Warrants allows for the seizure of weapons in the following articles:
• Article 18.09 allows a law enforcement officer to search for and seize property identified in a search warrant.

• Article 18.19 (a) requires the seizure of weapons used in an offense or used in connection with an offense under Penal Code Chapter 46-Weapons.

Other Law Enforcement Related Bills Passed During the 77th (2001) Legislative Session

• Family Code 71.004-Family Violence. Definition of family violence now includes dating violence. This enables victims of dating violence to get protective orders and other family violence services.

• Family Code 86.0011- Duty to Enter Information Into Statewide Law Enforcement Information System. Clarifies law enforcement’s duty to enter protective orders into TCIC and requires that they be entered immediately, but no later than 10 days after the agency receives the order.

• Family Code-Chapter 88 Uniform Interstate Enforcement of Protective Orders Act. Clarifies courts’ and law enforcement agencies’ duties to enforce out-of-state protective orders. Replaces many of the full faith and credit statutes previously in Texas law.

• Penal Code 42.062-Interference with Emergency Telephone Call. Creates a Class A misdemeanor offense for knowingly interfering with another person’s ability to place an emergency telephone call or disabling the telephone so a person cannot call for emergency assistance.

• Occupations Code 1701.253-School Curriculum. Amends the Occupations Code to require as part of the mandated family violence training, that officers receive instruction in “preventing dual arrest whenever possible and conducting a thorough investigation to determine which person is the predominant aggressor when allegations of family violence from two or more persons are received arising from the same incident.”

• Penal Code 42.07- Harassment. Now specifically includes repeated electronic communications (e-mails and faxes) in the offense of harassment.

• Penal Code 42.072-Stalking. The penalty for stalking is now a third degree felony.

NEW Law Enforcement Related Bills From the 78th (2003) Legislative Session

New laws take effect 9/1/03 unless otherwise noted.

• S.B.176-Interference with an Emergency Telephone Call. This bill changes the Penal Code 42.062 (d) definition of an emergency from a situation in which a person is in “imminent danger of serious bodily injury” to a situation in which a person is in “fear of imminent assault.” It also adds Article 14.03 (a)(5) to the Code of Criminal Procedure authorizing an arrest without warrant if the officer has probable cause to believe this offense occurred.

• S.B.317-Violation of a Protective Order or Magistrate’s Order. This bill amends Penal Code 25.07 (2)(B) from the word “and” to the word “or.” This change will allow officers to arrest if the respondent attempts to contact the protected person in any one of the ways listed in the statute.
To Protect and Serve: Law Enforcement’s Response to Family Violence

- **H.B.297-Conflicting Conditions in Magistrate’s Orders and Other Protective Orders.** Amends Article 17.292, Code of Criminal Procedure and clarifies that when there are conflicting provisions in a Protective Order issued subsequent to a Magistrate’s Order for Emergency Protection (MOEP), the conditions in the protective order prevail. When a Temporary Ex-parte Protective Order is issued subsequent to a MOEP, the conditions in the MOEP prevail unless the court specifically notes and authorizes that the provisions in the Temporary Ex-parte Protective Order prevail.

- **S.B.408-Punishment for Terroristic Threat.** Section 22.07, Penal Code is amended to make a terroristic threat a Class A misdemeanor if committed against a member of the person’s family or household or if the offense otherwise constitutes family violence or if the offense is committed against a public servant.

- **S.B.433-Protective Order for Victim of Sexual Assault.** Chapter 7A Code of Criminal Procedure will be changed to enable victims of sexual assault to get a protective without regard to the relationship between the victim and the offender.

- **S.B. 51-Law Enforcement Referral to Sexual Assault Program.** Article 56.07, Code of Criminal Procedure will now require law enforcement to provide written information and referrals to victims of sexual assault.

- **S.B. 837-Aggravated Sexual Assault Against a Disabled or Elderly Individual.** Section 22.021, Penal Code is amended to include disabled individuals as a specially protected class of victims for the purposes of aggravated sexual assault prosecutions.

- **H.B. 1246-Prosecution of Sexual Assault and Aggravated Sexual Assault.** The word “female” is eliminated in Section 22.011, Penal Code making this section applicable in all sexual assault cases regardless of the gender of the victim.

- **S.B. 1015-Confidentiality of certain information in a Crime Victims Impact Statement.** Amends Chapter 552, Government Code, to make the name, social security number, address and telephone number or any other identifying information of a crime victim included in a victim impact statement confidential.

- **H.B. 1895-Crime Victim Compensation for Travel Expenses to a Funeral or Wages Lost from Bereavement Leave.** Allows Crime Victims Compensation to reimburse for travel expenses related to attending the victim’s funeral and up to 10 work days or $1,000 of lost wages as a result of bereavement leave.

- **S.B. 319-Death or Injury to an Unborn Child.** Amends Section 71.001, Civil Practice and Remedies Code and authorizes civil remedies for the death or injury to an unborn child. Defines individual in this section and in Section 1.07, Penal Code, as an unborn child at every stage of gestation from fertilization until birth.

- **H.B. 227-Court Orders Providing Possession of or Access to a Child.** Authorizes peace officers to use reasonable efforts to enforce a final child custody order issued under 105.006, Family code, provides immunity if officer acts in good faith and provides criminal penalties for a person who requests enforcement of an order the person knows is no longer valid.
S.B. 1665-Care of a Child Taken into Possession by a Governmental Entity Without a Court Order. Authorizes an employee or a volunteer with a law enforcement agency, who has passed a background check, to assist in providing temporary care of a child who is taken into possession by a governmental entity without a court order until more permanent arrangements can be made.

S.B. 92-Residential Tenant’s Right to Summon Police or Emergency Assistance. Prohibits a landlord from imposing penalties for, or otherwise prohibiting or limiting a tenant’s right to, call for police or other emergency assistance in response to family violence. Also prohibits the landlord from requiring the tenant to waive these rights in order to be eligible to rent. Effective 6/20/03

Follow-up Investigation

Follow-up investigations are an important part of establishing a family violence assault case. The follow up visit:

1. Lets the victim know you care about her/his safety.
2. Provides an opportunity to review the initial investigation file and fill in the gaps in information if necessary.
3. Provides an opportunity to gather additional evidence, especially photos of injuries that may not have been previously visible (bruises, ligature marks, etc.).

Any information obtained during the follow up investigation should be merged with or added to the original report. This ensures that all the evidence is kept in one place for the prosecutor’s office.

NOTE: If possible, try to get the names, addresses and phone numbers (local or long distance) of at least two close friends or relatives of the victim who will always know how to reach her/him during and after the investigation.

Law Enforcement Liability

As sworn and licensed public servants, law enforcement officers are particularly vulnerable to lawsuits resulting from something they have or have not done. There are basically two types of liability for law enforcement officers and agencies, liability for over-reacting and liability for failure to act or protect. It is important to note, however, that there are many references in Texas law that release law enforcement officers acting in good faith to protect citizens from both civil and criminal liability in response to family violence calls.

Liability for Over-Reacting

Examples of over-reacting, include:

- False arrest
- Illegal search and seizure
- Use of excessive force
- Civil rights violations

Liability for Failure to Act or Protect

It is more likely there will be a lawsuit for failure to protect or prevent a crime than for over reacting. Examples of these cases include:

- Failure to respond to calls for assistance
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- Failure to arrest or restrain violent persons who are committing, or are about to commit a violent crime
- Failure to conduct a thorough investigation
- Failure to adequately train officers
- Failure to adequately screen potential officers during the hiring process
- Failure to secure or confiscate weapons when there is an obligation to do so
- Action that is so deficient that it entails gross negligence or intentional misconduct or abridgment of the rights of victims.

The failure to act (or to act adequately), in and of itself, will probably not result in liability because a second component is required: a duty to protect the person seeking protection. So the two requirements include:

1. failure to act or to act adequately, and
2. duty to protect the person seeking protection.

The duty to protect occurs if there is a special relationship between the officer or the department and the individual. A special relationship has been found and liability attached where the victim has a protective order, law enforcement are aware of the order and law enforcement have notice of the danger posed at the time of the incident. **The existence of a protective order increases officer liability for failure to act.**

The 6 Most Common Areas of Officer Liability

- Failure to take proper actions to protect a citizen
- Failure to appropriately enforce a court order protecting a victim of family violence
- Failure to respond at all or in a timely manner
- Failure to provide information to a victim as required by law
- Arresting a citizen without establishing probable cause
- Exhibiting a pattern of differential treatment or application of the law to family violence assault cases

(Adapted from materials created by Steve Storie, Investigator, Dallas County District Attorneys Office)

Reducing Your Liability:

There are several ways that agencies and officers can reduce the risk of a lawsuit when dealing with family violence cases.

Agencies can:

- Know the relevant laws and stay current with changes to the law
- Adopt a clear, comprehensive written family violence response policy
- Monitor policy compliance
- Evaluate and modify policies as needed
- Build a strong data collection and analysis system
- Enter protective orders into TCIC/NCIC in a timely manner
- Provide access to on-going training on family violence intervention strategies
- Establish a high-risk family violence offender registry
- Review current and new legislation after each legislative session

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Individual officers can:

- Document all family violence incidents with a written report and as required by law
- Clearly define and justify why certain actions were or were not taken in the report
- Participate in on-going training on responding to family violence calls
- Act affirmatively to protect victims of family violence from recurring abuse

When the Suspect or Victim is a Law Enforcement Agency Employee

When officers respond to a domestic violence call and the victim or suspect is a sworn or civilian employee of any law enforcement agency, a supervisor, preferably at least one rank higher than the suspect, should be immediately called to the scene.

Supervisors should ensure that all laws and departmental policies are carried out as in any other family violence call.

Law enforcement agencies should attempt to prevent batterers within their organization through the use of vigorous pre-hire screening. In addition, agencies should adopt and adhere to a zero tolerance policy toward law enforcement officers committing family violence. Abusive officers are an enormous liability to the agency and the community and should not be tolerated.

If the victim has a protective order against the suspect, officers should obtain a copy of the order and ask the victim if the order is still in effect. The officers should enforce the protective order like any other order and make an arrest in lawful and appropriate.

Family violence, like any other criminal offense should never be tolerated no matter who the suspected offender is.

Thank You

The family violence community believes that we are all allies in the fight against family violence and the damage it does to families and the community.

We know that officers put their lives on the line everyday to protect and serve victims. The Texas Council on Family Violence wishes to thank the men and women of law enforcement for their dedication and commitment to ending family violence.
To Protect and Serve:
Law Enforcement’s Response to Family Violence

Attachment A
Strangulation Assessment in Family Violence Cases
Strangulation Assessment in Family Violence Cases

Officers should look for, ask about and document the following:

**Scratches**

________________________________________________________________________________
________________________________________________________________________________

Scratches may have been inflicted by the assailant or the victim who is trying to release the choke-hold.

**Bruises**

________________________________________________________________________________
________________________________________________________________________________

Bruises, although you should go back a day or two later because they may not be visible yet.

**Spots on the face and/or neck**

________________________________________________________________________________
________________________________________________________________________________

Spots on the face and/or neck due to blood vessels bursting from the pressure of a choke-hold.

**Blood-red eyes**

________________________________________________________________________________
________________________________________________________________________________

Blood-red eyes due to capillary rupture in the white portion of the eyes.

**Rope, cord burns or other linear injuries**

________________________________________________________________________________
________________________________________________________________________________

Rope or cord burns or other linear injuries caused by an object used to throttle the victim.

**Neck swelling**

________________________________________________________________________________
________________________________________________________________________________

**Raspy breath**

________________________________________________________________________________
________________________________________________________________________________
To Protect and Serve: Law Enforcement’s Response to Family Violence

Attachment B

Lethality Assessment in Family Violence Cases
Lethality Assessment in Family Violence Cases

While it is true that all batterers are dangerous, some are more likely to kill than others and some are more likely to kill at specific times. Regardless of whether there is a protective order in effect, officers should evaluate whether an assailant is likely to kill his/her partner or other family members and/or police personnel and take appropriate action.

Assessment is tricky and never fool-proof. It is important to conduct an assessment at every call, no matter how many times an officer has responded to the same household. The dispatcher and responding officer can utilize the indicators described below in making an assessment of the batterer's potential to kill. Considering these factors may or may not reveal actual potential for homicidal assault. But, the likelihood of a homicide is greater when these factors are present. The greater the number of indicators that the batterer demonstrates or the greater the intensity of indicators, the greater the likelihood of a life-threatening attack.

1. Threats of homicide or suicide

The batterer who has threatened to kill himself, his partner, the children or her relatives must be considered extremely dangerous.

2. Fantasies of homicide or suicide

The more the batterer has developed a fantasy about who, how, when, and/or where to kill, the more dangerous he may be.

3. Weapons

Where a batterer possesses weapons and has used them or has threatened to use them in the past in his assaults on the battered woman, the children or himself, his access to those weapons increases his potential for lethal assault. The use of guns is a strong predictor of homicide. If a batterer has a history of arson or the threat of arson, fire should be considered a weapon.

4. "Ownership" of the battered partner

A batterer who believes he is absolutely entitled to his female partner, her services, her obedience and her loyalty, no matter what, is likely to be life-endangering.

5. Centrality of the partner

A man who idolizes his female partner, or who depends heavily on her to organize and sustain his life, or who has isolated himself from all other community, may retaliate against a partner who decides to end the relationship.
6. Separation Violence ________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________
When a batterer believes that he is about to lose his partner, if he can't envision life without her or if the separation causes him great despair or rage, he may choose to kill.

7. Depression________________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________
Where a batterer has been acutely depressed and sees little hope for moving beyond the depression, he may be a candidate for homicide and suicide.

8. Access to the battered woman and/or to family members__________________________________
____________________________________________________________________________________
____________________________________________________________________________________
If the batterer cannot find her, he cannot kill her. If he does not have access to the children, he cannot use them as a means of access to the battered woman. Careful safety planning and police assistance are required for those times when contact is required, e.g. court appearances and custody exchanges.

9. Repeated outreach to law enforcement_________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________
Partner or spousal homicide almost always occurs in a context of historical violence. Prior calls to the police indicate elevated risk of life-threatening conduct. The more calls, the greater the potential danger.

10. Escalation of batterer risk___________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________
A less obvious indicator of increasing danger may be the sharp escalation of personal risk undertaken by a batterer; when a batterer begins to act without regard to the legal or social consequences that previously constrained his violence, chances of lethal assault increase significantly.

11. Hostage-taking____________________________________________________________________
____________________________________________________________________________________
____________________________________________________________________________________
A hostage-taker is at high risk of inflicting homicide. Between 75% and 90% of all hostage takings in the US are related to domestic violence situations.

If an intervention worker concludes that a batterer is likely to kill or commit life-endangering violence, extraordinary measures should be taken to protect the victim and her children. This may include notifying the victim and law enforcement of risk, as well as seeking a mental health commitment, where appropriate. The victim should be advised that the presence of these indicators may mean that the batterer is contemplating homicide and that she should immediately take action to protect herself and should contact the local battered woman's program to further assess lethality and develop safety plans.

To Protect and Serve: Law Enforcement’s Response to Family Violence

Attachment C

Head Injury Assessment in Family Violence Cases
Head Injury Assessment in Family Violence Cases

Officers should look for, ask about and document the following as potential signs of a head injury:

**Headaches**
___________________________________________________________________________________

**Dizziness**
___________________________________________________________________________________

**Depression**
___________________________________________________________________________________

**Memory loss or poor memory**
___________________________________________________________________________________

**Difficulty concentrating**
___________________________________________________________________________________

**Difficulty reading**
___________________________________________________________________________________

**Difficulty writing**
___________________________________________________________________________________

**Difficulty performing other tasks**
___________________________________________________________________________________

Questions to ask:

**Were you hit in the head or slammed into anything?**
___________________________________________________________________________________

If yes, continue with the following questions:

**Were you hit with an object, hit with a fist or pushed into something?**
___________________________________________________________________________________

**How many times were you struck in the head?**
___________________________________________________________________________________

**Did you pass out?**
___________________________________________________________________________________

**Has this ever happened before?**
___________________________________________________________________________________
To Protect and Serve:
Law Enforcement’s Response to Family Violence

Attachment D
Notice To Adult Victims Of Family Violence
(English and Spanish)
NOTICE TO ADULT VICTIMS OF FAMILY VIOLENCE

It is a crime for any person to cause you any harm or physical injury even if that person is a member or former member of 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 a 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 may want to consult with 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 a magistrates order for emergency protection be issued. Please inform the investigating officer if you want an order for emergency protection. You do not have to be present when the order is issued. A 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) or (2) above may be a felony.

Call the following family violence programs or social service organizations if you need protection:

AVISO PARA VICTIMAS ADULTAS DE VIOLENCIA FAMILIAR

Es un crimen que cualquier persona le cause perjuicio o daño físico aunque esa persona sea miembro o ex miembro de su familia.

Por favor comuníquele a un oficial de la policía:
Si usted, su hijo(a) o cualquier otro residente de su residencia ha sido herido, o
Si usted cree que puede estar en peligro después de que un oficial de la policía se haya retirado de su residencia.

Usted tiene el derecho de:

- Acudir al fiscal local que archive una queja criminal en contra de la persona que ha cometido violencia familiar; y
- Acudir a una corte para obtener una orden que la proteja. Usted podrá consultar con una oficina de apoyo legal, con un fiscal, o un abogado privado. Si un familiar o miembro su residencia la agredió y es arrestado, usted puede solicitar una orden de protección de emergencia. (Note: no la confunda con una orden temporal de protección). Por favor infórmele al oficial de la policía si usted quiere obtener una orden de protección de emergencia. Usted no tiene que estar presente cuando la orden sea entregada. La corte puede submitir una orden que:

1. Prohíba que el agresor siga cometiendo actos de violencia;
2. Prohíba que el agresor amenace, acose o se comunique con usted en su hogar;
3. Ordene que el agresor se salga de su hogar; y
4. Se establezca custodia temporal de los niño(a)s o cualquier propiedad.

Una violación de ciertas medidas de la orden de protección de corte (tal como el numero 1 y 2) pueden resultar en una felonía (un delito mayor).

Hable a los siguientes programas de violencia familiar u organizaciones sociales si usted necesita protección.

Texas Council on Family Violence, 2003
To Protect and Serve:
Law Enforcement’s Response to
Family Violence

Attachment E
Family Violence Incident Interview Questions
Family Violence Incident
Interview Questions

Victim
- Can you tell me what happened?
- Were you hit, hurt, slapped, punched or pushed?
- If yes, who hurt you?
- When were you hurt?
- Did anyone put their hands around your neck?
- Were you hit in the head?
- Where (house, car, alley, street, etc.) were you hurt?
- How were you hurt?
- Did you feel any pain?
- Are you in pain now?
- Where does it hurt?
- Do you have a protective order?
- Was anyone else present who might have witnessed the assault?
- Would you like me to call an ambulance, friend, etc to take you to the hospital?
- Was anything used to scare you? For example, guns, knives, pots, pans, other items?
- Are there any weapons in the house? Where are they?
- Has the suspect been abusive in the past? Can you tell me about it?
- Do you have a safe place to stay?
- Would you like to go to a family violence shelter?
- Would you like to speak to our Crime Victims Assistance Coordinator?
- Can I get several names and phone numbers of people who will always know where you are in case we need additional information or need to contact you if the suspect bonds out
Suspect
Befriending the suspect and acknowledging the injustice of the situation is an accepted practice in eliciting information from a family violence offender and may very well result in numerous statements against interest that can later be used in court.

- Did you hit, hurt, slap, punch or push ____________ (victim’s name)?
- Did ____________ make you mad?
- Can you tell me what happened?
- Is there anything else you want to add?

Children
- Get down to the child’s eye level by either sitting or bending down
- Using a pleasant tone of voice, explain your role
- Begin with several non-threatening “warm-up” questions like, “How old are you?,” “What grade are you in?,” “What school do you go to,?” etc.
- Reflect the child’s feelings with statements like “it must have been scary.”
- Listen and record everything the child(ren) say to you
- With children under 8 years of age, use the basics: seeing, hearing, smelling, and feeling
- Ask very simple questions
  - **Always** take a picture of the child, whether crying in a corner and refusing to talk with you or seemingly unaffected
  - **Always** tell the child the violence is not his/her fault
  - Always reassure the child that you are there to help

Other Witnesses
- Did you see or hear anything?
- How long have you known the family?
- Do you know anything else that might help in the investigation?
- Has the suspect ever been threatening or violent to you or your family?
To Protect and Serve: Law Enforcement’s Response to Family Violence Attachment F

- Barriers Faced by Battered Immigrants
- “Victimless” Prosecution: Why it May Victimize Battered Immigrants
- Immigration Laws Affecting Battered Immigrant Women and Children
- Local Police Enforcement of Immigration Laws and It’s Effects on Victims of Domestic Violence

by Gail Pendleton
National Immigration Project, Boston, MA
Updated by Krista DelGallo, TCFV
BARRIERS FACED BY BATTERED IMMIGRANTS\(^1\)

Battered immigrants face a number of barriers when they try to access the legal system. These barriers often cause battered immigrants to refrain from accessing the legal system when needed. Law enforcement and prosecutors must be aware of and understand these barriers in order to provide effective service to immigrant communities. This section describes these barriers in detail.

Lack of Knowledge and Misinformation about Legal System

♦ The abuser misinforms the victim about her right to protection under U.S. civil and criminal laws and her right to apply for immigration status in the U.S.

♦ The abuser says he’ll get custody of the children under U.S. laws or will take the children to a country where she can’t go.

♦ The legal system in the victim’s home country doesn’t have laws or doesn’t enforce laws against domestic violence, or applies different evidentiary standards (e.g., oral testimony or testimony of women not admissible).

♦ Social mores in the home country discourage women from using existing civil or criminal protections.

Fear of the Police and Judicial System

♦ In the home country, the police and the judicial system assist only those with money or influence or are instruments of repression.

♦ In the immigrant community, police have a reputation for not responding to crimes in poor areas, areas where people of color live, or areas where immigrants live.

♦ A police force (or the court system) may be viewed by immigrants as racist and/or anti-immigrant because of its composition or because of well-publicized events that raise this concern.

♦ Immigrant communities will not trust a police department that they believe will turn them over to INS.

♦ Joint enforcement efforts with INS will undermine trust. Examples include joint INS/local law enforcement raids on neighborhoods and work sites; joint INS and local law enforcement foot or motorcycle patrols.

♦ Merely being in the United States without legal immigration documents is not a crime.

\(^1\) Heather Maher of the ABA and Gail Pendleton of the National Immigration Project of the National Lawyers Guild wrote these materials. Information in this article updated by Krista DelGallo, TCFV Public Policy Specialist.
Fear of Deportation

♦ Abusers often threaten to report victims to INS. A victim may be unwilling to call the police or cooperate with law enforcement if she believes that the abuser will report her to the INS.

♦ A victim may not access the system because she fears that the police, a judge, or a public benefits administrator will report her to the INS.

♦ A victim may fear deportation because her home countries do not have laws that will protect her from domestic violence.

Fear the Abuser will be Deported

♦ A victim may fear the deportation of their abusers for a number of reasons:
  ♦ she may fear that the abuser will take the children with him
  ♦ she may fear a loss of child support payments from the abuser, causing her to be unable to financially support herself
  ♦ she may fear a loss of financial support to her family in the home land
  ♦ she may fear being ineligible for VAWA immigration status

Language Barriers

♦ The police do not speak her language.

♦ Court personnel do not speak her language.

♦ Benefits administrators do not speak her language.

♦ All of these systems lack adequate translators.

Cultural and Religious Barriers

♦ A victim’s culture or religion may disapprove of challenging domestic violence or male domination.

♦ A victim’s culture or religion may prohibit the severance of a marriage. Divorce or separation may violate social mores or bring shame to family or community.

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2 Until VAWA (the Violence Against Women Act) was amended and reauthorized in 2000, a victim lost her opportunity to seek relief though VAWA if her abuser lost status. Changes made to the law in 2000 allow a victim to apply through VAWA within two year of the abuser’s loss of status or divorce.
♦ The victim’s family and community may ostracize or isolate her if she leaves the marriage or makes public the domestic violence.

♦ Shelters and domestic violence programs do not provide culturally and linguistically appropriate services.

Economic Barriers

♦ An immigrant must obtain work authorization from INS to work legally in the U.S.

♦ Even if she obtains work authorization, she may only be able to find low-paying job with no child care.

♦ Even battered immigrants who are qualified to receive public benefits find it very difficult to obtain them because of ignorance and antagonism of benefits’ administrators.
“VICTIMLESS” PROSECUTION: WHY IT MAY VICTIMIZE BATTERED IMMIGRANTS

Many prosecutor’s offices are now using what is known as “victimless” prosecution – going forward with cases without the cooperation of the victim. Prosecutors should be aware that victimless prosecution may have unintended consequences for battered immigrants. This section will outline some of these consequences and offer alternatives for prosecutors.

Consequences of Victimless Prosecution

♦ If an abuser faces trial, he may retaliate against the victim even if she does not have any control over whether the prosecution goes forward or not. For immigrants, this retaliation may include a report to INS. If an undocumented battered immigrant is reported to INS, the INS may deport her without notifying her of her right to apply for status. The INS does not view educating noncitizens about their rights as part of its job.

♦ If the battered immigrant is deported, she legitimately believes she will lose custody of her children, who will be left in the hands of their abusive parent.

Alternative for Prosecutors: Cooperative Strategy

Prosecutors can utilize the following strategies to help battered immigrants:

♦ Work with battered immigrants to explore their choices and the consequences of those choices.

♦ Help battered immigrants access the services and immigration status they need to overcome barriers to cooperating in prosecution:
  ♦ physical and legal safety
  ♦ protection orders, shelter, long-term housing
  ♦ economic survival
  ♦ access to public benefits (requires VAWA application)
  ♦ work authorization (requires VAWA approval)
  ♦ divorce, child custody, etc.
  ♦ immigration status preventing deportation
  ♦ eventual prosecution of the batterer (timing may be crucial)
Understanding how the immigration laws work will help you assist immigrant women and children who seek safety and security from abusive family members. This section will provide basic information on immigration law and information on immigration laws that specially benefit non-citizens who suffer domestic violence. It will suggest ways law enforcement and prosecutors can help victims overcome barriers to accessing the criminal justice system, as well as fears that inhibit taking the steps necessary to gain safety.

Overview of the Immigration System and Laws

The immigration system, its laws and regulations are complex and frequently change. What was true today may not be true tomorrow. Our first recommendation, therefore, is that you develop a working relationship with a local immigration expert who can answer your questions about how to help non-citizens you may encounter. Alternatively, the National Immigration Project is available to provide such advice.

To avoid unwittingly jeopardizing those you wish to help, you should be familiar with basic immigration rules.

Basic Rules

1. **Refer non-citizens to immigration law experts, not the Immigration and Naturalization Service (INS).**

A non-citizen should always speak with an immigration law expert before speaking to the INS either by telephone or in person. Non-citizens who are victims of domestic violence should speak with an expert in both immigration law and domestic violence. If non-citizens go to INS by themselves, INS may arrest them and deport them before they have the chance to talk to a lawyer. This is because most INS officers view “enforcement,” meaning deporting people, as their primary job. Many INS officers do not believe that explaining immigration options is part of their job, and most will readily admit this.

2. **Help non-citizens prepare for encounters with INS.**

In 1996, Congress passed a law making it very easy for INS to swiftly deport (now called “remove”) people from the U.S. This applies even to people who have the right to be in the U.S. Non-citizens should know they have the following rights, and you can help them by informing them of these rights:

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3 Gail Pendleton, Associate Director, National Immigration Project of the National Lawyers Guild
4 Contact Gail Pendleton at the National Immigration Project, 14 Beacon St., Ste. 602, Boston, MA 02108; phone = 617-227-9727; fax = 617-227-5495; email = nipgail@nlg.org.
5 Contact Gail Pendleton for a referral to an immigration and domestic violence expert in your area.
the right to speak to an attorney before answering any questions or signing any documents (they should NEVER sign documents without first speaking to an immigration attorney);

♦ the right to a hearing with an Immigration Judge;

♦ the right to have an attorney represent them at that hearing and in any interview with INS (these are not government-paid attorneys, as in criminal proceedings, however); and

♦ the right to request release from detention, by paying a bond, if necessary.

It does not matter if the non-citizens are documented or undocumented. All non-citizens have these rights. Non-citizens must assert these rights, however. If they do not assert these rights they can be deported without seeing either an attorney or a judge. Leaving the U.S. in this way may have serious consequences for the non-citizen’s ability to later enter or gain legal immigration status in the U.S.

3. **Encourage non-citizens to talk to an immigration expert before they travel outside the U.S.**

Anyone who is not a U.S. citizen may be barred from coming back into the U.S. if they fall into certain categories of people barred from entering. This includes some lawful permanent residents (people with “green cards”) and applicants for lawful permanent residence who go abroad. Some non-citizens who have been in the U.S. without INS permission may be permanently barred from re-entering or from gaining legal status in the U.S. if they leave. In addition, some non-citizens who leave the U.S. and come back in with INS permission (“advance parole”) may be swiftly removed from the U.S. if they end up in immigration proceedings.

4. **Tell non-citizens with questions about their immigration status to talk to an immigration advocate with expertise in domestic violence.**

These materials give you some basic information about immigration status and domestic violence, but you should only use this information to help non-citizens understand their options. Do not tell non-citizens you know what their immigration status is or how they can change that status. The INS system is confusing and complicated. The risks of bad advice are too great.

Unfortunately, many attorneys do not know how domestic violence affects eligibility for immigration status; so do not assume that just because someone is an immigration attorney, he or she will help battered immigrants. Many attorneys lack sensitivity to non-citizens who have suffered abuse, and even more are unfamiliar with the possible options available to battered non-citizens. After reading these materials, you may know more than some immigration advocates about domestic violence and immigration. Please share these materials with immigration and domestic violence counselors you consult.
It is important to note that non-citizens, regardless of their immigration status, have the same rights as citizens in the criminal context. In addition, immigration status is legally irrelevant to obtaining police assistance, emergency medical care, protective orders and emergency services such as safe shelter.

Learning the System: Basic Immigration Concepts

1. Non-citizen

“Non-citizen” means any person in the U.S. who is not a U.S. citizen, whether the person has legal immigration documents or not.

2. Undocumented

Generally, the undocumented are non-citizens who either entered the U.S. without INS permission or whose legal immigration documents have expired since they entered. These people are often called “illegal aliens,” although simply being in the U.S. without documents is not a crime.

3. Visa

A visa is the document the U.S. gives to a non-citizen to come into the U.S. A person may get a visa from INS or from a U.S. consular official in another country. Visas for people who are in the U.S. temporarily are called non-immigrant visas. Visas for people who plan to stay in the U.S. are immigrant visas. Most people with immigrant visas will eventually get a card that identifies their immigration status.

4. The Immigration and Naturalization Service (INS)

The INS enforces the U.S. immigration laws. The INS is part of the U.S. Department of Justice in the executive branch of the federal government. It has offices all over the country. The INS handles immigration applications of all kinds, including for citizenship, lawful permanent residence, immigrant visas, extension of visas, plus many more. It also has the power to “remove” (formerly called “exclude” or “deport”) non-citizens from the U.S. INS agents have police-like power to detain, search, question, and arrest people it suspects violated the immigration laws. Whatever the agents find out about the non-citizen may be used to remove the non-citizen, in some cases without a hearing.

As of March 1, 2003, the INS is part of the Department on Homeland Security (DHS). All services that were formerly conducted under the INS are now part of the Bureau of Citizenship and Immigrations Services (BCIS). How an immigrant applies for services and benefits, obtains forms, and accesses information and assistance has not changed. All INS offices continue to have the same functions and locations (Service Centers, Asylum Offices, and Application Support Centers). To obtain updated information please refer to the BCIS website: www.immigration.gov or call the National Customer Service Center at: 800-375-5283 or TTY 800-767-1833
5. **Consular Officers**

Consular officers at U.S. embassies abroad grant and deny requests for immigrant and non-immigrant visas. They are part of the U.S. Department of State. They have an enormous amount of discretion in making their decisions and no court in the U.S. may review their decisions, except in very unusual circumstances.

6. **Removal (Formerly Called Exclusion and Deportation)**

Removal is the process by which the INS can stop non-citizens from entering or staying in the U.S. INS may prevent non-citizens from entering the U.S. if they find they are “inadmissible,” as defined by the immigration statute. The rules on inadmissibility also apply to people who seek lawful permanent residence and may prevent them from getting it.

INS also may remove people it finds in the U.S. Under the 1996 immigration law, undocumented non-citizens inside the U.S. now may be removed for being “inadmissible” or “deportable.” The rules on deportability are somewhat different than the rules on inadmissibility.

7. **Expedited Removal**

Starting in April 1997, low-level INS officers were allowed to remove certain non-citizens without allowing them a hearing with an immigration judge. This is called “expedited removal.” The process has come under severe criticism for wrongfully removing people eligible to enter the U.S., especially asylum seekers, who are people fleeing persecution in their home countries.

8. **Immigration Proceedings**

All non-citizens inside the U.S. have the right to an immigration hearing. It is important for non-citizens arrested by INS to assert their right to a hearing because immigration proceedings are like trials. An immigration judge presides over the hearing, a government attorney represents the INS, and the non-citizen has the right to a lawyer, although not at the government’s expense. Some rules about evidence and procedure apply in immigration proceedings. The Board of Immigration Appeals (BIA) reviews all appeals from immigration judge decisions. The federal courts have some power to review BIA decisions.

**Kinds of Immigration Status**

Although Congress created special routes to immigration status for certain battered non-citizens in the Violence Against Women Act (VAWA), there may be other ways non-citizens you encounter could gain legal immigration status in the U.S. In addition, some may already have status and not realize it. A primary purpose of this section is to demonstrate that the immigration system is complicated and that people not well versed and up-to-date in immigration law are not qualified to decide who is documented or undocumented. The following list is far from exhaustive. This information will provide you with some background, but always remember to refer non-citizens to immigration law experts.
1. **U.S. Citizenship**

Anyone born in the U.S., its territories and certain possessions (Puerto Rico, Guam and the Virgin Islands, for instance) are citizens. These include people born of undocumented parents. Children of U.S. citizens who are born elsewhere also may be U.S. citizens. Everyone else must “naturalize” to become a citizen. Most non-citizens must become lawful permanent residents before they can naturalize.

U.S. citizens cannot be deported unless they obtained citizenship by fraud or other illegal means or were otherwise ineligible. U.S. citizens do not need INS authorization to work and they may file petitions for lawful permanent residence for their spouses, parents, children (both married and unmarried), and siblings.

2. **Lawful Permanent Residence**

Lawful permanent residents are non-citizens who make the U.S. their home, have authorization to work in the U.S. and have the most stable immigration status of all non-citizens. They may serve in the U.S. military but they cannot vote. They must follow certain guidelines when they travel or stay outside the U.S., and INS may still remove them for certain reasons. After five years (and in some cases, three years), lawful permanent residents may become citizens (“naturalize”) by taking a test and fulfilling other requirements. Lawful permanent residents should have alien registration cards, often called “green cards” though they are now pink. Lawful permanent residents may file petitions for lawful permanent residence for their spouses and unmarried children.

3. **Conditional Residence**

Non-citizens who apply for lawful permanent resident status based on marriage to a U.S. citizen or lawful permanent resident are called “conditional residents” if they have been married for less than two years when INS gave them lawful permanent residence. Although conditional residents are lawful permanent residents, to keep their status they must file another petition together with their spouses (a “joint” petition) two years after the first petition is granted. A conditional resident should have an alien registration card with “CR” stamped on it. This card allows them to work.

In some cases, a conditional resident may have to file the joint petition by herself. To do this, she must check the box on the joint petition form asking for a waiver. INS may grant waivers to conditional residents who are divorced from their spouses, who would suffer extreme hardship without it, or who are abused by their spouses.

4. **Asylum and Refugee Status**

This status is for those who show that they have suffered persecution or have a “well founded fear” of persecution in their homelands based on race, religion, nationality, political opinion or membership in a social group. Recently, the BIA and some federal courts have recognized
persecution based on gender as a valid basis for an asylum claim. In some cases, domestic violence may qualify as gender-based persecution.7

Refugees are non-citizens who proved their claims before they came to the U.S. and are entering legally as refugees. Those who apply for asylum once they are in the U.S. are asylum applicants. If they get asylum, they become asylees. Asylees and refugees are eligible to become lawful permanent residents after a year.

5. Cancellation of Removal

Cancellation of removal is available to non-citizens in immigration proceedings who show they have been continuously present in the U.S. for ten years, that their removal will cause “exceptional and extremely unusual hardship” to a U.S. citizen or lawful permanent resident spouse, child or parent, and that they have good moral character. A special form of cancellation for certain abused non-citizens also is available, and is described in the next section.

6. NACARA & Haitian Adjustment

In 1997, Congress passed the Nicaraguan Adjustment and Central American Relief Act. This allows certain nationals (and their family members) of Nicaragua, Cuba, El Salvador, Guatemala, the former eastern bloc countries and the former republics of the Soviet Union to file special petitions for immigration status. In 1998 Congress also created a special route to status for certain nationals of Haiti. The rules for eligibility and the procedures for applying vary within each program; local agencies specializing in helping these populations are the best source of information on gaining status under these new laws.8

7. Temporary Protected Status (TPS)

The Attorney General of the U.S. may grant this status to nationals of certain countries in turmoil. For instance, in the past, TPS has been granted to nationals of Honduras, Nicaragua, El Salvador, Kuwait, Lebanon, Liberia, Somalia, Bosnia and Rwanda. Once the designated period of protection ends, INS sends TPS recipients an immigration hearing notice, which means they must either obtain another immigration status or leave the U.S.

8. Non-immigrants

Non-immigrants have their permanent residence in another country. They have non-immigrant visas that include expiration dates. Non-immigrants who stay beyond that date become undocumented. There are many kinds of non-immigrants, including visitors for business or pleasure, foreign students, and temporary workers and trainees and their spouses and children.

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7 Contact the National Immigration Project for more information on this area of the law. See footnote 2 for contact information.

8 In addition, the National Immigration Project is one of the national organizations assisting local agencies implementing the provisions of NACARA affecting Salvadorans and Guatemalans. See footnote 2 for contact information.
Routes to Lawful Permanent Residence

Lawful permanent residence (having a “green card”) is the goal of many non-citizens who wish to stay in the U.S. Lawful permanent resident status provides the most security short of citizenship. Lawful permanent residence is hard to lose and lawful permanent residents can work. Most lawful permanent residents can become citizens after five years. Up until that time, however, INS can remove them or prevent them from coming back into the U.S.

Standard routes to lawful permanent residence are through a relationship with a family member, through employment, through the “lottery,” or through another special program (such as the NACARA and Haitian programs described above). Applying for lawful permanent residence through an employer is very complicated; applying through the lottery is very easy (Congress periodically establishes short-term lotteries for immigrant visas for nationals of certain countries).

Getting lawful permanent residence through a relative can be hard or easy, depending on which relative “sponsors” (applies for) the non-citizen. Under the law, applicants married for less than two years get “conditional” residency. They must file another petition in two years to remain lawful permanent residents.

In the Violence Against Women Act (VAWA) Congress created a special route to lawful permanent residence for battered spouses and children of U.S. citizens or lawful permanent residents. Battered spouses and children are “self-petitioners,” and need not rely on their abusive relatives to sponsor them or to complete the application process. Otherwise, the process parallels the normal family immigration process. This section provides you with a basic outline of the family immigration process that may help you understand why VAWA applications can be complicated (and why your assistance may be crucial).

1. How long does it take to get lawful permanent residence through a family member?

In general, spouses and children of U.S. citizens will be able to get status fairly quickly. Spouses and children of lawful permanent residents will have to wait several years before they can gain lawful permanent residence. In both cases, INS must approve an application for an immigrant visa, which is based on the relationship to the U.S. citizen or lawful permanent resident, before it can approve a separate application for lawful permanent residence. Applicants for lawful permanent residence must show they are not “inadmissible” as defined by the immigration statute.

Spouses and children of lawful permanent residents can’t file their applications for lawful permanent residence until their approved immigrant visas “become current,” which depends on the visa’s “priority date.” A complicated system of quotas determines when visas with certain priority dates become current. Spouses and children of U.S. citizens (called “immediate

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9 See Appendix I for the text of this statute.

10 The reauthorization of VAWA in 2000 (through the Victims of Trafficking and Violence Protection Act) created new visas for victims of crime (U visa) and victims of trafficking (T visa).
relatives”) can file the application for lawful permanent residence at the same time as the application for an immigrant visa because no quota system controls the number of visas available for them.

Applicants may have to attend an interview with INS about their application for the immigrant visa, and another interview when the time to decide their application for lawful permanent residence arrives. INS will make both decisions in one interview for applicants who are immediate relatives of U.S. citizens. As noted above, lawful permanent residents who obtained status through marriage when they were married for less than two years initially receive “conditional residence.”

The process for VAWA applications differs from the process described above in several ways. First, self-petitions, unlike petitions filed by sponsors, must all be filed at the INS Vermont Service Center. The Vermont Service Center makes a decision “on the papers,” without an interview with the applicant. Vermont has a special group of INS officers reviewing these applications; this group receives regular training in domestic violence. Vermont does not, however, make decisions about the applications for lawful permanent residence by self-petitioners.

This means the VAWA process is a two-step process for all applicants, whether the abuser is a U.S. citizen or a lawful permanent resident. Once Vermont approves a self-petition, an applicant whose abuser is a U.S. citizen may immediately apply for lawful permanent residence at her local INS office. If the abuser is a lawful permanent resident, however, the self-petitioner must wait in line to apply for lawful permanent residence, just like her counterpart in the normal family immigration system. One important difference, however, is that Vermont will grant work authorization to all approved self-petitioners while they wait to apply for lawful permanent residence. This helps them flee economic control by their abusers.

Finally, the rules about conditional residence do not apply to self-petitioners. Once Vermont approves a self-petition, the abuser’s influence over the process ceases.

2. Can applicants for lawful permanent residence stay in the U.S. to get status?

If possible, non-citizens should try to stay in the U.S. for the interview on their lawful permanent residence applications. This is called “adjusting status.” If they entered the U.S. without INS permission or worked with INS authorization, however, they may have to go to a U.S. embassy abroad (usually in their home countries) to get immigrant visas, which will give them lawful permanent residence once they return to the U.S. This is called “consular processing.”

The 1996 immigration law makes it much more dangerous for applicants for lawful permanent residence to go abroad to get their immigrant visas. Merely by leaving the U.S., for instance, they may become “inadmissible” and therefore ineligible for lawful permanent residence.

As of this writing, many of the same complicated rules and barriers to lawful permanent residence apply to VAWA self-petitioners as apply to other family immigration applicants. It is, therefore, extremely dangerous for approved self-petitioners to leave the U.S.; they may
not be able to re-enter legally and may forfeit their applications for lawful permanent residence. There is a bill in Congress to fix this problem; contact the National Immigration Project for an update on the fate of this legislation.

**VAWA Self-Petitions**

In order to be successful in a VAWA self-petitioning case, a battered immigrant must show four things: (1) she is married to a U.S. citizen or a lawful permanent resident; (2) she was subjected to battery or extreme cruelty by her spouse in the U.S.; and (3) she is a person of good moral character.

**How Prosecutors and Law Enforcement May Help Eligible VAWA/ U visa Applicants Overcome Evidentiary Problems**

Here are some ways you may help self-petitioners gain legal immigration status:

1. **Obtain Information in Abuser’s Control**
   Information about the abuser’s immigration or citizenship status, prior divorces and residence with the battered immigrant:
   - Retrieve needed documents when helping battered immigrants collect possessions in the home.
   - If the victim is obtaining an emergency protection order, encourage her to bring any documents about her children, her marriage, her life with her spouse, and his status in the U.S. with her to court.
   - Require abuser to provide information or to cooperate in ongoing immigration petition as part of discovery or sanctions against abuse (e.g., criminal stay away order, pretrial release provisions, sentencing or deferred prosecution agreements).
   - If you have direct knowledge of information the applicant lacks, write an affidavit providing the basis and content of your knowledge.

2. **Help Document the Case**

   Battery or Extreme Cruelty – must be shown in VAWA self-petitions
   - Document detail of abuse in police reports and charges against abuser.
   - Subpoena medical records documenting abuse.
   - Ask victim questions for the record about past police reports of abuse.
♦ Include oral and written testimony in the record.

♦ Place on the record threats made to the victim in court.

♦ Place on the record abuser’s behaviors that exhibit disregard for protection orders, etc. (e.g., ripping it up in court, leaving the courtroom).

Good Moral Character – must be shown in VAWA self-petitions

♦ Help the battered immigrant eliminate any problems with past criminal record flowing from domestic violence.

♦ Swiftly provide necessary police reports (for good moral character).

3. Avoid Undermining a Victim’s VAWA Application:

♦ Do not recommend mutual protection orders – mutual orders undermine good moral character and proof of battery & extreme cruelty.

♦ Do not convict a battered immigrant of a crime that makes her ineligible for VAWA self-petitioning or cancellation of removal.

Prohibition and Penalties for INS Use of Information Provided by an Abuser; Confidentiality

In the 1996 immigration law, Congress added a provision intended to further curtail manipulation of the immigration process by abusers. Under Section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), no employee of the Department of Justice (which includes INS and immigration court personnel and judges) may “make an adverse determination” about a person’s application for status “using information furnished solely by” the applicant’s abuser, an abusive member of the applicant’s household, or someone who has abused the applicant’s child.11

IIRIRA also prohibits the “use or disclosure to anyone” except to other INS officers “for legitimate … agency purposes,” of information relating to self-petitioners, conditional residents requesting battered spouse waivers, and applicants for cancellation of removal. Anyone who “willfully uses, publishes, or permits information to be disclosed in violation of this section shall be subject to appropriate disciplinary action and subject to a civil money penalty of not more than $5,000 for each such violation.” These prohibitions and penalties apply to any act by an employee of the Department of Justice that took place on or after September 30, 1996.

11 See Appendix I for the text of this statute.
Since these new penalties may not appear in the immigration law itself, you should let immigration officers and other employees of the Department of Justice know about their existence. It is an important tool for discouraging INS complicity in abuse.

**U Visas**

VAWA 2000 created a new non-immigrant visa that is available for certain crime victims. This visa is available to victims who have suffered substantial physical or emotional injury as a result of being subjected to specific crimes committed against them in the United States.

In order to qualify for a U-Visa, a crime victim must:

- Show that she has suffered “substantial physical or mental abuse” as the result of a form of criminal activity (or “similar” activity)
- Show that she possesses information concerning the criminal activity and
- Provide a certification from a federal, state or local law enforcement officer, prosecutor or judge or authority investigating the criminal activity designated in the statute that certifies that the victim has been helpful, is being helpful or is likely to be helpful in the investigation or prosecution of the crime.

The most valuable action law enforcement can take on behalf of a possible U visa applicant’s immigration status is completing the certification.

**INS Policy Memo on Possible U visa Applicants**

This INS memo discourages agents from removing possible U visa applicants. It states, among other things, that:

* Noncitizens “identified as possible victims in the above categories [U or T] should not be removed from the United States until they have had the opportunity to avail themselves of the provisions of the VTVPA. . .” *INS personnel should keep in mind that it is better to err on the side of caution than to remove a possible victim. . .* and “[i]n the absence of governing regulations, Service personnel should ensure broad interpretation of the guidance to ensure an alien is not removed. . .”

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12 *Criminal activity includes rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, or attempt, conspiracy or solicitation to commit any of the above mentioned crimes.

13 Interim Relief Memo at 2 (emphasis in original).

14 Id. at 3.

LOCAL POLICE ENFORCEMENT OF IMMIGRATION LAWS AND ITS EFFECTS ON VICTIMS OF DOMESTIC VIOLENCE\textsuperscript{16}

The Law Regarding Local Police Enforcement of Federal Immigration Laws

Local courts and law enforcement officers have no authority to enforce the non-criminal provisions of the Immigration and Nationality Act. There is also no requirement that a victim or witness state her place of birth or immigration status when filing a complaint or a police report. Under federal law, the police have no duty to inquire into the immigration status of a victim, witness or arrestee. (Gonzales v. City of Peoria, 722 F. 2d 468 (9\textsuperscript{th} Cir., 1983). Despite this fact, some judges and law enforcement officers do inquire into immigration status in domestic violence cases. Such inquiries during police investigations or at trial significantly erode community confidence in the judiciary and cooperation with the police. For victims of family violence this practice can be lethal. It can drive a victim who has finally turned to the courts or the police for protection back into an increasingly violent home. To curb this practice, several jurisdictions across the country have passed laws specifically prohibiting government employees, departments, and police form inquiring into immigration status.\textsuperscript{17}

\textit{Gonzales: Civil v. Criminal Enforcement of Immigration Laws}

The leading case on whether local police have the authority to enforce federal immigration laws is Gonzales, a civil rights suit brought by 11 plaintiffs of Mexican descent who challenged the practice of police enforcement of federal immigration law. \textit{Gonzales v. The City of Peoria}, 722 F. 2d 468 (9\textsuperscript{th} Cir., 1983). The Court of Appeals held that:

\begin{itemize}
  \item Local police are precluded from enforcing the \textit{civil} provisions of the Immigration and Nationality Act (INA).\textsuperscript{18}
  \\
  \item \textit{Civil} provisions of the INA are the exclusive enforcement domain of the INS and include \textit{unlawful presence} and \textit{unauthorized employment} in the U.S. "Expiration of a visitor's visa, change of student status, or acquisition of prohibited employment" are examples of \textit{civil} violations of the INA for which local police cannot make arrests.\textsuperscript{19} These civil violations are distinct from unlawful entry into the U.S., a \textit{criminal} violation of the INA.\textsuperscript{20}
\end{itemize}

\textsuperscript{16} Gail Pendleton, Associate Director, National Immigration Project of the National Lawyers Guild & David Neal, Law Student Intern at the National Immigration Project from UNC-CH

\textsuperscript{17} Issue Paper on Domestic Violence Cases Involving Immigrant and Refugee Communities: The Response of the Courts (1991), prepared by the Family Violence prevention Fund for the National Council of Juvenile and Family Court Judges at 18.

\textsuperscript{18} The civil provisions constitute "a pervasive regulatory scheme as would be consistent with exclusive federal power of immigration." \textit{Gonzales}, 722 F. Supp. at 475.

\textsuperscript{19} Id. at 476.

\textsuperscript{20} 8 U.S.C. § 1325 (INA § 275). The other criminal provisions mentioned by the court included 8 U.S.C. § 1324 (INA § 274), making it a crime to illicitly bring non-citizens across the border and 8 U.S.C. § 1326 (INA § 276), making it a crime to illicitly reenter the U.S. after removal.
Although there is a clear legal distinction between the civil and criminal provisions of the Act, in practice such terms as "illegal alien" blur the distinction and lead to confusion about the difference between illegal entry and unlawful presence.

The Gonzales decision implies that local police are not precluded from enforcing any of the criminal provisions of the INA, but some of the criminal provisions of the Act are poorly suited for local enforcement. For example, 8 U.S.C. § 1325(c) (§ 275(c) of the INA) makes it a felony punishable by up to five years in prison for entering into a fraudulent marriage for immigration benefits. As the penalty implies, this is a criminal provision, but it is difficult to imagine how local police could endeavor to enforce it.

Local police authority to make arrests for violations of these criminal provisions must be authorized by state law, not federal law. State law must grant "affirmative authority to make arrests" under the INA criminal statutes. In other words, local police are not precluded from enforcing these criminal provisions but neither are they granted extra authority to carry out such enforcement.

There is no affirmative duty for police to enforce any immigration laws.

Constitutional Rights Extend to Non-citizens and Citizens Alike in the Criminal Context

Fourth Amendment Protects Non-citizens

The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." This protection applies to citizens and non-citizens with equal force.

Any arrests made for criminal violations of the INA must not violate the Constitution. Satisfying probable cause for making searches or seizures and for making arrests are of particular concern when contemplating enforcement of immigration laws. Police departments that endeavor to enforce immigration laws risk violating these guarantees as

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21 In a recent challenge to the Ohio State Highway Patrol's practice of asking people of Mexican descent their immigration status, the federal district court held, following Gonzales, that, "[i]n light of the preemptive reach of federal authority over immigration, the states, at least arguably, have no interest in, and thus no role to play in the enforcement of federal laws relating to aliens." Farm Labor Organizing Committee v. Ohio State Highway Patrol, 991 F. Supp. 895, 902 (N.D. Ohio 1997). Though this court agreed with Gonzales that local police are not prohibited from enforcing immigration laws, it is clear that such enforcement is optional and of questionable value.

22 Id.

23 Demonstrating that local police departments' primary goals are thwarted by attempts to enforce immigration laws is not the same as arguing that local police should universally refuse to cooperate with the INS. The INA now includes a provision which prohibits state and local governments from refusing outright to share information with the INS. See 8 U.S.C. sec. 642 of the Immigration Reform Act of 1996.

24 U.S. Const. amend. IV.


there are inherent probable cause problems in making arrests for illegal entry unless the arresting officer actually witnesses the non-citizen crossing the border.

♦ The Supreme Court has unequivocally held that racially motivated stops and seizures violate the Fourth Amendment to the Constitution.27 Police departments are likely to open themselves to claims of racial profiling for enforcement practices that are directed at minorities, such as persons who are of Mexican descent.28

♦ Failure to produce documentation of citizenship or legal permanent residence status, absent any other information, does not constitute probable cause that an individual is a non-citizen in violation of any criminal provisions of the INA.29

Legal Pitfalls Police Can Encounter in Enforcing Immigration Laws

Though the ninth circuit has ruled that enforcing these criminal provisions is permitted under federal law, local municipalities are potentially exposing themselves to liability for operations that violate individuals' civil rights. The town of Georgetown, Texas settled a civil rights suit brought by U.S. citizens and lawful permanent residents whose homes had been entered and searched by three city police officers and the INS without consent or search warrants. The small town of Georgetown was required to pay $42,500 to the plaintiffs as part of the settlement. If the INS calls a local police department for assistance, the police can refuse citing the reasonable concern that they could incur civil liability and loss of trust with community.

Recent Statutory Changes Have Not Altered the Ruling in Gonzales

Subsequent to the Gonzales ruling there have been many changes to the INA. Of particular interest to local law enforcement is 8 U.S.C. § 1252c, which provides limited authority for local law enforcement to arrest non-citizens unlawfully present in the U.S. if the following are met:

(1) the arrest is authorized by state or local law;

(2) the non-citizen is present in violation of 8 U.S.C. § 1326 after a previous conviction for a felony; and

(3) the officer receives confirmation from the INS regarding the suspect's status prior to making the arrest.

This statute is consistent with the ruling in Gonzales, though the arrest authority is more expressly circumscribed to a particular situation than the ninth circuit holding.30

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28 For example, the Illinois state police have been sued in a class action law suit for racial profiling. Field Reports submitted from 1987 to 1997 demonstrated that in some areas where Hispanic drivers made up as little as 2.4% of area motorists, Hispanic drivers made up 39.15% of the discretionary state police stops. "Driving While Black: Racial Profiling on Our Nation's Highways," A Special Report of the ACLU, June 1999.
30 The tenth circuit has held that arrests not authorized by section 1252c are not necessarily prohibited by this section. See U.S. v. Vasquez-Alvarez, 176 F. 3d 1294 (10th Cir. 1999).
Other provisions of the INA enacted since 1996 provide the Attorney General with the authority to enter into specific contractual agreements with local police departments to enforce immigration laws.31 Several municipalities across the U.S. have voted to designate themselves as "sanctuary cities," declaring an intention to take no part in immigration enforcement activities. Subsection (9) of this provision explicitly establishes that nothing in the statute requires local law enforcement agencies to enter into such agreements with the Attorney General.

Clearly, these agreements would expand the arrest authority and enforcement capability for local police departments interested in enforcing immigration laws beyond the parameters outlined above. The costs to the goals of local law enforcement that would likely be incurred from entering into such agreements with the INS are not as immediately apparent and require serious consideration. In the next section, we will address both positive steps police and prosecutors can make to further the goals of local law enforcement in immigrant communities and the risks to those same law enforcement goals if police do attempt to enforce federal immigration laws.

Why Police and Prosecutors Should Avoid Enforcing Immigration Laws

Goal of Encouraging Reporting of Domestic Violence in Immigrant Communities

Local police and prosecutors should be prepared for the predictable reduction in reporting of serious crimes if law enforcement officers chose to expand their duties to include the policing of immigration matters. Non-citizens will become reluctant to report crime, thus encouraging criminals to further victimize these communities and spread into the community at large.

Of particular concern is the predictable effect on non-citizen victims of domestic violence. Congress has recognized the need to address the problem of battered immigrant women by passing the VAWA provisions that allow victims of abuse the legal means to obtain legal immigration status independent of their abusers. The effectiveness of these provisions relies on local police responding to domestic violence calls and courts issuing Protective Orders. If police are seen as agents of the INS in the eyes of the community, many battered immigrants will be reluctant to call the police and take the initial steps necessary to become independent of the abuser out of fear of being asked about her immigration status. An advocate for battered immigrants at the St. Paul Domestic Abuse Intervention Project noted that local police involvement in immigration enforcement increases fear in "already vulnerable communities: 'Most immigrants in battered women shelters are too afraid to call police, even if they have been badly assaulted by their partner.'"32

Battered immigrants may also be reluctant to report the domestic violence if they think that their abusers will be turned into the INS. It is very likely that having the abuser deported would not be in the long-term best interests of the battered immigrant. For example, she may be blamed by her home-country community for his deportation and ostracized for her actions.

31 See 8 U.S.C § 1357(g)(1), INA § 287(g)(1).
Effectively Serving and Protecting All Communities: Building Trust in Immigrant Communities

Fulfilling the Primary Goals of Local Police

To support and defend the Constitution of the U.S. … to promote and foster the enforcement of law and order…to cultivate a spirit of fraternalism and mutual helpfulness between our members and the people we serve; to increase the efficiency of the law enforcement profession and thus more firmly establish the confidence of the public in the service dedicated to the protection of life and property.

From the Charter of the Fraternal Order of Police, North Carolina Chapter

The goals expressed by the Fraternal Order of Police above are exemplary of police goals from all over the country. When serving communities that include foreign-born individuals, local police undercut these primary goals when officers attempt to enforce immigration laws. A predictable chilling effect on law enforcement will result if a non-citizen who is lawfully or unlawfully present in the U.S. believes that calling the police to report a crime is likely to lead to police questioning the individual regarding his or her immigration status. The goal of the police to serve and protect the community extends to all members of the community and it is imperative for public safety that police maintain a relationship of trust with everyone, citizen and non-citizen alike.

The problems inherent in police enforcing immigration laws were illustrated when the Chandler (Arizona) Police Department conducted a joint operation with the INS Border Patrol in July of 1997. The efforts of the police to rid the community of non-citizens unlawfully present in the U.S. led not just to deportations, but to the filing of a $35 million civil rights lawsuit against the City of Chandler brought by U.S. citizens and legal permanent residents. More costly than the financial burden to the city in defending and settling the lawsuit is the lost trust between members of the community and the police whose sworn duty it is to serve them. The reasons why this kind of operation erodes the trust of the immigrant community in the police was made clear in Arizona Attorney General Grant Woods's report on the joint INS-city police operation.33

The report noted that "[n]umerous American citizens and legal permanent residents were stopped...for no other apparent reason than their skin color or Mexican appearance or use of the Spanish language." Not only did the Attorney General concluded that the Chandler Police violated the Constitutional rights of citizens and legal permanent residents, but also that:

[t]he joint operation by Chandler Police Department and INS/Border Patrol created an atmosphere of fear and uncertainty in the particular zone targeted and beyond. This operation has damaged the relationship between a local law enforcement entity and the public it serves.34

34 Id. at 32.
Attorney General Woods went on to recommend that the city police in Chandler both "acknowledge the divisive and negative impact caused by this operation" and develop:

specific programs designed to restore and improve trust between the City Council, the police, and the community. The programs should address the atmosphere of mistrust that this operation engendered in Chandler, especially in its Hispanic community.35

It is much more difficult to repair such rifts in trust and understanding than it is to maintain good relationships with the community.

The Chandler operation is not an isolated incidence of police shattering their reputation in immigrant communities by enforcing immigration laws. An incident in Salt Lake City Utah involving the city police and county sheriff's department in a joint operation with INS and other federal agents resulted in nothing but fear and anger within the Latino community. Police officers and federal agents burst into Rafael Gomez's business, the Panderia La Diana, and forced all of his customers and employees to the floor while they searched for drugs. The local and federal officers were operating on the later disproved theory that undocumented Mexicans made up 80% of the illegal drug trade in Salt Lake City. This raid had lasting effects on Mr. Gomez's business as customers became afraid to shop there and on the Latino community who learned to mistrust the motivations of the City Police Department.

Effectively Fulfilling the Goals of Community Policing

Community Policing is based upon a solid relationship between the police and the community....By working together, the police and the community can reduce the fear and incidence of crime and improve the quality of life in the community.

Los Angeles Police Department Report on Community Policing36

The U.S. Department of Justice has placed an emphasis on community policing, offering grants from its COPS program (Community Oriented Policing Services) to communities in 26 states and the District of Columbia to put more officers on the beat and in direct contact with the people they serve. These initiatives only function when relationships of trust develop between the officers and the members of the neighborhoods those police patrol. Attorney General Woods noted in his conclusion to the Chandler survey that local police involvement in immigration enforcement "can present a conflict to the purpose and intent of neighborhood and community policing."37 The Arizona Attorney General explained that:

[c]ommunity policing efforts, particularly when utilizing bicycle officers, are predicated upon the belief that enhancing relationships between "beat" officers and neighborhood residents will lead to mutual trust and respect. It is this mutual

35 Id. at 33.
36 From the Los Angeles Police Department web-site.
trust and respect that will in turn enhance the ability local police to obtain from willing citizens the information and support necessary to carry out their mission to protect and serve. This joint operation...greatly harmed the trust relationship between the Chandler Police and many of the City’s residents.38

Develop Police and Prosecutorial Practices that Encourage Reporting of Domestic Violence and Build Trust With Immigrant Communities

Positive steps police and prosecutors can take to encourage the reporting of domestic violence in immigrant communities include:

♦ Establish practices that encourage and facilitate immigrant victims of domestic violence to contact the police and cooperate with the prosecutor:

1. make it known in the community that police will not ask about the immigration status of the victim or the perpetrator of domestic violence when victims call for help

2. assure victims of domestic violence who may be non-citizens that the police will not contact the INS

3. if the police suspect that the victim is a non-citizen, give her information about local agencies that can help battered immigrants or immigrants in general.

♦ Employ the cooperative approach instead of the victimless crime approach:

1. allow battered immigrants to express concerns and respect those concerns, including the desire that the abuser not be deported;

2. explain how the legal system works, the victim’s rights under the legal system regardless of immigration status, what to expect if she testifies or otherwise cooperates with the prosecution;

3. work with battered immigrants to explore their choices and the consequences of those choices; and

4. help battered immigrants access the services and immigration status they need to overcome barriers to cooperating in prosecution. Have reliable and up-to-date referrals for resources available to help overcome these barriers. These barriers include:

   (a) physical safety - help with protection orders, shelter, and long-term housing

   (b) economic survival - help with access to public benefits and work authorization

38 Id. at 34.
(c) legal safety - help with divorce, child custody, and other family law issues directly related to overcoming domestic violence. Offer assistance with immigration status to prevent deportation and prosecution of the batterer (with particular attention to timing that may be crucial to the legal safety of the battered immigrant)

♦ Develop policies for situations where one party does not speak English to facilitate identifying the real perpetrator:

1. explore predominant languages used in immigrant communities and hire staff and/or arrange for translators that speak those languages

2. seek out, hire, and provide support for multilingual and multicultural staff

Positive Steps Police and Prosecutors Can Take to Develop Relationships of Trust and Cooperation With the Immigrant Community include:

♦ Adopt policies similar to the enclosed examples concerning inquiring about the immigration status and reporting to non-citizens to the INS. Work with immigrant communities in your area to address concerns and tailor policies to meet those concerns and the goals of law enforcement.

♦ Establish liaison with immigrant communities by going to local immigrant organizations or groups, religious institutions, etc., to explain the role of the police and immigrants' rights under the U.S. legal system. Make it clear that the police strive to serve and protect all communities, regardless of status or national origin.

♦ Avoid undermining the trust of immigrant communities:

1. adopt explicit policies discouraging reporting non-citizens to INS

2. avoid joint enforcement operations with INS, including raids on neighborhoods, workplaces, and foot, bicycle, motorcycle or car patrols.

3. address apparent racist or anti-immigrant misconduct by law enforcement officers in a straightforward manner. Blanket denials are ineffective and undermine trust.

♦ Establish policies and priorities that avoid undermining the trust of immigrant communities.

1. prosecute vigorously crimes against non-citizens and make public statements clarifying that the criminal laws protect everyone regardless of immigration status

2. consider and acknowledge the seriousness of deportation: the severe consequences for those who could face persecution, starvation, separation from children, or other serious deprivation in the homeland
3. eschew criminal dispositions that strip discretion from immigration judges to weigh factors such as rehabilitation against danger to the community, etc. when determining whether an immigrant who has served his or her sentence should be deported

4. avoid reneging on deals to help immigrant witnesses to crimes gain legal immigration status

In making these steps, it is important to reconcile the central goals of local law enforcement with the specific needs of immigrant communities. If police are not working to enforce immigration laws, then the goals of the police department to serve and protect the persons and property of all members of the community are not likely to be in conflict with the needs of immigrant communities.
To Protect and Serve:
Law Enforcement’s Response to Family Violence

Attachment G
Application For Further Detention
APPLICATION FOR FURTHER DETENTION

Pursuant to Article 17.291 of the Texas Code of Criminal Procedure, the undersigned applicant requests that the above named defendant be detained for ___________________________ (not to exceed 48 hours) after bond is posted in the above referenced cause.

The defendant has been arrested in the prevention of family violence and based upon the following facts, there is probable cause to believe that the violence will continue if the defendant is released immediately upon posting bond:

_____________________________________________________________________________________
_____________________________________________________________________________________
_____________________________________________________________________________________
_____________________________________________________________________________________
_____________________________________________________________________________________
_____________________________________________________________________________________
_____________________________________________________________________________________
_____________________________________________________________________________________

Date:_________________

Applicant

Note: If the additional period exceeds 24 hours, probable cause must exist to believe that the detained person committed the instant offense and during the 10 year period preceding the date the person has been arrested (check the applicable offense and attach copies of supporting documentation of requisite probable cause):

☐ On more than one occasion for an offense involving family violence; or

☐ For any other offense, if a deadly weapon, as defined Section 1.07 of the Penal Code, was used or exhibited during the commission of the offense or during immediate flight after the offense.
To Protect and Serve:
Law Enforcement’s Response to Family Violence

Attachment H
Standardized Protective Order
(with attachments A-D)

A-Orders Concerning Children
B-Orders Concerning Property
C-Orders Concerning Firearms
D-Orders to Reduce the Likelihood of Violence
NO.__________________

IN THE MATTER OF § IN THE _________________
_________________, APPLICANT § COURT OF
AND § ______________________
_________________ , RESPONDENT § COUNTY, TEXAS

PROTECTIVE ORDER

On ______________________, 20___, the Court heard the Application for a Protective Order of _______________________________, applicant.

1. Appearances

Applicant appeared in person represented by ________________________________.

Respondent, ______________________________, having been duly and properly cited, and after having been properly served with the application and notice of the hearing:
[   ] appeared in person and by attorney, ________________________________, and announced ready.
[   ] appeared in person and announced ready.
[   ] did not appear and wholly made default.
[   ] a record of the proceedings was waived.

2. Jurisdiction

The court, having considered the pleadings and heard the evidence and argument of counsel, finds that all necessary prerequisites of the law have been satisfied pursuant to Title 4, Family Code, and that this court has jurisdiction over the parties and subject matter of this cause.

3. Findings

The Court finds that applicant and respondent:
[   ] are members of the same family or household, or
[   ] have or have had a dating relationship, as defined by Section 71.0021, Family Code.
The Court finds that:
[ ] family violence, as defined by Section 71.004, Family Code, has occurred and is likely to occur in the future.
[ ] the respondent violated a previous protective order while it was in effect.
[ ] the parties have agreed to the terms of this protective order.

The Court finds that this protective order is in the best interest of the applicant, the family or household, or a member of the family or household.

The Court finds that applicant and ______________________________________
________________________________________________________________________
are protected individuals under this order.

4. Orders Enforceable by Arrest

It is ordered that respondent is:
  a. Prohibited from committing family violence as defined in §71.004 Family Code or an act in furtherance of an offense under §42.072, Penal Code, against the applicant and other protected individuals.
  b. Prohibited from communicating directly with the applicant and other protected individuals in a threatening or harassing manner.
  c. Prohibited from communicating a threat through any person to the applicant or the other protected individuals.
  d. Prohibited from going within __________ of the residence of the applicant or the other protected individuals located at ____________________________
_______________________________________________________________________.
  e. Prohibited from going within __________ of the place of employment or business of the applicant or the other protected individuals located at ______________
_______________________________________________________________________.
  f. Prohibited from going within __________ of the childcare facility and school(s) of ________________________________________, located at_____________
_______________________________________________________________________.
  g. Prohibited from possessing a firearm.
  h. Prohibited from the use, attempted use, or threatened use of physical force against an intimate partner or child that would be reasonably expected to cause bodily injury.
  i. Prohibited from harassing, stalking or threatening a protected individual or engaging in conduct that would place a protected individual in reasonable fear of bodily injury to themself or a child protected under this order.

[ ] It is further ordered by the Court, after having found good cause, that respondent is prohibited from communicating in any manner with a member of the family or household except through ____________________________, the party’s attorney, or person appointed by the Court.
It is further ordered that respondent is excluded from the residence located at ___________________________________________________________________________, on or before ________________, and the sheriff, constable or chief of police shall provide a law enforcement officer, who shall:

a. accompany applicant to the residence covered by the order;

b. inform the respondent that the court has ordered that the respondent be excluded from the residence;

c. protect the applicant while the applicant takes possession of the residence and the respondent takes possession of the respondent’s necessary personal property; and

d. if the respondent refuses to vacate the residence, remove the respondent and arrest the respondent for violating this order.

5. Orders Enforceable by Contempt

The Court hereby incorporates the following attached orders in this Protective Order:

[ ] Attachment A: Orders Concerning Children.
[ ] Attachment B: Orders Concerning Property.
[ ] Attachment C: Orders Concerning Weapons.
[ ] Attachment D: Orders to Reduce the Likelihood of Violence.

6. Confidentiality of Certain Information

Pursuant to a request by a member of the family or household, it is hereby ordered that the address and telephone number of the following persons and places be excluded from this order:

[ ] a person protected by the order.
[ ] the place of employment or business of a person protected by this order.
[ ] the child-care facility or school a child protected by the order attends or in which the child resides.

The Clerk of the Court is hereby ordered to strike the information listed above from the public records of the Court, and to maintain a confidential record of the information above for use only by the Court.

7. Fees and Costs

It is ordered that respondent pay the following fees and costs:

[ ] Costs of court, including the protective order fee, cost of service of this order, and all other expenses incurred in connection with this order, in the amount of ________________, payable on or by ________________, to ________________________________.
[ ] Reasonable and necessary attorneys fees in the amount of _______, payable on or by ______________________, to ________________________________.

8. Warnings

A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF AS MUCH AS $500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH.

NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER.

A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS $4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS.


IT IS UNLAWFUL FOR ANY PERSON WHO IS SUBJECT TO A PROTECTIVE ORDER TO KNOWINGLY PURCHASE, RENT, LEASE OR RECEIVE AS A LOAN OR GIFT FROM ANOTHER A HANDGUN FOR THE DURATION OF THIS ORDER. SECTION 46.06, PENAL CODE.

IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A FIREARM OR AMMUNITION. 18 U.S.C. SECTION 922(g)(8); SECTION 46.04, PENAL CODE.

POSSESSION OF A FIREARM WHILE THIS PROTECTIVE ORDER IS IN EFFECT MAY BE A FELONY UNDER FEDERAL LAW PUNISHABLE BY UP TO TEN YEARS IN PRISON AND/OR A $250,000 FINE. 18 U.S.C. §922(g)(8).
9. Findings in Compliance with Federal Law

The court finds that:
   Respondent received actual notice of the hearing and had an opportunity to participate.
   Applicant and Respondent are intimate partners pursuant to Title 18, United States Code, Section 2266.
   The protected individual(s) listed in paragraph 5, __________________________, is a child/children of applicant or respondent.
   Respondent represents a credible threat to the physical safety of the applicant and any child of applicant who is listed as a protected individual in this order.

10. Order Forwarded

The clerk of this court is hereby ordered to forward a copy of this order to the Chief of Police of the City of ______________________, or, if respondent does not live in a municipality, the sheriff of ______________________ County and the constable of ______________________ County, Precinct ______________________, the child care facility and/or school in Section 4 of this Order, and the Texas Department of Public Safety, if the respondent is licensed to carry a concealed weapon.

11. Duration of Protective Order

This order is effective immediately and shall continue in effect until ______________________, 20____. If respondent is confined or imprisoned on the date this order would otherwise expire, the period of this order is hereby extended and the order expires on the first anniversary of the date respondent is released from confinement or imprisonment.

12. Service of Protective Order

This court finds that the order:
   [   ] has been served on respondent in open court; or
   [   ] shall be personally served on respondent in the same manner as a writ of injunction; or
   [   ] shall be served on respondent by registered or certified mail in accordance with Rule 21 A, Texas Rules of Civil Procedure.

Signed and entered on this the _____ day of ______________________, 20____.

_______________________________________
Judge, _________________________________
APPROVED TO FORM AND CONTENT: [if applicable]

____________________________________
Respondent
Address: ___________________________________
Date of Birth: ______________________________
SSN: ______________________________________
TDL: ______________________________________

____________________________________
Applicant
Date of Birth: _____________________________

APPROVED AS TO FORM ONLY:

____________________________________
Respondent’s Attorney
Address: __________________________________
Phone: _____________________________________
Fax: ________________________________________
SBOT: _____________________________________

____________________________________
Attorney for applicant/state
Address: __________________________________
Phone: _____________________________________
Fax: ________________________________________
SBOT: _____________________________________
CAUSE NO. ________________________

ATTACHMENT A – ORDERS CONCERNING CHILDREN

Jurisdiction

The Court finds that it has jurisdiction over the child(ren) in this cause and that this order is issued in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, §152.001 et seq., Family Code, and the Parental Kidnapping Prevention Act, 28 U.S.C.A. §1738A.

Findings

The Court FINDS that awarding Respondent access to the child(ren) will not endanger the child(ren)’s physical health or emotional welfare and would be in the best interest of the child(ren). Section 153.004(d), Family Code

The Court FINDS that:

[ ] it is not in the child(ren)’s best interest for Respondent to have unsupervised possession and access; or

[ ] Respondent has rebutted the presumption set forth in Section 153.004(e) and it is in the child(ren)’s best interest for Respondent to have unsupervised possession and access.

Periods of Possession:

IT IS ORDERED that Applicant shall have possession of the child(ren), ____________________________________, and Respondent is ORDERED to not remove the child(ren) from the possession of the Applicant except for the times set forth below.

This possession schedule shall begin on _________________.

Respondent is to have possession of the child(ren) during the following periods:

[ ] On Saturday/Sunday of each week from _______ until _______ the same day.

[ ] On the first, third, and fifth weekends of each month from 6:00 p.m. on Friday until the Sunday immediately following at 6:00 p.m. The first, third, and fifth weekends of a month are those that begin on the first, third, and fifth Fridays of the month.

[ ] On Wednesday of each week during school, from 6:00 p.m. until 8:00 p.m.

[ ] If a weekend visit with the Respondent coincides with a school holiday during the regular school term or with a federal, state, or local holiday during the summer months when school is not in session, such weekend visit shall extend until 6:00 p.m. on the Monday holiday, or shall begin at 6:00 p.m. Thursday for a Friday holiday or school holiday.
The following provisions of this order will determine possession of the child(ren) for holidays and vacations, even if such a holiday or vacation provision conflicts with the weekend and Wednesday visitation set out above.

[ ] The Respondent shall have possession of the child(ren) from noon on December 26th until 6:00 p.m. on the day before school resumes.

[ ] The Respondent shall have possession of the child(ren) from 6:00 p.m. on the Wednesday before Thanksgiving until 6:00 p.m. on the following Sunday.

[ ] The Respondent shall have possession of the child(ren), if he/she gives the Applicant written notice by April 15 specifying an extended period or periods of summer possession, for 30 days beginning not earlier than the day after school is dismissed for summer vacation and ending not later than seven days before school resumes, to be exercised in no more than two separate periods of at least seven consecutive days each.

[ ] On Father's Day, the child(ren) shall visit the father from 9:00 a.m. until 6:00 p.m.

[ ] On Mother's Day, the child(ren) shall visit the mother from 9:00 a.m. until 6:00 p.m.

[ ] At any other reasonable times as may be agreed upon by the parties in advance in writing.

[ ] Other: ________________________________

Respondent is ORDERED to not remove the child(ren) from the jurisdiction of the court.

Pick Up and Return of Child(ren):

Applicant, or designee, is ORDERED to surrender the child(ren) to Respondent at the beginning of each period of possession at the following location:

________________________________________________________________________.

Respondent is ORDERED to return the child(ren) to Applicant, or designee, at the end of each period of possession at the following location:

________________________________________________________________________.

Conditions of Periods of Possession:

[ ] Respondent is ordered not to consume any alcoholic beverages or illegal drugs within 24 hours prior to or at any time during a period of visitation.

[ ] Respondent is ordered not to remove the child(ren) from __________ County without Applicant's prior written consent.
Respondent is ordered not to use corporal punishment in disciplining the child(ren).

Orders for Supervision:

IT IS ORDERED that:

all periods of possession shall be supervised by _________________________

all exchanges shall be supervised by __________________________________

IT IS ORDERED that supervision of the possession and access by the Respondent shall be conducted by: _______________________________________________________________
____________________________________________________________________________.

IT IS FURTHER ORDERED that Respondent shall pay all costs incurred for supervision services, including intake appointments. Respondent and Applicant shall follow all rules and regulations as set forth by the supervised visitation facility.

Child Support:

Respondent is ORDERED to pay $___________ per ______________ to Applicant as child support beginning on _________________________________ and continuing each ______________ thereafter for the term of this Order or until further order of this Court.

Respondent is Ordered to make all payments for child support payable to the Applicant as named in this Order and send all payments for support through:________________________________
____________________________________________________________________________.

 Respondent is Ordered to keep this agency informed of Respondent’s residence and work addresses. On this date, the Court signed an Order for Withholding from Earnings for Child Support ordering the employer and any subsequent employer of Respondent to withhold the above-ordered child support from Respondent’s earnings.

THE EXISTENCE OF THE ORDER FOR WITHHOLDING FROM EARNINGS FOR CHILD SUPPORT DOES NOT EXCUSE RESPONDENT FROM PERSONALLY MAKING ANY CHILD SUPPORT PAYMENT ORDERED HEREIN, EXCEPT TO THE EXTENT RESPONDENT'S EMPLOYER ACTUALLY MAKES THE PAYMENT ON BEHALF OF RESPONDENT.
CAUSE NO. ________________________

ATTACHMENT B – ORDERS CONCERNING PROPERTY

IT IS ORDERED that Applicant shall have exclusive use and possession of the following property for the term of this Order or until further order of the court:

[ ] automobile; make: ______________________________, model: ________________________________, state: ______________, license plate number: ________________________________

[ ] residence located at: ________________________________

[ ] other: __________________________________________

________________________________________________________________________
________________________________________________________________________

IT IS ORDERED that Respondent shall have exclusive use and possession of the following property for the term of this Order or until further order of the court:

[ ] automobile; make: ______________________________, model: ________________________________, state: ______________, license plate number: ________________________________

[ ] residence located at: ________________________________

[ ] other: __________________________________________

________________________________________________________________________
________________________________________________________________________

IT IS FURTHER ORDERED that Applicant and Respondent shall not willfully nor intentionally damage, transfer, encumber, or otherwise dispose of any property owned or leased by the parties except in the ordinary course of business.

Spousal Support:

Respondent is ORDERED to pay $_________ per ______________ to Applicant as spousal support beginning on _____________________, __________; and continuing each ______________ thereafter for the term of this order or until further order of this court. Respondent is ORDERED to make all payments payable to the Applicant as named in this order and mail the support to the following address:

________________________________________________________________________
CAUSE NO. ________________________

ATTACHMENT C – ORDERS CONCERNING FIREARMS

[ ] Suspension of Concealed Handgun License:
IT IS ORDERED that the license to carry a concealed handgun of Respondent is
suspended for the duration of this order.

Notice to the Clerk of this Court: A copy of this order shall be
forwarded to the Concealed Handgun Licensing Unit, Department of
Public Safety, P.O. Box 4143, Austin, Texas 78765-4143. On receipt of
this order suspending the license to carry a concealed handgun, the
department shall record suspension of the license, report the suspension to
the local law enforcement agencies, as appropriate, and demand surrender
of the suspended license from the license holder.

[ ] Transfer of Firearms:
Respondent is ORDERED to transfer firearms immediately to: ______________
_______________________________________________________________________
_______________________________________________________________________

WARNING
IT IS UNLAWFUL FOR ANY PERSON WHO IS SUBJECT TO A PROTECTIVE
ORDER TO KNOWINGLY PURCHASE, RENT, LEASE OR RECEIVE AS A
LOAN OR GIFT FROM ANOTHER A HANDGUN FOR THE DURATION OF
THIS ORDER. SECTION 46.06, TEXAS PENAL CODE

IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS
DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN
EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE
AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO A
PROTECTIVE ORDER TO POSSESS A FIREARM OR AMMUNITION. 18 U.S.C.
SECTION 922 (g)(8), SECTION 46.04, TEXAS PENAL CODE
ATTACHMENT D – ORDERS TO REDUCE THE LIKELIHOOD OF VIOLENCE

[ ] Battering Intervention Program:

IT IS ORDERED that Respondent enter, meet attendance requirements, pay costs and complete the following program:

course: _______________________________________________________

location: _______________________________________________________

telephone: _____________________________________________________

Respondent is ORDERED to enter the program no later than _________________________
and to complete the program by _________________________________.

IT IS FURTHER ORDERED that Respondent shall file with the Court an affidavit before the 60th day after the date this protective order is signed stating that Respondent has started the counseling or that the counseling is not available within a reasonable distance of Respondent’s residence. Respondent shall file with the Court before the date the protective order expires a statement that Respondent completed the program not later than the 30th day before the expiration date of the protective order. The affidavit must be accompanied by a letter, notice, or certificate from the program that verifies the Respondent’s completion of the program. If Respondent fails to provide the affidavit as ordered, Respondent may be punished for contempt of court, as provided by section 21.002 of the Texas Government Code, by a fine not to exceed $500, by confinement in jail for a term not to exceed six months, or by both.

Respondent is ORDERED to comply with any recommendation/referral for additional or alternate counseling within seven (7) days of the recommendation being made and ordered to complete the program as recommended.

Respondent is ORDERED to sign a waiver for release of information upon registration so that __________________________________________________________ may monitor participation in the program.
[ ] **Drug and Alcohol Evaluation:**

IT IS ORDERED that Respondent shall submit to an alcohol and drug evaluation no later than __________________________ at the following facility:

name: __________________________________________

location: __________________________________________

telephone: ____________________ ___________________________________

Respondent shall enter all programs recommended by the counselor within seven (7) days of the recommendation being made, complete all program(s) and pay all costs connected with those program(s). Respondent is ordered to sign a waiver for release of information upon registration so that __________________________________________ may monitor participation in the program.

[ ] **Parenting Education:**

IT IS FURTHER ORDERED that Respondent enter, meet attendance requirements, pay costs and complete the following course:

course:  _______________________________________________________

location:  _______________________________________________________

telephone:  _______________________________________________________

Respondent is ORDERED to enter the program no later than __________________________ and to complete the program by __________________________.

Respondent shall comply with any recommendation or referral for counseling within seven (7) days of the recommendation being made, complete all program(s) and pay all costs connected with those program(s). Respondent is ordered to sign a waiver for release of information upon registration so that __________________________________________ may monitor participation in the program.

[ ] **Other Orders to Reduce the Likelihood of Violence**

IT IS FURTHER ORDERED that Respondent shall:

[ ] not go within _______ yards of any location where the Applicant or the child(ren) protected by this order are known by the Respondent to be.

[ ] other:  _______________________________________________________

______________________________________________________________
Attachment I

Request for a Magistrates Order for Emergency Protection

(It is always preferable for the arresting officer to be available during magistration in case the judge needs additional information, but the following form can be filled out and attached to the booking information in the event the officer cannot be present)
REQUEST FOR MAGISTRATE’S ORDER FOR EMERGENCY PROTECTION

To said magistrate ________________________________________,

I, ______________________, request the court issue a Magistrates Order for Emergency Protection for the benefit and protection of the following named persons:

_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________

I am (check one of the following):

____ the victim, __________________________;  
____ guardian of the victim, ______________________;  
____ a peace officer, ___________________________;  
____ or attorney representing the State, __________________________;  

The Defendant, ______________________, has been arrested for an offense involving:

_____ family violence; or
_____ stalking under Section 42.072, Texas Penal Code; or
_____ as a matter of law after the court’s finding that the Defendant has been arrested for an offense that also involves:

_____ serious bodily injury to the victim;
_____ the use of exhibition of a deadly weapon during the commission of an assault.

Signed at ___________ a.m./p.m. on this day of _________________, 20____.

__________________________________________
Requestor

_______________________________________________
________________________________________________
Requestor’s contact information (address, pager, phone, etc.)
To Protect and Serve:
Law Enforcement’s Response to Family Violence

Attachment J
Magistrates Order for Emergency Protection
(English and Spanish)
MAGISTRATE’S ORDER FOR EMERGENCY PROTECTION

On this day, Defendant, ___________________, appeared before the Court after arrest for an offense involving:

[ ] family violence
[ ] stalking under Section 42.072 of the Texas Penal Code.

The Court considered entering a Magistrates Order for Emergency Protection pursuant to Art. 17.292 of the Texas Criminal Procedure -- Code and Rules:

[ ] on its own motion;
[ ] at the request of the:
  [ ] victim, ______________________________
  [ ] guardian of the victim, ______________________________
  [ ] peace officer, ______________________________
  [ ] attorney representing the State, ______________________________; or

[ ] as a matter of law after the Court’s finding that the Defendant has been arrested for an offense that also involves:
  [ ] serious bodily injury to the victim; or
  [ ] the use of exhibition of a deadly weapon during the commission of an assault.

Protected Person(s):

Based on the information presented, this Court enters this Order for Emergency Protection on behalf of the following persons: ______________________________

Prohibited Acts:
IT IS HEREBY ORDERED that effective immediately Defendant (date of birth: ________, driver’s license no. ____________) is prohibited from:

[ ] committing family violence or an assault on the person protected under the order;
[ ] committing an act in furtherance of an offense under Section 42.072, Penal Code (stalking);
[ ] communicating directly with a member of the family or household or with the person(s) protected under the order in a threatening or harassing manner;
[ ] communicating a threat through any person to a member of the family or household or to the person protected under the order;
[ ] going within _______________ (specify minimum distance) of the residence located at ____________________________________________________; or place of employment located at ____________________________________________________ of a member of the family or household or of the person protected under the order;
[ ] going within _______________ (specify minimum distance) of the residence located at ____________________________________________________; child care facility located at ____________________________________________________; or school located at ____________________________________________________, where a child protected under the order resides or attends; and
[ ] possessing a firearm.

Confidentiality of Addresses:

[ ] Based on the facts presented, the Court further finds that for the safety of the person or persons protected under this order, the addresses and specific locations of the person or persons protected by the order remain confidential and shall be omitted from the order.

Delivery of Order:

IT IS ORDERED that the Clerk of the Court shall send a copy of this order to the:

[ ] Chief of Police in the municipality where the member of the family or household or individual protected by the order resides.
[ ] to the Sheriff or Constable of the county where the member of the family or household or individual protected by the order resides.
[ ] to the principal, director, or person in charge of the school or childcare facility attended by a person protected by the order and named herein.
[ ] to the victim (if not present at hearing).

Notice to the Victim:
IT IS ORDERED that a law enforcement officer shall make a good faith effort to notify, within 24 hours, the victim that this order has been issued by calling the victim’s residence and place of employment.

Suspension of Concealed Handgun License:

IT IS ORDERED that the license to carry a concealed handgun of __________________, Defendant, is suspended for the duration of this order. A copy of this order shall be forwarded to the Concealed Handgun Licensing Unit, Department of Public Safety, P.O. Box 4143, Austin, and Texas 78765-4143. On receipt of this order suspending the license to carry a concealed handgun, the department shall record suspension of the license, report the suspension to the local law enforcement agencies, as appropriate, and demand surrender of the suspended license from the license holder.

Duration of Order:

This Order is effective upon issuance and shall remain in full force and effect until midnight on ________, 20____ (no less than 31 and up to 61 days from the date of issuance).

Signed at ______________ a.m./p.m. on this day of ________________, ______.

________________________________________
Judge Presiding, __________________________

WARNING

A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS $4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR OR BY BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE OR A STALKING OFFENSE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS. THE POSSESSION OF A FIREARM BY A PERSON, OTHER THAN A PEACE OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO THIS ORDER MAY BE PROSECUTED AS A SEPARATE OFFENSE PUNISHABLE BY CONFINEMENT OR IMPRISONMENT.

NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF
THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER.

WARNINGS UNDER FEDERAL LAW


INTERSTATE VIOLATION OF THIS ORDER MAY SUBJECT THE RESPONDENT TO FEDERAL CRIMINAL PENALTIES. 18 U.S.C. §§ 2261, 2262

POSSESSION, TRANSPORTATION OR RECEIPT OF A FIREARM WHILE THIS ORDER REMAINS IN EFFECT MAY BE A FELONY UNDER FEDERAL LAW PUNISHABLE BY UP TO TEN YEARS IN PRISON AND/OR A FINE.

IT IS UNLAWFUL FOR ANY PERSON WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A FIREARM OR AMMUNITION. 18 U.S.C. §922(G)(8)

RESPONDENT’S ACKNOWLEDGEMENT OF RECEIPT OF ORDER

I, ______________________________ (name of Defendant), the Defendant in this case received a copy of the Magistrate’s Order For Emergency Protection in open court, on ____________________________, 20___.

Defendant

STATEMENT OF SERVICE

I the undersigned hereby state that I gave a copy of the Magistrate’s Order for Emergency Protection attached hereto to the Defendant named above at _________________ a.m./p.m. on ____________________________, 20___.

_________________________________________  ______________________________
Name       Title
NO. _____________

EL ESTADO DE TEXAS § EN LA CORTE_____________

CONTRA § DE

________________ §

§

___________________ §

Acusado §

CONDADO__________, TEXAS

ORDEN DE EMERGENCIA DE PROTECCIÓN DEL MAGISTRADO

En este día, el Acusado, __________________, se presentó frente de esta Corte después de haber sido arrestado por una ofensa que involucre:

[ ] violencia familiar
[ ] acechando bajo la sección 42.072 del Código Penal de Texas.

La Corte ha considerado una Orden de Emergencia de Protección del Magistrado como seguimiento al Artículo 17.292 de los Procedimientos Criminales de Códigos y Reglamentos de Texas:

[ ] por su propia moción;
[ ] requerido por:

[ ] víctima, ________________________________
[ ] tutor de la víctima, ________________________________
[ ] oficial de la paz, ________________________________
[ ] fiscal representando al Estado, ________________________________; o

[ ] como asunto de la ley después de que la Corte haya encontrado que el Acusado fue arrestado por una ofensa que involucró:

[ ] serios daños físicos a la víctima; o
[ ] exhibición de un arma de gravedad durante un acto de agresión.

Persona(s) Protegida(s):

Basado en la información que fue presentada, esta Corte otorga una Orden de Emergencia de Protección para las personas nombradas a continuación:

__________________________________________
Actos Prohibidos:

POR ESTE MEDIO ESTÁ ORDENADO que queda en efecto de manera Inmediata, que el Acusado (fecha de nacimiento: ________, número de licencia de conducción _____________) tiene prohibido:

[ ] cometer actos de violencia familiar o agredir a la persona protegida bajo la orden;
[ ] cometer un acto que implique una ofensa de violencia familiar bajo la Sección 42.072, del Código Penal (acecho);
[ ] comunicándose directamente con un miembro de la familia o de la vivienda o con la persona protegida bajo la orden de una manera amenazante o de manera acosante;
[ ] comunicando una amenaza a través de cualquier persona, hacia algún miembro de la familia de la vivienda o con la persona protegida bajo la orden;
[ ] acercándose____________________(especifique distancia mínima) a la residencia localizada en ____________________________________________________; o lugar de trabajo localizado en ________________________________________________ a un miembro de la familia o de la vivienda o con la persona protegida bajo la orden;
[ ] acercándose____________________(especifique distancia mínima) a la residencia localizada en ____________________________________________________; guardería localizada en ____________________________________________________; o escuela localizada en ____________________________________________________, donde un niño protegido bajo esta orden atiende o vive, y
[ ] posesión de un arma de fuego.

Confidencia del Domicilio:

[ ] Basado en los hechos presentados, la Corte encuentra que para mantener la seguridad de la persona o personas protegidas bajo esta orden, los domicilios y localidades específicas de la persona o personas protegidas por esta orden se mantendrán de manera confidencial y serán excluidas en la orden.

Entrega de la Orden:

ESTA ORDENADO que el Funcionario de la Corte deberá mandar una copia de esta orden a:

[ ] el Jefe de Policía del municipio donde reside la persona o personas protegidas bajo esta orden.
[ ] al Alguacil o Agente del condado donde reside la persona o personas protegidas bajo esta orden.
al director o a la persona encargada de la escuela o guardería donde atiende una de las personas protegida y nombrada bajo esta orden.

[ ] a la víctima (sino está presente en el tribunal).

Aviso a la Víctima:

QUEDA ORDENADO que un oficial de la ley deberá en buena fe hacer un esfuerzo para notificarle a la víctima por medio de una llamada a su hogar o lugar de empleo, en un periodo de 24 horas, que esta orden ha sido entregada.

Suspensión de la Licencia Para Portar un Arma de Fuego Oculta:

QUEDA ORDENADO que la licencia para portar un arma de fuego oculta de ________________, Acusado, queda suspendida por la duración de esta orden. Una copia de esta orden será enviada a: Concealed Handgun Licensing Unit, Department of Public Safety, P.O. Box 4143, Austin, and Texas 78765-4143. En el momento que dicho departamento recibe la orden de suspensión de la licencia para portar armas de fuego, el departamento debe de documentar la suspensión de la licencia, reportar la suspensión a las agencias locales que hacen cumplir la ley, y pedir el rendimiento de la licencia al dueño.

Duración de la Orden:

Esta orden toma efecto en el momento que es emitida y se mantendrá válida hasta la media noche del día _________, 20____ (no menos de 31 y no más de 61 días de la fecha que fue emitida).

Firmada a la(s) ______________ a.m./p.m. en este día de ________________, ______.

________________________________________
Juez Presidiendo, ____________________________

ADVERTENCIA

ES UNA VIOLACIÓN DE ESTA ORDEN COMETER UN ACTO PROHIBIDO POR LA ORDEN, Y PUEDE SER CASTIGADO CON UNA MULTA DE NO MÁS DE $4,000 O SIENDO ENCARCELADO POR UN PERIODO DE NO MÁS DE UN AÑO O AMBOS. UN ACTO QUE RESULTA EN VIOLENCIA FAMILIAR O UNA OFENZA DE ACECHAMIENTO, PUEDE SER ENJUICIADO POR SEPARADO COMO UN DELITO MENOR O UN DELITO GRAVE. SI UN ACTO ES ENJUICIADO COMO UN DELITO GRAVE POR SEPARADO, SERÁ CASTIGADO CON ENCARCELAMIENTO EN UNA PRISIÓN POR UN PERIODO DE NO MENOS DE DOS AÑOS. POSESIÓN DE UN ARMA DE FUEGO POR UNA PERSONA QUE NO SEA UN OFICIAL DE LA PAZ, COMO ES DEFINIDO EN LA SECCIÓN 1.07, DEL CÓDIGO PENAL, QUE ESTÁ PARTICIPANDO
DE MANERA ACTIVA COMO EMPLEADO DE TIEMPO COMPLETO DE UNA AGENCIA ESTATAL O UNA SUBDIVISIÓN POLÍTICA, QUE HAYA SIDO JURADO BAJO LA LEY, QUE ES SUJETO A ESTA ORDEN, PUEDE SER ENJUICIADO CON UNA OFENSA POR SEPARADO Y CASTIGADA CON ENCARCELAMIENTO.

NINGUNA PERSONA, INCLUYENDO A LA PERSONA QUE ES PROTEGIDA BAJO ESTA ORDEN, PUEDE DAR PERMISO QUE ALGUIEN Ignore O VIOLÉ CUALQUIER PROVISIÓN DE ESTA ORDEN. DURANTE EL PERIODO QUE ESTA ORDEN ES VÁLIDA, TODAS LAS PROVISIONES DE ESTA ORDEN SERÁN TOTALMENTE ENFORZADAS A MENOS QUE LA CORTE CAMBIE LA ORDEN.

ADVERTENSIÁ BAJO LA LEY FEDERAL

ESTA ORDEN ES ENFORZADA EN LOS CINCUENTA ESTADOS, EL DISTRITO DE COLUMBIA, TIERRAS TRIBALES Y TERRITORIOS DE LOS ESTADOS UNIDOS. 18 U.S.C. §2265

VIOLACIÓN ENTRE-ESTATAL DE ESTA ORDEN PUEDE SOMETER AL ACUSADO A CRIMENES PENALES EN EL ÁMBITO FEDERAL. 18 U.S.C. §§ 2261, 2262

POSESIÓN, TRANSPORTACIÓN O RECIBIMIENTO DE UN ARMA DE FUEGO MIENTRAS ESTA ORDEN ESTÁ EN EFECTO PUEDE SER UN DELITO GRAVE BAJO LA LEY FEDERAL, Y CASTIGADA CON ENCARCELAMIENTO DE UN PERIODO DE NO MÁS DE DIES AÑOS Y/O UNA MULTA.


RECONOCIMIENTO DEL ACUSADO DE HABER RECIBIDO LA ORDEN

Yo, ______________________________ (nombre del Acusado), el Acusado en este caso recibí una copia de la Orden de Emergencia de Protección del Magistrado en un tribunal abierto, el ___________________________, 20___.

_______________________________  ______________________________  
Acusado

DECLARACIÓN DE SERVICIO

Yo con mi firma a continuación, estoy declarando que le di una copia aquí adjunta de la Orden de Emergencia de Protección del Magistrado al Acusado nombrado anteriormente, a la(s) ___________________________ a.m./p.m. el ___________________________, 20__.

_______________________________  ______________________________  
Nombre  Título
To Protect and Serve:
Law Enforcement’s Response to
Family Violence

Attachment K

Enforcing Out-of-Jurisdiction
Protective Orders: Tips for Texas
Law Enforcement
Enforcing Out-of–Jurisdiction Protective Orders:  
Tips for Texas Law Enforcement

Upon arrival at the scene of a domestic violence call, please consider the following:

1. Ask if there is a protective order in effect.

2. Ask to see a copy of the protective order.

3. Presume that the protective order is valid if it appears to be authentic on its face.

4. NEVER enforce a mutual protective order or arrest the protected person. Mutual protective orders (one order that is against both parties) are not criminally enforceable in Texas.

5. Good faith enforcement of an out-of-jurisdiction protective order protects you and your department from civil and criminal liability (even if it is determined later that the order was not entitled to full faith and credit enforcement).

6. Failure to enforce a valid out-of–jurisdiction protective order could result in civil or criminal liability, especially if the protected person(s) is subsequently assaulted.

7. If you know or have reason to believe that the respondent is in possession of firearms or ammunition, notify the nearest field office of the Bureau of Alcohol, Tobacco and Firearms (ATF) or call 1-800-ATF-GUNS.

8. If respondent has crossed state lines to violate the protective order, notify your nearest US Attorney’s Office VAWA point of contact. In addition to any state charges, federal prosecution for interstate domestic violence is possible.

Thank you for your hard work and dedication to ending family violence in Texas!

(Over for Texas Law)
Family Code 86.005  Protective Order from Another Jurisdiction

To ensure that law enforcement officers responding to calls are aware of the existence and terms of a protective order from another jurisdiction, each law enforcement agency shall establish procedures in the agency to provide adequate information or access to information for law enforcement officers regarding the name of each person protected by an order rendered in another jurisdiction and of each person against whom the protective order is directed.

Family Code, Chapter 88  Uniform Interstate Enforcement of Protective Orders Act

Family Code 88.004.  Nonjudicial Enforcement of Order

(a) A law enforcement officer of this state, on determining that there is probable cause to believe that a valid foreign protective order exists and that the order has been violated, shall enforce the foreign protective order as if it were an order of a tribunal of this state. A law enforcement officer has probable cause to believe that a foreign protective order exists if the protected individual presents a foreign protective order that identifies both the protected individual and the respondent and on its face, is currently in effect.

(b) A foreign protective order may be inscribed on a tangible medium or may be stored in an electronic or other medium if it is retrievable in a perceivable form. Presentation of a certified copy of a protective order is not required for enforcement.

(c) If a protected individual does not present a foreign protective order, a law enforcement officer may determine that there is probable cause to believe that a valid foreign protective order exists by relying on any relevant information.

(d) A law enforcement officer of this state who determines that an otherwise valid foreign protective order cannot be enforced because the respondent has not been notified or served with the order shall inform the respondent of the order and make a reasonable effort to serve the order on the respondent. After informing the respondent and attempting to serve the order, the officer shall allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

(e) The registration or filing of an order in this state is not required for the enforcement of a valid foreign protective order under this chapter.

Family Code 88.005 Registration of Order

(a) An individual may register a foreign protective order in this state. To register a foreign protective order, an individual shall:

(1) present a certified copy of the order to a sheriff, constable, or chief of police responsible for the registration of orders in the local computer records and in the statewide law enforcement system maintained by the Texas Department of Public Safety; or

(2) present a certified copy of the order to the Department of Public Safety and request that the order be registered in the statewide law enforcement system maintained by the Department of Public Safety.

(f) A fee may not be charged for the registration of a foreign protective order.

88.006.  IMMUNITY

A state or local governmental agency, law enforcement officer, prosecuting attorney, clerk of court, or any state or local governmental official acting in an official capacity is immune from civil and criminal liability for an act or omission arising from the registration or enforcement of a foreign protective order or the detention or arrest of a person alleged to have violated a foreign protective order if the act or omission was done in good faith in an effort to comply with this chapter.
To Protect and Serve:
Law Enforcement’s Response to Family Violence

Attachment L

Crime Victims Rights (English and Spanish)
Crime Victims Compensation Application
(English and Spanish)
Crime Victims Compensation Materials Order Form

(For additional information go to the Office of the Attorney General’s Web site at www.oag.state.tx.us)
A victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:

**THE RIGHT**

- to be present at all public court proceedings related to the offense, subject to the approval of the judge in the case.

**THE RIGHT**

- to receive from law enforcement protection from harm and threats of harm when cooperating with prosecution efforts.

**THE RIGHT**

- to have the judge consider the safety of the victim and her family when setting bail.

**THE RIGHT**

- if requested, to be told of court proceedings and to be informed if those court proceedings have been canceled or rescheduled.

**THE RIGHT** to be informed of:

- the procedures in criminal investigation.
- the procedures in the criminal justice system, including the plea bargaining, negotiations and arrangements, restitution, and the appeals and parole process.

**THE RIGHT**

- to tell the court how the crime has impacted her and her family’s life prior to sentencing.

**THE RIGHT**

- to receive information regarding compensation to victims of crimes.

**THE RIGHT** to:

- be notified, if requested, of parole proceedings.
- participate in the parole process.
- provide to the Board of Pardons and Paroles information to be considered.
- be notified, if requested, of the defendant’s release.

**THE RIGHT**

- to be provided with a waiting area separate or secure from other witnesses, including the offender and relatives of the offender.

**THE RIGHT**

- to prompt return of any property of the victim that is held by law enforcement or prosecutors when the property is no longer needed.

**THE RIGHT**

- to have the prosecutor notify the victim’s employer, if requested, of the necessity of the victim’s cooperation and testimony in a proceeding.

**THE RIGHT**

- to have counseling, on request, regarding AIDS and HIV and testing for AIDS and HIV if the offense is a sexual assault.
DERECHOS DE LAS VÍCTIMAS DEL CRIMEN

Una víctima, guardián de una víctima, o algún familiar cercano de una víctima difunta tiene el derecho a lo siguiente dentro del sistema de la justicia criminal:

**EL DERECHO A:**
Estar presente durante cada procedimiento público ante el tribunal, siempre y cuando lo permita el juez que presida sobre la corte.

**EL DERECHO A:**
Recibir protección adecuada contra daños físicos o amenazas por cooperar en los esfuerzos judiciales.

**EL DERECHO A:**
Que se tome en cuenta la seguridad de la víctima antes de determinar la cantidad de la fianza del acusado.

**EL DERECHO A:**
Recibir aviso adelantado acerca de procedimientos judiciales relevantes.

**EL DERECHO A:**
Recibir información acerca de los derechos del acusado a ser puesto en libertad bajo fianza y los correspondientes procedimientos de investigación y los procedimientos generales del sistema de justicia penal.

**EL DERECHO A:**
Dar información acerca del impacto del delito, la cual puede ser tomada en cuenta al ser sentenciado un acusado o durante las audiencias de libertad condicional del mismo.

**EL DERECHO A:**
Recibir información sobre el Fondo para la Compensación a las Víctimas del Crimen de Tejas.

**EL DERECHO A:**
Recibir información acerca de los procedimientos de libertad condicional bajo palabra del acusado y ser notificada sobre la puesta en libertad del mismo.

**EL DERECHO A:**
Tener disponible un lugar de espera seguro durante los procedimientos públicos del tribunal.

**EL DERECHO A:**
Que se le devuelva con la mayor rapidez posible toda la propiedad que haya dejado de ser necesaria como prueba.

**EL DERECHO A:**
Que notifique el fiscal al lugar de empleo de la víctima, si es solicitado, o necesario que la víctima coopere y de testimonio en un procedimiento.

**EL DERECHO A:**
Recibir asesoría sobre la infección por el SIDA (AIDS) y el VIH (HIV) y los exámenes correspondientes, si es necesario debido al crimen.
APPLICATION
For Texas Crime Victims’ Compensation Benefits

Please read the directions on this page before completing the application.

• Reading these instructions will help you complete each section correctly.

• Include all the documentation you can - if you have a copy of the police report, protective order with affidavit, hospital or doctor bills, be sure to send them with the application.

• If you do not have this documentation, do not wait to mail the application. Send the application as soon as you have completed it. Collect all other additional information so that you will have it when we contact you.

• Keep this front page so that you will have our address and phone number.

Mail your completed application to:

Office of the Attorney General
Crime Victims’ Compensation (011)
P.O. Box 12198
Austin, Texas 78711-2198

• If your address or phone number changes, it is important that you call and let us know.

  - The toll free number for victims, family members, and service providers is 1-800-983-9933.
  - Austin callers should use 936-1200.

• If you need help completing this application, contact your local law enforcement agency’s Crime Victim Liaison or your local District Attorney’s Victim Assistance Coordinator. The Crime Victims’ Compensation staff is also available to help.

NOTA: Si tiene alguna pregunta sobre esta solicitud o si la desea en español, favor de llamar a la División de Compensación para las Victimas de Crimen al 1-512-936-1200 o 1-800-983-9933.
What is the Crime Victims' Compensation Program?
• May provide financial assistance to victims of violent crime for related expenses that cannot be reimbursed by insurance or other sources.
• Is administered by the Office of the Attorney General, which is committed to assisting victims who qualify under the statutory guidelines of the Texas Crime Victims’ Compensation Act (Texas Code of Criminal Procedure, Chapter 56) and the procedures under 1 Texas Administrative Code, Part III, chapter 61.
• Money in the Compensation Fund comes from fees paid by those convicted of a crime.

What are the basic conditions to be eligible for Crime Victims’ Compensation benefits?
• The victim must be a resident of Texas, a United States resident who is victimized while in Texas, or a Texas resident victimized in another state or country that does not have a compensation fund.
• The victim must report the crime to law enforcement within a reasonable amount of time so as not to hinder the investigation or prosecution of the offense, unless there is a valid exception.
• The victim must cooperate with law enforcement officials in the investigation and prosecution of the case.
• Benefits may be denied or reduced if the victim’s own behavior contributed to the crime.
• All other available sources or reimbursements, including Medicare and Medicaid, personal health insurance, civil suit recovery or settlement, or court ordered restitution to the compensation program, must be used.
• The Compensation Program must be notified when a civil lawsuit is filed related to the crime or if restitution is ordered.

Who may be eligible for Crime Victims’ Compensation benefits?
• Victims of violent crime who sustain emotional or physical injury as a direct result of the crime.
• Dependents of a victim and immediate family members.
• Persons who have a legal responsibility or who assume financial responsibility for covered bills or expenses.

What expenses may be covered with Crime Victims’ Compensation benefits?
• Reasonable medical, hospital, counseling, and funeral expenses.
• Loss of earnings or support.
• Counseling for immediate family members of the victim.
• Reasonable attorney fees for assistance in filing the application and obtaining benefits.
• Eyeglasses, hearing aids, dentures, or prosthetic devices if damaged or needed as a result of the crime.
• Certain related travel expenses.
• Crime scene clean-up.
• Necessary expenses related to new child or adult dependent care needs.
• One-time relocation expenses for victims of family violence or sexual assault in victim’s residence.
• Emergency awards in cases of extreme need.

What expenses are not covered by Crime Victims’ Compensation benefits?
• Property damage or loss.
• Pain and suffering.
• Expenses not directly resulting from the crime.
• Travel expenses to and from a funeral.

The Office of the Attorney General, Crime Victims’ Compensation Division collects information about individuals who complete and file this document with the Office of the Attorney General. Upon request, you are entitled to the following: to be informed about the information collected; to receive and review the information; and to have the Office of the Attorney General correct information about you that is incorrect.

Please keep this page for your records.
APPLICATION FORM
For Texas Crime Victims’ Compensation Benefits
Si desea hablar con alguien en español, marque esta cajita por favor. ☐ Español

Please print clearly and use black ink, or type in the information.

1. VICTIM INFORMATION
The VICTIM is the person who was injured or killed as a result of the crime. If the victim is a minor, you must also fill out the CLAIMANT INFORMATION section below. If there is more than one victim, each victim must have a separate application.

VICTIM'S Last Name_______________________First Name________________________Middle Name_____________
Street Address___________________________Apt. #_______City________________State/Zip____________________
Mailing Address______________________________________City________________State/Zip____________________
Home phone ( ____ )___________________________________Work phone ( _____ ) ___________________________
Social Security Number __________-_________-__________ Date of Birth ____________/___________/____________
Sex (check one) ☐Male ☐Female

What kind of assistance do you need? Check all that apply.
☐ Loss of Earnings ☐ Loss of Support ☐ Counseling ☐ Funeral/Burial ☐ Relocation ☐ Crime-Related Travel
☐ Child or Dependent Care ☐ Crime Scene Clean-Up ☐ Replacement of Property Seized as Evidence ☐ Medical
☐ Other ___________________________________________________________________________________________________

2. CLAIMANT INFORMATION
The CLAIMANT is a person, other than the victim, who had expenses as a direct result of the crime, or an immediate family member of the victim who requires counseling as a result of the crime, or who has legal authority to act on behalf of the victim. In order to contact CVC and discuss the claim, a caller must be on the application as a victim or claimant.

CLAIMANT’S Last Name_____________________First Name_______________________Middle Name_____________
Street Address___________________________Apt. #______City________________State/Zip____________________
Mailing Address_____________________________________City________________State/Zip____________________
Home phone ( ____ )___________________________________Work phone ( _____ ) ___________________________
Social Security Number __________-_________-__________ Date of Birth ____________/___________/____________
Relationship to Victim_______________________________________________________________________________
Sex (check one) ☐Male ☐Female

What kind of assistance do you need? Check all that apply.
☐ Loss of Earnings ☐ Loss of Support ☐ Counseling ☐ Funeral/Burial ☐ Relocation ☐ Crime-Related Travel
☐ Child or Dependent Care ☐ Crime Scene Clean-Up ☐ Replacement of Property Seized as Evidence ☐ Medical
☐ Other ___________________________________________________________________________________________________

See next page to enter more information. NOTE: If there are more than three (3) claimants, please list them on a separate sheet of paper.

RETURN THIS PAGE TO OFFICE OF THE ATTORNEY GENERAL
CLAIMANT’S Last Name_______________________First Name_______________________Middle Name_____________
Street Address_________________________________Apt. #______City________________State/Zip____________________
Mailing Address_________________________________City________________State/Zip____________________
Home phone ( ____ )_________________________________Work phone ( _____ ) ___________________________
Social Security Number __________-_________-__________ Date of Birth ____________/___________/____________
Relationship to Victim_______________________________________________________________________________
Sex (check one)  Male Female

What kind of assistance do you need? Check all that apply.
☐ Loss of Earnings ☐ Loss of Support ☐ Counseling ☐ Funeral/Burial ☐ Relocation ☐ Crime-Related Travel
☐ Child or Dependent Care ☐ Crime Scene Clean-Up ☐ Replacement of Property Seized as Evidence ☐ Medical
☐ Other ___________________________________________________________________________________________________

CIVIL LAWSUIT & ATTORNEY INFORMATION

Have you filed a civil lawsuit in relation to this crime? (circle one)   Yes  No

Do you plan on filing a civil lawsuit in relation to this crime? (circle one)   Yes  No

What is your Attorney’s name?
_______________________________________________________________________

What is your Attorney’s phone number? ( _____ ) ______________________________________________________

Attorney’s Address_________________________________City________________State/Zip________________________

INFORMATION ABOUT THE CRIME

Complete this section with as many details as you have available. You must complete this section or your claim will not be processed.

On what date did the Crime occur?____________________________________________________

What is the Police Report Number (if known)?_______________________________________________

What is the Child Protective Service Number (if known)?_______________________________________

What is the Prosecutor Case Number (if known)?_______________________________________________

What was the location of the crime?
Address_______________________________________________________________________________________
City________________________State/Zip____________________________County__________________________

What is the name of the law enforcement agency that was notified? _______________________________________

Did the victim know the suspect? (circle one)   Yes  No

If yes, how did the victim know the suspect? _______________________________________________________

What is the suspects name? _______________________________________________________________________

What is the suspects social security number (if known)?_____________-______________-________________

Describe the crime and the injuries, if there were any.
________________________________________________________________________________________________

________________________________________________________________________________________________

________________________________________________________________________________________________

________________________________________________________________________________________________

________________________________________________________________________________________________

________________________________________________________________________________________________

________________________________________________________________________________________________

Have you ever filed charges against the suspect? (circle one)   Yes  No

If this is a family violence crime, have you obtained a permanent protective order? (circle one)   Yes  No

Court number _______________________________ Effective date____________________________

What kind of crime occurred? Check all that best describes the type of crime that occurred.
☐ Adult Sexual Assault ☐ Child Sexual Assault ☐ Child Physical Abuse ☐ Assault (Non-Family)
☐ Aggravated Assault ☐ Family Violence ☐ DWI/Vehicular Crime ☐ Elder Abuse ☐ Homicide ☐ Stalking
☐ Kidnaping ☐ Other (please specify)____________________________________________________________
5. VICTIM EMPLOYMENT & MEDICAL INFORMATION

Was the victim employed on the date of the crime? (circle one)  Yes  No

Was the victim self-employed on the date of the crime? (circle one)  Yes  No

Occupation__________________________________________Job Title______________________________________

What was the name of the victim’s employer on the date of the crime? _____________________________________

Employer’s Address ____________________________________City____________________State/Zip________________________

Phone (_____) ________________________________ Fax (_____ ) ________________________________________

If the victim has physical injuries, please provide the name of the treating doctor.

Doctor’s name____________________________________________________________________________________

Phone (_____) ________________________________ Fax (_____ ) ________________________________________

6. INSURANCE AND REIMBURSEMENT SOURCES

By law, you must first use all existing sources of financial assistance or reimbursement before receiving payments from the Crime Victims’ Compensation Fund. Crime Victims’ Compensation must first verify application to these sources and the amount received, if any, before determining reimbursement.

Does the victim or the claimant have access to any of the following? (check all that apply).

☐Medicare  ☐Medicaid  ☐Health Insurance  ☐Burial Insurance  ☐Workers Compensation  ☐Auto Insurance

☐Home Insurance  ☐Disability Insurance  ☐Social Security  ☐Veteran’s Benefits  ☐Other __________________________

What is the Medicare Number? ___________________________What is the Medicaid Number? _____________________________

What is the name of the Health Insurance Company? _____________________________________________________

Health Insurance Co. Street Address______________________City____________________State/Zip______________

Group Policy Number ______________________________________________________________________________

If the crime was motor vehicle related, include the name of the auto insurance company and the policy numbers for both the victim and the suspect, if available.

Victim’s  Auto Insurance Company name_________________________________Policy number _______________

Suspect’s Auto Insurance Company name_________________________________Policy number _______________

7. DEPARTMENT OF JUSTICE INFORMATION

In order to comply with regulations from the United States Department of Justice, we must collect the following information about the victim of the crime. This information is for statistical purposes only. It will not be used in determining whether the victim is eligible for Crime Victims’ Compensation benefits.

Was the victim disabled at the time of the crime? (circle one)  Yes  No

To which ethnic group does the victim belong? (check one )

☐American Indian or Alaskan Native  ☐Black  ☐Hispanic  ☐White  ☐Asian or Pacific Islander

What is their National Origin (Country of Birth)? __________________________________________________________

Where did you find out about the Crime Victims’ Compensation Program? (check all that apply)

☐Public Service Announcement  ☐Compensation Program  ☐Advocacy Group  ☐Victim Assistance Program  ☐Poster

☐Brochure  ☐Hospital  ☐Law Enforcement  ☐Other________________________________________________________
IMPORTANT AFFIDAVIT

IMPORTANT: This affidavit is part of your application and must be completed and signed before action can be taken on the application. READ EVERYTHING BEFORE YOU SIGN AT THE BOTTOM.

Subrogation Agreement. In accordance with Texas Code of Criminal Procedure, Article 56.52, I agree to notify the Crime Victims’ Compensation Division (CVC) of the Office of the Attorney General in writing before I file a lawsuit against another party as a result of this crime. I further agree that I shall not settle or resolve any such action without prior written authorization from CVC. If I recover any money by judgment, settlement, or other collateral source as a result of the incident that gave rise to this claim, I agree to repay CVC for any and all amounts that CVC has awarded to me. I agree that Travis County, Texas will have jurisdiction over any cause of action that arises between me and the Office of the Attorney General as a result of this claim.

Authorization for release of information. I hereby authorize any financial institution, social service agency, government agency, hospital, physician, mental health facility, counselor, psychologist, psychiatrist, employer, insurer, or other persons with information relating to financial, health, or employment status to release information concerning this application for benefits to the employees of the Crime Victims’ Compensation Division of the Office of the Attorney General of Texas as needed to process this claim. This information is to include, but is not limited to, financial, employment, diagnosis, and treatment information. A copy of this signed release will be considered the same as the original.

Affirmation and Authorization. I swear and affirm under penalty of perjury under the laws of the State of Texas (Penal Code § 37.02) that the information provided in the application for Texas Crime Victims’ Compensation and any additional information that I provide are true and correct to the best of my knowledge. I understand that the Attorney General of the State of Texas or any agent or representative of the office has the right to verify the information provided. I understand that if false, intentionally incomplete, or misleading information is provided, my application will be denied and I may be subject to criminal punishment under the Texas Penal Code and administrative penalties under the Texas Code of Criminal Procedure, Chapter 56.

VICTIM OR CLAIMANT MUST SIGN BELOW IN ORDER TO PROCESS THIS APPLICATION

NOTE: You must be eighteen years of age or older to sign this application, unless you are legally married or emancipated.

By signing this application, the victim or claimant has indicated an intent to make confidential his or her identifying information. Please note that Section 552.132 of the Texas Public Information Act only provides confidentiality for the identity of victims, as defined by Subchapter B, Chapter 56 of the Code of Criminal Procedure.

If a victim or claimant wishes to make his or her identifying information public, please state your request here □ Yes □ No

Signature X

Printed Name X ___________________________ Date ___________________________

Date of Birth ___________________________ Victim’s SS# _______–______–______

IF THE VICTIM CANNOT SIGN THE APPLICATION (MINOR OR INCAPACITATED ADULT) THE CLAIMANT MUST SIGN HERE IN ORDER TO PROCESS THIS APPLICATION.

Signature X

Printed Name X ___________________________ Date ___________________________

Date of Birth ___________________________ Claimant’s SS # _______–______–______

If someone helped you fill out this application, list his or her name and phone number here.

Name ___________________________________________ Phone ___________________________

RETURN THIS PAGE TO OFFICE OF THE ATTORNEY GENERAL

Crime Victims’ Compensation (011) • P.O. Box 12198 • Austin, Texas 78711-2198

Revised 02/03
Mi oficina se dedica a ayudar a las víctimas del crimen, para que reciban toda la ayuda posible, a través del Programa para la Compensación a las Víctimas del Crimen (Crime Victims Compensation Program). Este programa le ayuda a pagar cuentas médicas, asesoramiento, funerales y demás gastos relacionados a un delito. Asimismo, podemos ayudarle a hallar fuentes de apoyo al nivel local, las cuales podrían respaldarlo personalmente. Usted no se encuentra solo - estamos aquí para ayudarle.

John Cornyn, Procurador General de Texas

PROCURADURIA GENERAL DE TEXAS
DIVISION DE SERVICIOS PARA LAS VICTIMAS DEL CRIMEN

SOLICITUd
PARA COMPENSACION A LAS VICTIMAS DEL CRIMEN DE TEXAS

PARA LLENAR ESTA SOLICITUd

i Antes de empezar a llenar una sección, lea todas las instrucciones correspondientes, para que sea incluida la información correcta.

i Incluya toda la documentación posible - si tiene el reporte policiaco, facturas del hospital o cuentas médicas, por favor envíe copias de estos documentos junto a la solicitud.

i Si usted no tiene tales documentos, NO espere por ellos antes de enviar esta solicitud. Enviela tan pronto la haya llenado. Después de enviar la solicitud, usted tiene la oportunidad de obtener toda la información/documentación adicional para tenerla lista una vez que nosotros entremos en contacto con usted.

i Quédese con esta primera página, para que tenga nuestra dirección y número de teléfono. Envíe su solicitud a:

Office of the Attorney General
Crime Victims’ Compensation (011)
P.O. Box 12198
Austin, TX 78711-2198

i Sea tan amable de llamarnos en caso de que cambie alguna dirección. Usted puede ponerse en contacto telefónico con nosotros al:

1-800-983-9933 Línea telefónica gratuita para las víctimas y sus familias
512-936-1200 Línea telefónica para las personas que estén en la ciudad de Austin y para las personas y entidades que le proporcionan servicios a las víctimas

i Si le sirve ayuda para llenar la solicitud, póngase en contacto con el enlace local para las Víctimas del Crimen (Crime Victim Liaison) dentro del departamento del orden público local, o póngase en contacto con el Coordinador de Asistencia para las Víctimas (Victim Assistance Coordinator) de la oficina del fiscal (district attorney). Nuestro personal de Compensación a las Víctimas del Crimen también está listo para ayudarle, en español e inglés.
Información

<table>
<thead>
<tr>
<th>EL PROGRAMA DE COMPENSACION A LAS VICTIMAS DEL CRIMEN</th>
<th>Proporciona asistencia financiera a las víctimas de crímenes violentos, por gastos a causa de un delito, y que no puedan ser reembolsadas por su seguro o otras fuentes.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>La Procuraduría General maneja el Fondo, y está dedicada a ayudar a las víctimas que sean elegibles conforme a las normas del Acta de Compensación a las Víctimas del Crimen (Código de Procedimientos Penales de Texas, Artículo 56).</td>
</tr>
<tr>
<td></td>
<td>El dinero del Fondo se obtiene a través de cantidades pagadas por las personas sentenciadas por un crimen.</td>
</tr>
<tr>
<td>¿CUALES SON LAS CONDICIONES BASICAS?</td>
<td>La víctima debe ser un residente de Texas, un residente de los Estados Unidos que fue víctima en Texas, o un residente de Texas que fue víctima en otro estado o país que no cuente con un programa de compensación.</td>
</tr>
<tr>
<td></td>
<td>La víctima debe reportar el crimen a las autoridades dentro de un plazo razonable de tiempo, de manera tal que no impida o interfiera con la investigación y el enjuiciamiento del crimen, salvo si existe una excepción válida por no haberlo hecho.</td>
</tr>
<tr>
<td></td>
<td>La víctima debe cooperar plenamente con las autoridades que manejen la investigación y el enjuiciamiento del caso.</td>
</tr>
<tr>
<td></td>
<td>La conducta de la víctima no puede haber contribuido al crimen; de lo contrario, los beneficios pueden ser reducidos o negados.</td>
</tr>
<tr>
<td></td>
<td>El solicitante debe usar todos los recursos que sean disponibles para el reembolso, inclusive los beneficios ofrecidos por los programas Medicare y Medicaid, la restitución a través de una demanda o acuerdo civil, o restitución ordenada por un tribunal.</td>
</tr>
<tr>
<td></td>
<td>El Programa de Compensación a las Víctimas debe recibir aviso cuando se anteponga una demanda civil relacionada al crimen, o si se ordena que sean efectuados pagos de indemnización.</td>
</tr>
<tr>
<td>¿QUIEN PUEDE SER ELEGIBLE?</td>
<td>Las víctimas de un crimen violento que padezcan daño físico o moral como resultado directo de un crimen.</td>
</tr>
<tr>
<td></td>
<td>Los dependientes de una víctima y sus familiares inmediatos.</td>
</tr>
<tr>
<td></td>
<td>Las personas que sean legalmente responsables por deudas o que se hicieron cargo financieramente por cuentas o gastos.</td>
</tr>
<tr>
<td></td>
<td>Personas que al ayudar a alguna víctima, fueron lesionadas o murieron como resultado de tal intervención.</td>
</tr>
<tr>
<td>¿QUIEN NO ES ELEGIBLE?</td>
<td>El culpable, su cómplice, o personas que, al recibir algún beneficio, esto indebidamente beneficiaría al culpable o cómplice;</td>
</tr>
<tr>
<td></td>
<td>Cualquier persona lesionada en un accidente automovilístico, salvo si el conductor intencionalmente causó la lesión; estaba manejando bajo un estado de intoxicación; no se detuvo para dar auxilio; o causó la lesión o muerte de la víctima debido a negligencia penal u homicidio.</td>
</tr>
<tr>
<td></td>
<td>Cualquier reo que se encontraba detenido en una institución penal cuando ocurrió el crimen.</td>
</tr>
<tr>
<td></td>
<td>Cualquier víctima que proporcione información falsa o falsificada ante el Programa para la Compensación a las Víctimas del Crimen.</td>
</tr>
<tr>
<td>¿CUALES GASTOS PUEDEN SER CUBIERTOS?</td>
<td>Gastos razonables médicos, de hospital, asesoramiento o funerarios.</td>
</tr>
<tr>
<td></td>
<td>Pérdida de ingresos o manutención.</td>
</tr>
<tr>
<td></td>
<td>Asesoramiento para familiares próximos de la víctima.</td>
</tr>
<tr>
<td></td>
<td>Honorarios legales razonables para ayudar a entablar la solicitud y obtener beneficios.</td>
</tr>
<tr>
<td></td>
<td>Anteojos, aparatos para sordos, dentaduras o aparatos protésicos, si fueron dañados o necesarios como resultado del crimen.</td>
</tr>
<tr>
<td></td>
<td>Ciertos gastos relacionados a viajes.</td>
</tr>
<tr>
<td></td>
<td>Limpieza de la escena del crimen.</td>
</tr>
<tr>
<td></td>
<td>Propiedad decomisada como prueba.</td>
</tr>
<tr>
<td></td>
<td>Cuidado de un menor/dependiente.</td>
</tr>
<tr>
<td></td>
<td>Gastos de mudanza, los cuales son disponibles una vez, para las víctimas de violencia doméstica.</td>
</tr>
<tr>
<td></td>
<td>En casos de extrema necesidad, pueden entregarse fondos de emergencia.</td>
</tr>
<tr>
<td>¿GASTOS QUE NO SE CUBREN?</td>
<td>Daño o pérdida de propiedad.</td>
</tr>
<tr>
<td></td>
<td>Dolor y sufrimiento.</td>
</tr>
<tr>
<td></td>
<td>Gastos que no sean el resultado directo del crimen.</td>
</tr>
</tbody>
</table>
SOLICITUD Para la Compensación a las Víctimas del Crimen de Texas

Por favor imprima claramente en letras de molde usando tinta negra o escriba a máquina.

<table>
<thead>
<tr>
<th>INFORMACION SOBRE LA VICTIMA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apellido de la Víctima</td>
</tr>
<tr>
<td>Primer Nombre</td>
</tr>
<tr>
<td>Segundo Nombre</td>
</tr>
<tr>
<td>Dirección (Número de Apartamento)</td>
</tr>
<tr>
<td>Ciudad</td>
</tr>
<tr>
<td>Estado/Código Postal</td>
</tr>
<tr>
<td>(Código de Area) Teléfono de Domicilio</td>
</tr>
<tr>
<td>(Código de Area) Teléfono del Trabajo</td>
</tr>
<tr>
<td>Sexo:</td>
</tr>
<tr>
<td>9 Masculino</td>
</tr>
<tr>
<td>9 Femenino</td>
</tr>
</tbody>
</table>

Gastos por los cuales solicita reembolso (favor de marcar la cajilla o cajillas siguientes):
- 9 Pérdida de Ingresos
- 9 Pérdida de Manutención
- 9 Médico
- 9 Asesoría
- 9 Entierro/Funeral
- 9 Reubicación/Mudanza
- 9 Viajes relacionados al crimen
- 9 Cuidado de un menor o un ser dependiente
- 9 Limpieza de la escena del crimen
- 9 Reemplazo de propiedad tomada como prueba
- 9 Otro

<table>
<thead>
<tr>
<th>INFORMACION DEL SOLICITANTE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apellido del Solicitante</td>
</tr>
<tr>
<td>Primer Nombre</td>
</tr>
<tr>
<td>Segundo Nombre</td>
</tr>
<tr>
<td>Dirección (Número de Apartamento)</td>
</tr>
<tr>
<td>Ciudad</td>
</tr>
<tr>
<td>Estado/Código Postal</td>
</tr>
<tr>
<td>(Código de Area) Teléfono de Casa</td>
</tr>
<tr>
<td>(Código de Area) Teléfono del Trabajo</td>
</tr>
<tr>
<td>Relación a la Víctima</td>
</tr>
<tr>
<td>Sexo:</td>
</tr>
<tr>
<td>9 Masculino</td>
</tr>
<tr>
<td>9 Femenino</td>
</tr>
</tbody>
</table>

Gastos por los cuales solicita reembolso (favor de marcar la cajilla o cajillas siguientes):
- 9 Pérdida de Ingresos
- 9 Pérdida de Manutención
- 9 Médico
- 9 Asesoría
- 9 Entierro/Funeral
- 9 Reubicación/Mudanza
- 9 Viajes relacionados al crimen
- 9 Cuidado de un menor o un ser dependiente
- 9 Limpieza de la escena del crimen
- 9 Reemplazo de propiedad tomada como prueba
- 9 Otro

| Apellido del Solicitante Adicional |
| Primer Nombre                     |
| Segundo Nombre                    |
| Dirección (Número de Apartamento) |
| Ciudad                        |
| Estado/Código Postal              |
| (Código de Area) Teléfono de Casa |
| (Código de Area) Teléfono del Trabajo |
| Relación a la Víctima        |
| Sexo:                         |
| 9 Masculino                   |
| 9 Femenino                    |

Gastos por los cuales solicita reembolso (favor de marcar la cajilla o cajillas siguientes):
- 9 Pérdida de Ingresos
- 9 Pérdida de Manutención
- 9 Médico
- 9 Asesoría
- 9 Entierro/Funeral
- 9 Reubicación/Mudanza
- 9 Viajes relacionados al crimen
- 9 Cuidado de un menor o un ser dependiente
- 9 Limpieza de la escena del crimen
- 9 Reemplazo de propiedad tomada como prueba
- 9 Otro

(1)
SOLICITUD PARA LA COMPENSACIÓN A LAS VICTIMAS DEL CRIMEN (CONTINUACION)

<table>
<thead>
<tr>
<th>INFORMACION SOBRE EL CRIMEN</th>
<th>Fecha del Crimen</th>
<th>No. del Reporte de Policía o de Protección para Niños (CPS)</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. del caso de la oficina del fiscal (district attorney/prosecutor)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sitio en que se cometió el crimen (dirección/ciudad/condado/estado)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Nombre de la autoridad policiaca que fue notificada

¿Conocía la víctima al sospechoso? 9 Sí 9 No

¿Cómo lo conocía? ___________________________________________ Nombre del sospechoso ____________________________________

Favor de describir el crimen y las lesiones que sufrió como su resultado. Si es necesario, favor de usar páginas adicionales para proporcionar esta información:

______________________________________________________________________________________________________________

Favor de marcar la caja que mejor describa el tipo de crimen que ocurrió:

<table>
<thead>
<tr>
<th>9 Agresión Sexual Contra un Adulto</th>
<th>9 Agresión Sexual Contra un Menor</th>
<th>9 Abuso Físico de un Menor de Edad</th>
</tr>
</thead>
<tbody>
<tr>
<td>9 Agresión (No Familiar)</td>
<td>9 Asalto con Agravante</td>
<td>9 Violencia Doméstica</td>
</tr>
<tr>
<td>9 Manejando Embriagado (DWI)/Delito Vehicular</td>
<td>9 Abuso De Un Anciano</td>
<td>9 Homicidio</td>
</tr>
<tr>
<td>9 Otro (Favor de explicar): ______</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

INFORMACION DE EMPLEO

¿Estaba empleada la víctima en la fecha en que ocurrió el crimen? 9 Sí 9 No

¿Trabajaba la víctima por sí misma en la fecha en que ocurrió el crimen? 9 Sí 9 No

Profesión de la Víctima

Nombre del Empleador de la Víctima Cuando Ocurrió el Crimen

Dirección Del Empleador Ciudad Estado/Código Postal (Area) No. de teléfono

______________________________________________________________________________________________________________

POLIZAS DE SEGURO Y OTRAS FUENTES DE REEMBOLSO

¿Tiene Ud. alguno de los siguientes? Favor de marcar “Sí” o “No” en cada opción.

<table>
<thead>
<tr>
<th>9 Sí</th>
<th>9 No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medicare</td>
<td></td>
</tr>
<tr>
<td>Medicaid</td>
<td></td>
</tr>
<tr>
<td>Seguro Médico</td>
<td>9 Sí</td>
</tr>
<tr>
<td>Seguro de Funeral</td>
<td>9 Sí</td>
</tr>
<tr>
<td>TANF</td>
<td>9 Sí</td>
</tr>
<tr>
<td>Compensación al Trabajador</td>
<td>9 Sí</td>
</tr>
<tr>
<td>Seguro de Auto</td>
<td>9 Sí</td>
</tr>
<tr>
<td>Seguro para el Hogar</td>
<td>9 Sí</td>
</tr>
<tr>
<td>Beneficios para Veteranos</td>
<td>9 Sí</td>
</tr>
<tr>
<td>Seguro Social</td>
<td>9 Sí</td>
</tr>
<tr>
<td>¿Otro? (Descríbase) __________________________</td>
<td></td>
</tr>
</tbody>
</table>

Número Medicare   Número Medicaid

Nombre de la Compañía de Seguro (Area) Número de Teléfono Número de Póliza/Grupo

Dirección Ciudad Estado/Código Postal

Si se trata de un delito vehicular, favor de indicar el nombre y número de póliza de la compañía de seguro de la víctima y del sospechoso, si tal información es disponible.

INFORMACION SOBRE UNA DEMANDA CIVIL

¿Ha antepuesto usted alguna demanda civil relacionada a este crimen, o pretende usted anteponer tal demanda? 9 Sí 9 No

Nombre de Abogado (Area) Número de Teléfono

Dirección Ciudad Estado/Código Postal

Favor de contestar las preguntas en el reverso de esta página.
Solicitud Para La Compensación A Las Víctimas Del Crimen De Texas (Continuación)

AVISOS IMPORTANTE SOBRE DOCUMENTOS ABIERTOS AL PUBLICO

Por favor lea cada declaración, y luego marque una de las cajillas.

La información que sea proporcionada al Programa de Compensación a las Víctimas del Crimen se pone a la disposición pública, si es solicitada. La ley de Documentos Abiertos (Open Records) le extiende a usted esta oportunidad de informarle al Programa CVC si usted no desea que el Programa CVC dé a saber el nombre, la dirección, el número de seguro social, u otra información de identificación de usted. Sin embargo, si usted recibe beneficios, la ley permite que el público tenga acceso a la cantidad recibida y el nombre de usted. Por favor, marque la cajilla al lado de la declaración que se conforme a los deseos de usted.

9 YO NO DESEO QUE EL PROGRAMA DE COMPENSACION A LAS VICTIMAS DEL CRIMEN PERMITA QUE EL PUBLICO TENGA ACCESO A MI NOMBRE, DIRECCION O CUALQUIER OTRA INFORMACION QUE ME IDENTIFIQUE.

9 YO SI DESEO QUE EL PROGRAMA DE COMPENSACION A LAS VICTIMAS DEL CRIMEN PERMITA QUE EL PUBLICO TENGA ACCESO A MI NOMBRE, DIRECCION O CUALQUIER OTRA INFORMACION QUE ME IDENTIFIQUE.

AVISO: Si usted NO elige una de estas dos opciones, su información personal le SERA abierta al público.

Información para el Departamento de Justicia

Para cumplir con las normas del Departamento de Justicia de los Estados Unidos (United States Department of Justice), debemos recaudar los siguientes datos acerca de la víctima. Esta información se solicita sólo para formular estadísticas. No será usada para establecer la elegibilidad de la víctima como beneficiaria del Programa para la Compensación a las Víctimas del Crimen.

¿Estaba físicamente incapacitada la víctima cuando ocurrió el crimen? 9 Sí 9 No

Grupo Etnico:

9 Nativo Americano o Nativo de Alaska
9 Afro-Americano
9 Hispano
9 Blanco
9 Asiático o Nativo de las Islas del Pacífico
9 Origen Nacional (país donde nació): ______________

¿Cómo se enteró acerca de nuestro programa? ¿Cuál fue su fuente de referencia?:

9 Un Anuncio de Información Pública
9 Programa de Compensación
9 Grupo de Apoyo
9 Programa de Asistencia para las Víctimas
9 Un Letrero, Folleto, etc.
9 El Hospital
9 Entidad policiaca/del orden público
9 Otro: ____________________________________
**DECLARACION JURADA**

**IMPORTANTE:**
Esta Declaración Jurada es parte de su solicitud y debe ser llenada y firmada antes de que se pueda procesar su solicitud.

---

**ACUERDO DE SUBROGACION:**

Conforme al Código de Procedimientos Penales de Texas (Texas Code of Criminal Procedure), Artículo 56.52, me comprometo a darle aviso por escrito al Programa de la Procuraduría General para la Compensación a las Víctimas del Crimen (Crime Victims Compensation Program, CVC) antes de entablar una demanda civil contra cualquier parte como el resultado de esta actividad criminal. Asimismo, me comprometo a no ratificar ningún acuerdo o resolver tal acción civil, sin antes recibir la autorización por escrito, emitida por el programa CVC. Si recupero cualquier cantidad, a raíz de un fallo jurídico, acuerdo legal u otra fuente colateral, como resultado de los acontecimientos que sean la base de mi solicitud ante el programa CVC, me conformo a reembolsarle a CVC cualquier y toda cantidad que CVC me haya otorgado. Me conformo a que el Condado de Travis, Texas será la jurisdicción competente en lo referente a cualquier acción legal que surja entre la Procuraduría General y yo como resultado de esta petición.

**AUTORIZACION PARA LA EMISION DE INFORMACION:**

Mediante la presente, le concedo autorización a cualquier institución financiera, dependencia de servicio social, agencia gubernamental, hospital, médico, instalación para salud mental, asesor, psicólogo, psiquiatra, empleador, asegurador o demás personas con información relacionada al estado financiero, médico y de empleo, de entregar información relacionada a esta solicitud para beneficios, a los empleados del Programa de la Procuraduría General para la Compensación a las Víctimas del Crimen, con el fin de procesar esta solicitud. Esta información incluye, pero no se limita exclusivamente a, informes financieros, de empleo, diagnosis médicas y de tratamiento. Una copia de esta autorización firmada para la emisión de información se considera como equivalente a la original.

**AFIRMACION Y AUTORIZACION:**

Juro y afirmo bajo pena de perjurio, conforme las leyes del Estado de Texas (Código Penal § 37.02), que la información proporcionada en la Solicitud para Compensación a las Víctimas del Crimen de Texas, y cualquier información adicional que yo incluya, es verídica y correcta según mi mejor entendimiento. Comprendo que el Procurador General del Estado de Texas, o cualquier agente o representante de su oficina, tiene el derecho de verificar la información que se ha proporcionado. Comprendo que, si se proporciona información falsa, intencionalmente incompleta o engañosa, mi solicitud será negada y yo podría ser sujeto a penas civiles y administrativas conforme al Código de Procesos Penales de Texas (Texas Code of Criminal Procedure), Capítulo 56.

**AVISO:** Usted debe tener por lo menos 18 años de edad para poder firmar esta solicitud, salvo si es legalmente casado/a.

<table>
<thead>
<tr>
<th>Firma de la víctima o solicitante</th>
<th>Nombre (en letras de molde)</th>
<th>Fecha</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Fecha de nacimiento</th>
<th>Número de Seguro Social</th>
<th>Relación a la víctima</th>
</tr>
</thead>
</table>

Si alguien le ayudó a llenar esta solicitud, por favor anote el nombre y el número de teléfono de tal persona aquí arriba.

(4)
MATERIALS REQUEST - ORDER FORM
CRIME VICTIM INFORMATION

NAME OF ORGANIZATION:  

ADDRESS (PHYSICAL):  

REQUESTED BY: 

CITY • STATE • ZIP CODE:  

DATE: 

TELEPHONE:  

FAX: 

MATERIALS REQUESTED

<table>
<thead>
<tr>
<th>TITLE</th>
<th>ENGLISH QUANTITY</th>
<th>SPANISH QUANTITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>CRIME VICTIMS’ COMPENSATION APPLICATION</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CRIME VICTIMS’ COMPENSATION BROCHURE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SEXUAL ASSAULT - INFORMATION FOR SURVIVORS OF SEXUAL ASSAULT AND ATTEMPTED SEXUAL ASSAULT</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SEXUAL ASSAULT NURSE EXAMINER PROGRAM</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CVC POSTER (1) Purple - 2 sided (ENGLISH/SPANISH)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CVC POSTER (2) Pastel - 2 sided (ENGLISH/SPANISH)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TEXAS CRIME VICTIMS’ RIGHTS PALM CARD</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>TEXAS CRIME VICTIMS’ COMPENSATION PALM CARD</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>HOTLINE NUMBERS PALM CARD</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>CVC 2001 ANNUAL REPORT</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>FAMILY VIOLENCE (A PERSONAL SAFETY PLAN)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TAKING THE FIRST STEP (PROTECTIVE ORDER)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>DEFENDING YOURSELF AGAINST STALKING</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CVC 2000 ANNUAL REPORT</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>PARTNERS IN JUSTICE VIDEO</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>CHILD ABUSE VIDEO</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>WHEN YOU SUSPECT A CHILD HAS BEEN NEGLECTED OR ABUSED (A GENERAL GUIDE)</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>CAPITAL PUNISHMENT APPELLATE GUIDE BOOK</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PSEUDONYM FORM</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EVIDENCE COLLECTION PROTOCOL SEPTEMBER, 1998</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

How did you hear about our services?  
PSA ____  Training ____  Church ____  Internet ____  Other ____

PLEASE MAIL or FAX TO:  
OFFICE OF THE ATTORNEY GENERAL
Attn: Materials Request/Sara Tribble
4044 Promontory Point
Austin, TX 78744
Phone: 512-936-1737
FAX: 512-469-3157

Revised: 08/15/02
To Protect and Serve: Law Enforcement’s Response to Family Violence

Attachment M

Domestic Violence Offense/Incident Report Form
## DOMESTIC VIOLENCE - OFFENSE/INCIDENT REPORT

**Offense/Incident Information:**

- **Primary Offense/Incident:**
- **Penal Code Number:**
- **UCR Code:**
- **Agency Case Number:**

<table>
<thead>
<tr>
<th>Date(s) of Offense:</th>
<th>Date Reported:</th>
<th>Time of Offense (From when to when):</th>
<th>Related Case Numbers:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Location of Offense:</th>
<th>Type of Premises Involved:</th>
<th>Grid Number:</th>
<th>Patrol Area #:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Incident/Arrest Number:</th>
<th>Other Important Information:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Victim's Name (Last, First Middle):</th>
<th>Race:</th>
<th>Sex:</th>
<th>Age:</th>
<th>Date of Birth:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Officer Information:**

- **Investigator Assigned:**
- **ID #:**
- **Date Assigned:**

<table>
<thead>
<tr>
<th>Reporting Officer:</th>
<th>ID #:</th>
<th>Dispatch Time:</th>
<th>Arrival Time:</th>
<th>Clear Time:</th>
<th>Unit #:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Backup Officer:</th>
<th>ID #:</th>
<th>Dispatch Time:</th>
<th>Arrival Time:</th>
<th>Clear Time:</th>
<th>Unit #:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>Backup Officer:</th>
<th>ID #:</th>
<th>Dispatch Time:</th>
<th>Arrival Time:</th>
<th>Clear Time:</th>
<th>Unit #:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

- **Other Officers Involved:**

**Weather Conditions:**

- Clear/Cloudy
- Sleeting
- Fog
- Raining
- Snowing
- High Winds
- Other (Explain)

**NOTE:** This FRONT PAGE of the offense report is furnished in compliance with the Texas Open Records Act, article 6252-17a Vernon's Annotated Civil Statutes, case law, and published Attorney General rulings related to cases under investigation.

**Brief Narrative of Facts - If Vehicle or Property is Involved, Please Describe Below:**

________________________
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**DOMESTIC VIOLENCE - SUSPECT INFORMATION**

<table>
<thead>
<tr>
<th>Name (Last, First Middle)</th>
<th>Race</th>
<th>Age</th>
<th>Date of Birth</th>
<th>Ht.</th>
<th>Wt.</th>
<th>Hair</th>
<th>Eyes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resident Address:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Employer/Business Address:</td>
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<td></td>
</tr>
</tbody>
</table>

**AKA’s and Other Important Information**

<table>
<thead>
<tr>
<th>Phone # (E.C. #2):</th>
<th>DL # and State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Home Phone #:</td>
<td>Business Phone #:</td>
</tr>
<tr>
<td>Social Security #:</td>
<td></td>
</tr>
</tbody>
</table>

**Observations About Suspect at the Scene**

<table>
<thead>
<tr>
<th>Demeanor:</th>
<th>Physical Condition:</th>
<th>Speech:</th>
<th>Appearance:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angry</td>
<td>Abrasion(s)</td>
<td>Normal/Calm</td>
<td>Bloody Clothes</td>
</tr>
<tr>
<td>Apologetic</td>
<td>Bruise(s) - New</td>
<td>Out of Breath</td>
<td>Disorderly Clothing</td>
</tr>
<tr>
<td>Calm</td>
<td>Bruise(s) - Healing</td>
<td>Excited/Very Fast</td>
<td>Smear Makeup</td>
</tr>
<tr>
<td>Combative</td>
<td>Bleeding</td>
<td>Crying/Sobbing</td>
<td>Soiled/Sweat Stained</td>
</tr>
<tr>
<td>Crying</td>
<td>Complaint of Pain</td>
<td>Yelling/Angry</td>
<td>Tangled/Messy Hair</td>
</tr>
<tr>
<td>Fearful</td>
<td>Concussion(s)</td>
<td>Cursing</td>
<td>Torn/Ripped Clothing</td>
</tr>
<tr>
<td>Fearful</td>
<td>Fracture(s)</td>
<td>Other (Explain)</td>
<td>Other (Explain)</td>
</tr>
</tbody>
</table>

**DOMESTIC VIOLENCE - CIVILIAN WITNESS INFORMATION**

**Witness No. 1**

<table>
<thead>
<tr>
<th>Name (Last, First Middle)</th>
<th>Race</th>
<th>Age</th>
<th>Date of Birth</th>
<th>DL # and State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resident Address:</td>
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<tr>
<td>Employer/Business/School Address:</td>
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<tr>
<td>Child</td>
<td>Neighbor</td>
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<tr>
<td>Friend</td>
<td>Friend</td>
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</table>

**Witness No. 2**

<table>
<thead>
<tr>
<th>Name (Last, First Middle)</th>
<th>Race</th>
<th>Age</th>
<th>Date of Birth</th>
<th>DL # and State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resident Address:</td>
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<tr>
<td>Employer/Business/School Address:</td>
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<td>Child</td>
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<tr>
<td>Friend</td>
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**Witness No. 3**

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<th>Age</th>
<th>Date of Birth</th>
<th>DL # and State</th>
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<tbody>
<tr>
<td>Resident Address:</td>
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<td>Employer/Business/School Address:</td>
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<td>Child</td>
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<tr>
<td>Friend</td>
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</table>

**Witness No. 4**

<table>
<thead>
<tr>
<th>Name (Last, First Middle)</th>
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<th>Age</th>
<th>Date of Birth</th>
<th>DL # and State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resident Address:</td>
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<tr>
<td>Employer/Business/School Address:</td>
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<tr>
<td>Child</td>
<td>Neighbor</td>
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</tr>
<tr>
<td>Friend</td>
<td>Friend</td>
<td></td>
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</tbody>
</table>

**ARREST INFORMATION:**

<table>
<thead>
<tr>
<th>Arresting Officer:</th>
<th>ID#:</th>
<th>Date of Arrest:</th>
<th>Time of Arrest:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location of Arrest:</td>
<td></td>
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</tr>
</tbody>
</table>

**Note:** Please include a copy of the book-in sheet and photo with the offense report.

**Provided by The**

Texas Council on Family Violence ©2003

(Procedure and ID#)_____________________________                 Page ____ of ____
### DOMESTIC VIOLENCE - VICTIM STATEMENT

**Victim’s Name (Last, First Middle):**

**Date of Birth:**

**Driver’s License Number:**

Where are you right now:

**Home Address:**

**Home Phone Number:**

**Name and Address of Work:**

**Work Phone Number:**

<table>
<thead>
<tr>
<th>Emergency Contacts: (Please list at least two friends or relatives that will know how to reach you if you move.)</th>
</tr>
</thead>
</table>
| **Name:**
| **Address and Phone Number:** |

| **Name:** |
| **Address and Phone Number:** |

**WHO ASSAULTED YOU?** (Please list the full name and the person's relationship to you.)

**WHAT INJURIES DO YOU HAVE AS A RESULT OF THE ASSAULT?**

**HOW DID THIS PERSON ASSAULT YOU?** (Example: “Strike with fist on the head,” etc.)

**DID THIS PERSON USE ANYTHING OTHER THAN THEIR HAND TO ASSAULT YOU? WHAT? HOW?**

**WAS THERE ANYONE AROUND WHO SAW OR HEARD THE ASSAULT?** (Children, Relatives, Neighbors, Etc.)

| **Name:** |
| **Address and Phone Number:** |

| **Name:** |
| **Address and Phone Number:** |

| **Name:** |
| **Address and Phone Number:** |

**WHAT WERE THE CIRCUMSTANCES THAT LED UP TO THE ASSAULT?**

**WAS THERE DAMAGE TO ANY PROPERTY?** (Walls, Phone, Furniture, Etc.)

**HAS THIS PERSON ASSAULTED YOU BEFORE? WHEN? WHERE? HOW?**

I affirm that this statement is true and correct and in my own words.

**Signature:**

**Date:**

**Time:**

**Officer Witness:**

**Badge No.:**

**Agency Case #:**
VIOLENCIA DOMESTICA - DECLARATION DE LA VICTIMA

Nombre de la víctima (Apellido, Nombre): 
Fecha de Nacimiento: 
No. de Licencia de Manejar: 

En donde esta viviendo ahora?

Dirección de casa: 
No. de teléfono de casa:

Nombre y dirección de tabajo: 
No de teléfono de trabajo:

Contactos de Emergencia: (favor de nobrar dos amigos o parientes que sepan como comunicarse con used si se cambia de domicilio)
Nombre: 
Dirección y No. de Teléfono:

Nombre: 
Dirección y No. de Teléfono:

QUIENA LA ASALTO? (Favor de poner el nombre completo de la persona y su parentesco.)

QUE HERIDAS TIENE COMO RESULTADO DEL ASALTO?

COMO ES QUE LA (LO) ASALTO ESTA PERSONA? (Ejemplo: “pegar con el puno en las cabeza,” etc.)

ESTA PERSONA USO CUALQUIER OTRA COSA APARTE DE LA MANO PARA ASLTARLO(A)? COMO?

ESTA PERSONA USO O LA(LO) AMENAZO CON USAR UNA ARMA CONTRA USTED? QUE? COMO?

HUBA ALGUIEN ALREDEDOR QUE ESCUCHO O VIO EL ASALTO? (niños, parientes, vecinos, Etc.)
Nombre: 
Dirección y No. de Teléfono:

Nombre: 
Dirección y No. de Teléfono:

Nombre: 
Dirección y No. de Teléfono:

CUALES FUERON LOS MOTIVOS QUE INICIARON EL ASALTO?

HUBO DANOS A ALGUNA PROPIEDAD? (paredes, teléfono, muebles, Etc.)

ESTA PERSONA LA (LO) ASALTO ANTES? CUANDO? EN DONDE? COMO?

Firma: 
Fecha: 
Hora: 

Officer Witness: 
Badge No.: 
Agency Case #: 
I, the undersigned, _________________________________________________, am _________(age) years of age and my date of birth is ______________________________________. My address is _____________________________. I have been warned and advised by ______________________________________________________(person advising of rights) a person who has identified themselves as __________________________________________________, that I have the right to remain silent and not make any statement at all and that any statement I make may be used against me at my trial; that any statement I make may be used against me in court; that I have the right to have a lawyer present to advise me prior to and during any questioning; and that I have the right to terminate this statement or interview at any time.

I have had each of the above rights explained to me. I understand the above listed rights and I want to give up those rights and give this statement of my own free will without any promises of reward or threats having been made towards me.


 I have read each page of this statement consisting of ________ page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advise or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at ______________ ___.m. on the _______ day of ___________________, 20__.  

Signature of Person Giving the Voluntary Statement: _________________________________________________

Printed Name: ________________________________

Witness: ________________________________

Witness: ________________________________

Page _____of _____
<table>
<thead>
<tr>
<th>Name:</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Date of Birth:</td>
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<tr>
<td>Address:</td>
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</table>

<table>
<thead>
<tr>
<th>Date Warnings Were Given:</th>
<th>Time Warnings Were Given:</th>
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<tbody>
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</table>

<table>
<thead>
<tr>
<th>Location Where Warnings Were Given:</th>
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</table>

<table>
<thead>
<tr>
<th>Person Giving the Warnings:</th>
<th></th>
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</thead>
<tbody>
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</tbody>
</table>

**Warning of Rights**

(Person to whom warnings are given should initial to the left of each warning.)

1. ________ You have the right to remain silent and not make any statement at all and any statement you make may be used against you at your trial.

2. ________ Any statement you make may be used as evidence against you in court.

3. ________ You have the right to have a lawyer present to advise you prior to and during any questioning.

4. ________ If you are unable to employ a lawyer, you have the right to have a lawyer appointed to advise you prior to and during any questioning.

5. ________ Do you understand these rights as I have explained them to you?

I have had each of the above listed rights read to me and I have put my initials to the left of each warning to indicate that I understand each warning that has been given. I want to waive those rights and give them up of my own free will. I have not been promised any reward and no threats have been made towards me in exchange for this waiver.

**Signature of Person Being Warned:** ____________________________________________

**Time Signed:** ________________________ **Date Signed:** __________________________

**Printed Name:** ________________________________

**Witness:** _____________________________________________

**Witness:** _____________________________________________
Victim Statement (Page 1)

*** Please fill out the personal information on the reverse side of this page. ***

My name is __________________________________________. My date of birth is _______________________.
I do hereby make the following information known to Officer _______________________, Badge No. _____________. and prosecutors for whatever purpose it may serve. Further, I affirm that the facts contained within this statement are true and correct to the best of my knowledge.

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

If more than one page, please use Civilian Statement of Fact Form.

Date of this statement: ___________________________ Time Statement Given: ___________________________

Signature: ___________________________ Printed Name: ___________________________

Officer Witness: ___________________________ Badge No.: ___________________________ Page ____ of ____
To Protect and Serve:  
Law Enforcement’s Response to 
Family Violence  

Attachment N  
DPS Family Violence Report  

Note: the attached report form is for informational purposes only. Law enforcement agencies should contact DPS for original forms:  

Texas Department of Public Safety  
Uniform Crime Reporting  
PO Box 4143  
Austin, TX 78765-4143  
512-424-2091
The Texas Department of Public Safety/Crime Records Service is mandated to collect information on family violence incidents. Uniform Crime Reporting is the section responsible for the collection of this information. In addition to the DPS requirements, all peace officers in Texas are mandated to report family violence to DPS. This report is the result of those mandates.

Section 411.042(b) of the Gov. Code states that the bureau of identification and records shall: (2) collect information concerning the number and nature of offenses reported or known to have been committed in the state and the legal steps taken in connection with the offenses, and other information useful in the study of crime and the administration of justice, including a statistical breakdown of those offenses in which family violence was involved.

According to Code of Criminal Procedures, Art. 5.05 Reports and Records (e) A peace officer who makes a report under Subsection (a) of this article shall provide information concerning the incident or disturbance to the bureau of identification and records of the Department of Public Safety for its record-keeping function under Section 411.042, Gov. Code. The bureau shall prescribe the form and nature of the information required to be reported to the bureau by this article.

**INSTRUCTIONS:**
1. Incident Date - Enter the month, day and year of incident. Mark the appropriate ovals provided.
2. Agency Identifier - This is your Agency ORI or TX number. Mark the appropriate ovals provided.
3. County Code - Enter the code for the county in which the incident took place. Mark the appropriate ovals provided.
4. Incident Number - Agency incident or case number assigned by your agency. If you have several victims and/or offenders per incident, use the same incident number but prepare a separate form for each victim/offender.
5. Victim Information/
6. Offender Information
   - Age - Enter to two characters (01-99). Newborn up to one week use NB (Oval provided for NB). If over one week, but less than one year enter BB (Oval provided). Unknown age, use 00. Sex - mark one oval; Race - mark one oval; Ethnic Origin - mark one oval; Number of Victims/Offenders - enter the number of victims/offenders involved in the incident - use one sheet for each victim/offender. If number of victims/offenders is more than ten, enter the number in the blocks provided.
7. Relationship - Victim to Offender - mark one oval.
   a. Weapons - The type of weapon or force used (mark up to three ovals).
   b. Injury - Type of injury sustained by victim (mark up to five ovals).
   c. Offenses - Mark the offenses that apply to each incident (mark up to eight). See definitions listed below.
11. Law Enforcement Officers Assaulted - Mark whether any officers were assaulted during this incident. Mark oval to show how many officers were assaulted. If more than ten officers assaulted, enter number in blocks provided.

**STATUTORY TERMS**

Family Code. Chapter 71. Definitions

Family Code. Section 71.004. FAMILY VIOLENCE. "Family violence" means:
(1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself; or
(2) abuse, as that term is defined by Sections 261.001(C), (E), and (G) by a member of a family or household toward a child of the family or household.

Family Code. Section 71.003. "Family" includes individuals related by consanguinity or affinity, as defined under Sections 573.022 and 573.024, Government Code, individuals who are former spouses of each other, individuals who are the biological parents of the same child, without regard to marriage, and a foster child and foster parent, without regard to whether those individuals reside together.

Family Code. Section 71.005 "Household" means a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other.

Family Code. Section 71.006 "Member of a household" includes a person who previously lived in a household.

Family Code. Section 261.001(1). "Abuse" includes the following acts or omissions by a person:
(C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;
(E) sexual conduct harmful to a child's mental, emotional, or physical welfare;
(G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, penal code;

Family Code. Section 82.001. APPLICATION.
A proceeding under this subtitle is begun by filing "An Application for a Protective Order" with the clerk of the court.

Family Code. Section 81.007. PROSECUTING ATTORNEY.
(a) The county attorney or the criminal district attorney is the prosecuting attorney responsible for filing applications under this subtitle unless the district attorney assumes the responsibility by giving notice of that assumption to the county attorney.

**OFFENSE DEFINITIONS:**

According to National Uniform Crime Reporting Guidelines

Aggravated Assault - an unlawful attack by one person upon another wherein the offender uses a weapon or displays it in a threatening manner, or the victim suffers obvious severe or aggravated bodily injury (i.e., broken bones, internal injury, stitches, etc.)

Simple Assault - an unlawful attack by one person upon another where neither the offender displays a weapon, nor the victim suffers serious injury.

Intimidation - to unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

Murder & Non-negligent Manslaughter - the willful killing of one human being by another.

Negligent Manslaughter - the killing of another person through negligence.

Justifiable Homicide - the killing of a perpetrator of a serious criminal offense by a peace officer in the line of duty; or the killing, during the commission of a serious criminal offense, of the perpetrator by a private individual.

Kidnapping/Abduction - the unlawful seizure, transportation, and/or detention of a person against his/her will, or of a minor without the consent of his/her custodial parent(s) or legal guardian.

Robbery - the taking, or attempting to take, anything of value under confrontational circumstances from the control, custody, or care of another person by force or threat of force or violence and/or putting the victim in fear.

Forcible Rape - the carnal knowledge of a person, forcibly and/or against that person's will; or, not forcibly or against the person's will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.

Forcible Sodomy - the use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person forcibly and/or against that person's will; or, not forcibly or against the person's will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.

Sex Assault With An Object - oral or anal sexual intercourse with another person, forcibly and/or against that person's will; or, not forcibly or against the person's will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.

Sexual Conduct With A Child - compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code.

Incest - non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape - non-forcible sexual intercourse with a person who is under the statutory age of consent.
To Protect and Serve:
Law Enforcement’s Response to Family Violence

Attachment O

Determining the Predominant Aggressor at a Family Violence Call
Determining the Predominant Aggressor at a Family Violence Call

Determining the predominant aggressor starts with a thorough investigation. The following are issues to investigate prior to making this determination:

- Who poses the most danger to the other?
- Was one party in actual fear of the other?
- Was the amount of force used appropriate and reasonable? For example, did one party react to a slap by beating the other party?
- The relative severity of the injuries inflicted on each person.
- Was one party physically larger and stronger than the other?
- Was there a history of violence by one of the parties against the other? Against other people?
- Was one party usually the aggressor?
- Who is at most risk for future harm or injury.
- Did any injuries appear to be the result of self-defense?
- Is the party with less serious injuries demanding that the other party be arrested too?
- Do the stories make sense?
- Can anyone else (children, witnesses, 911 tapes) corroborate either story?

Texas law does not require the arrest of both parties simply because they both have injuries from each other.
To Protect and Serve:
Law Enforcement’s Response to Family Violence

Attachment P
Misdemeanor Crimes of Domestic Violence and Federal Firearms Prohibitions
Questions and Answers from The ATF
Protection Orders and Federal Firearms Prohibitions
Open Letter to all State and Local Law Enforcement Officials from the ATF
U.S. Attorney VAWA Points of Contact
MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE
AND FEDERAL FIREARMS PROHIBITIONS

Persons who have been convicted in any court of a qualifying misdemeanor crime of domestic violence (MCDV) generally are prohibited under federal law from possessing any firearm or ammunition in or affecting commerce (or shipping or transporting any firearm or ammunition in interstate or foreign commerce, or receiving any such firearm or ammunition). This prohibition also applies to federal, state, and local governmental employees in both their official and private capacities. Violation of this prohibition is a federal offense punishable by up to ten years imprisonment. See 18 U.S.C. § 922(g)(9); see also 18 U.S.C. §§ 921(a)(33), 924(a)(2), 925(a)(1); 27 C.F.R. §§ 178.11, 178.32.

A qualifying MCDV is an offense that:

- Is a federal, state, or local offense that is a misdemeanor under federal or state law;
- Has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon; and,
- At the time the MCDV was committed, the defendant was:
  - A current or former spouse, parent, or guardian of the victim;
  - A person with whom the victim shared a child in common;
  - A person who was cohabiting with or had cohabited with the victim as a spouse, parent, or guardian; or,
  - A person who was or had been similarly situated to a spouse, parent, or guardian of the victim.

EXCEPTIONS: A person has not been convicted of a qualifying MCDV:

- IF the person was not represented by counsel — unless he or she knowingly and intelligently waived the right to counsel;
- IF the person was entitled to a jury trial AND the case was not tried by a jury — unless the person knowingly and intelligently waived the right to jury trial; or,
- IF the conviction was set aside or expunged; the person was pardoned; or, the person's civil rights – the right to vote, sit on a jury, and hold elected office – were restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense).

BUT: This exception does NOT lift the federal firearms prohibition if:

- the expungement, pardon, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms; or,
- the person is otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

For further information about section 922(g)(9) or federal firearms prohibitions generally, contact your local field division of the Bureau of Alcohol, Tobacco and Firearms by calling (800) 800-3855. For further information about domestic violence generally, contact the National Center on Full Faith and Credit at (800) 256-5883 Ext. 2.
Questions and Answers from the ATF

Domestic Violence FAQ

MISDEMEANOR CRIME OF DOMESTIC VIOLENCE QUESTIONS AND ANSWERS

(from the ATF website. For full access to the ATF site please go to http://www.atf.gov/firearms/domestic/qa.htm)

As of April 28, 1997

1. What is a misdemeanor crime of domestic violence?

As defined in the Gun Control Act of 1968, a "misdemeanor crime of domestic violence" means an offense that:
(1) is a misdemeanor under Federal or State law;
(2) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon; and
(3) was committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

However, a person is not considered to have been convicted of a misdemeanor crime of domestic violence unless:
(1) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and
(2) in the case of a prosecution for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either--
(a) the case was tried by a jury, or
(b) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

In addition, a conviction would not be disabling if it has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the jurisdiction in which the proceedings were held provides for the loss of civil rights upon conviction for such an offense) unless the pardon, expunction, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, and the person is not otherwise prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing firearms.

2. What is the effective date of this disability?

The law was effective September 30, 1996. However, the prohibition applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the new law's effective date.
3. Does the new disability apply to law enforcement officers?

Yes. The Gun Control Act of 1968 was amended so that employees of Government agencies convicted of qualifying misdemeanors would not be exempt from this new disability with respect to their receipt or possession of firearms or ammunition. Thus, law enforcement officers and other Government officials who have been convicted of a disqualifying misdemeanor may not lawfully possess or receive firearms or ammunition for any purpose, including performance of their official duties. This disability applies to firearms and ammunition issued by Government agencies, firearms and ammunition purchased by Government employees for use in performing their official duties, and personal firearms and ammunition possessed by such employees.

4. Is this provision of the law being applied retroactively in violation of constitutional rights?

No. This provision is not being applied retroactively or in violation of the ex post facto clause of the Constitution. This is because the law does not impose additional punishment upon persons convicted prior to the effective date, but merely regulates the future possession of firearms on or after the effective date. The provision is not retroactive merely because the person's conviction occurred prior to the effective date.

5. What is the penalty for violating this offense?

Any individual who knowingly violates this provision of the law is subject to a fine of $250,000, imprisonment of up to 10 years, or both.

6. Does the law impose any additional duties on dealers in firearms and ammunition?

Yes. Until the Form 4473 and Brady forms have been revised to include the new offense, licensees should inquire of their customers whether they have been convicted of a disqualifying domestic violence misdemeanor and avoid transferring any firearms or ammunition to such persons. ATF is in the process of revising the forms and will provide them to licensees as soon as possible.

7. What should a licensee do if he has been convicted of a misdemeanor crime of domestic violence?

Federal firearms licensees should verify that they are disabled under the new prohibition. A licensee convicted of a disqualifying misdemeanor may not lawfully possess firearms or ammunition. In addition, a licensee who incurs firearms disabilities during the term of a license may not continue operations under the license for more than 30 days after incurring the disability unless the licensee applies for relief from Federal firearms disabilities.

8. What should a person do if he has been convicted of a misdemeanor crime of domestic violence?

Individuals subject to this disability should immediately lawfully dispose of their firearms and ammunition. ATF recommends that such persons transfer their firearms and ammunition to a third party, such as their attorney, to their local police agency, or a federal firearms dealer. The continued possession of firearms or ammunition by persons under this disability is a violation of law and may subject the possessor to criminal penalties. In addition, such firearms and ammunition are subject to seizure and forfeiture.
9. X was convicted of misdemeanor assault on October 10, 1996. The crime of assault does not make specific mention of domestic violence, but the criminal complaint reflects that X assaulted his wife. May X still possess firearms or ammunition?

No. X may no longer possess firearms or ammunition.

10. X was convicted of the same crime on September 20, 1996, 10 days before the effective date of the new statute. He possesses a firearm on October 10, 1996. May X lawfully possess firearms?

No. If a person was convicted of a crime at any time, he or she may not lawfully possess firearms or ammunition on or after September 30, 1996.

11. What State and local offenses are "misdemeanors" for purposes of 18 U.S.C. • 922(d)(9) and (g)(9)?

"Misdemeanor" as used in 18 U.S.C. sections 922(d)(9) and (g)(9) includes any offense that is classified as a misdemeanor under federal or state law. In addition, the definition includes any state or local offense punishable only by a fine or by imprisonment for a term of one year or less.

12. In determining whether a conviction in a State court is a "conviction" of a misdemeanor crime of domestic violence, does federal or state law apply?

State law applies. If a conviction for a qualifying misdemeanor does not occur under State law, the person has not been "convicted" of a misdemeanor crime of domestic violence. The law states that a person must be convicted of a State misdemeanor to be under firearms disabilities. Therefore, if the State does not consider the person to be convicted, the person would not have Federal firearms disabilities.

13. Is a person who received "probation before judgment" or some other type of deferred adjudication subject to this disability?

What is a conviction is determined by the law of the jurisdiction in which the proceedings were held. If the State law where the proceedings were held does not consider probation before judgement or deferred adjudication to be a conviction, the person would not be subject to Federal firearms disabilities.

14. Are local criminal ordinances "misdemeanors under State law" for purposes of sections 922(d)(9) and (g)(9)?

Yes, assuming a violation of the ordinance meets the definition of "misdemeanor crime of domestic violence" in all other respects.

15. X was convicted of misdemeanor assault on October 10, 1996. The crime of assault does not make specific mention of domestic violence but the criminal complaint reflects that he assaulted his wife. May X still possess firearms or ammunition?

No. X may no longer possess firearms or ammunition.

16. X was convicted of the same crime on September 20, 1996, 10 days before the effective date of the new statute. He possesses a firearm on October 10, 1996. May X lawfully possess firearms?
No. If a person was convicted of the crime at any time, he or she may not lawfully possess firearms or ammunition on or after September 30, 1996.

17. Officer C was charged with felony assault on her child in 1989. She pled guilty to a misdemeanor and the felony charge was dismissed. She was suspended from the police force and ordered to undergo counseling. After successful completion of the counseling, she was reinstated. May Officer C lawfully possess firearms or ammunition?

No. Officer C may no longer lawfully possess firearms or ammunition either on or off duty.

18. Are convictions for misdemeanor crimes of domestic violence entered by an Indian tribal court disqualifying under 18 U.S.C. 922 (d) (9) and (g) (9)?

Convictions for misdemeanor crimes of domestic violence entered by "tribal courts" are not disqualifying under 18 U.S.C. 922 (d) and (g) (9) since the statute expressly refers to federal and state court convictions, but does not reference tribal court convictions. However, Courts of Indian Offenses operated by the Bureau of Indian Affairs under 25 C.F.R. Part 11 are federal instrumentalities. Therefore, convictions for purposes of 18 U.S.C. 922 (d) and (g) (9).

Note: For one who has been convicted of a misdemeanor crime of domestic violence, the prohibition on the possession of firearms and ammunition DOES not apply if the individual has received a pardon for the crime, the conviction has been expunged or set-aside, or the person has had civil rights restored (if there was a loss of civil rights) AND the person is not otherwise prohibited from possessing firearms or ammunition.
PROTECTION ORDERS AND FEDERAL FIREARMS PROHIBITIONS

Persons subject to a qualifying protection order under federal law are generally prohibited from possessing any firearm or ammunition in or affecting commerce (or shipping or transporting any firearm or ammunition in interstate or foreign commerce, or receiving any such firearm or ammunition). Violation of this prohibition while the order remains in effect is a federal offense punishable by up to ten years imprisonment. 18 U.S.C. §§ 922(g)(8), 924(a)(2).

The following list enumerates the elements that define a qualifying protection order under the federal firearms prohibition. Generally, a defendant/respondent subject to a protection order that includes one element (indicated by a diamond) from each section listed below is covered by the federal firearms prohibition.

I. HEARING
   - Defendant/Respondent received actual notice and had an opportunity to participate.

II. INTIMATE PARTNER
   Plaintiff/Petitioner is an intimate partner of the Defendant/Respondent, (18 U.S.C. § 921(a)(32)) that is:
   - a spouse of Defendant/Respondent;
   - a former spouse of Defendant/Respondent;
   - an individual who is a parent of a child of Defendant/Respondent; or
   - an individual who cohabitates or has cohabited with Defendant/Respondent.

III. RESTRAINS FUTURE CONDUCT
   - The order restrains Defendant/Respondent from harassing, stalking, or threatening the intimate partner, child of the Defendant/Respondent, or child of the Defendant/Respondent’s intimate partner; or
   - The order restrains Defendant/Respondent from engaging in other conduct that would place the intimate partner in reasonable fear of bodily injury to the partner or child.

IV. CREDIBLE THREAT OR PHYSICAL FORCE
   - The order includes a finding that Defendant/Respondent is a credible threat to the physical safety of the intimate partner or child; or
   - The order, by its terms, explicitly prohibits 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.

For further information about firearms prohibitions or section 922(g)(8), contact your local Field Division of the Bureau of Alcohol, Tobacco and Firearms by calling (800) 800-3855. For general information about protection orders and firearms, contact the Full Faith and Credit Project at (800) 256-5883.

ATF I 3310.2 (03-01)
OPEN LETTER TO ALL STATE AND LOCAL LAW ENFORCEMENT OFFICIALS

The purpose of this letter is to provide information to all State and local law enforcement agencies regarding one specific aspect of the recently enacted Omnibus Consolidated Appropriations Act of 1997 (the Act). One part of the Act amended the Gun Control Act of 1968 (GCA) to make it unlawful for any person convicted of a "misdemeanor crime of domestic violence" to ship, transport, possess, or receive firearms or ammunition. It also makes it unlawful for any person to sell or otherwise dispose of a firearm or ammunition to any person knowing or having reasonable cause to believe that the recipient has been convicted of such a misdemeanor. This new prohibition does not apply to all law enforcement officers.

Act adds new firearms disability

As defined in the GCA, a "misdemeanor crime of domestic violence" means an offense that:

(1) is a misdemeanor under federal or state law; and

(2) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common "by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

This definition includes all misdemeanors that involve the use or attempted use of physical force (e.g., simple assault, assault and battery) if the offense is committed by one of the defined parties. This is true whether or not the State statute or local ordinance specifically defines the offense as a domestic violence misdemeanor. For example, a person convicted of misdemeanor assault against his or her spouse would be prohibited from receiving or possessing firearms or ammunition. Moreover, the prohibition applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the new law's effective date, September 30, 1996. As of the effective date of the new law, such a person may no longer possess a firearm or ammunition. However, with respect to all persons, a conviction would not be disabling if it has been expunged, set aside, pardoned, or the person has had his or her civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil right-s-under such an offense) AND the person is not otherwise prohibited from possessing firearms or ammunition.

New disability applies to law enforcement officers

In addition, the Act amended the GCA so that employees of government agencies convicted of qualifying misdemeanors would not be exempt from this new disability with respect to their receipt or possession of firearms or ammunition. Thus, law enforcement officers and other government officials who have been
convicted of a qualifying misdemeanor will not be able to lawfully possess or receive firearms or ammunition for any purpose, including performing their official duties. This disability applies to firearms and ammunition issued by government agencies, firearms and ammunition purchased by officials for use in performing their official duties, and personal firearms and ammunition possessed by such officials.

In view of this amendment's effect on law enforcement officers, your department may want to determine if any employee who is authorized to carry a firearm is subject to this disability and what appropriate action should be taken. Employees subject to this disability must immediately dispose of all firearms and ammunition in their possession. The continued possession of firearms and ammunition by persons under this disability a violation of law and may subject the possessor to criminal penalties. In addition, such firearms and ammunition are subject to seizure and forfeiture.

In cases where your agency becomes aware of individuals subject to this disability, we recommend that such persons be encouraged to relinquish all firearms and ammunition in their possession immediately to a third party, such as their attorney, their local police agency, or a firearms dealer.

If such person refuses to relinquish the firearm or ammunition, and your agency is without authority to retain or seize the firearm or ammunition, you should contact the local ATF office.

Brady Act In the so-called "Brady States" Chief Law Enforcement Officers (CLEOs) "shall make a reasonable effort" to determine whether a prospective buyer's receipt of a handgun would be in violation of the law. CLEOs have five business days in which to make that reasonable effort. What constitutes a "reasonable effort" is to be determined by each law enforcement agency based on its own circumstances, e.g., the availability of resources, access to records, and the law enforcement priorities of the jurisdiction.

This "reasonable effort" standard is not altered by the addition of this new disqualifying category. It remains fully within the discretion of the CLEO to determine what effort is reasonable. For example, even if the CLEO determines that a misdemeanor assault conviction has occurred, it remains fully within the CLEO's discretion to determine whether to make further inquiry.

ATF forms are being revised to reflect the new category of prohibited persons.

If you have any questions concerning these new provisions, contact your local ATF office or the Firearms and Explosives Regulatory Division at 202-927-8300.

John W. Magaw
Director

###
U.S. Attorney’s Points of Contact for the Violence Against Women Act (VAWA)

**Eastern District of Texas**
U.S. Attorney: Matthew Orwig
VAWA contact person: Ms. Tracey Batson
(409) 839-2538

**Northern District of Texas**
U.S. Attorney: Jane Boyle
VAWA contact person: Dayle Elieson
(214) 659-8600

**Southern District of Texas**
U.S. Attorney: Michael Shelby
VAWA contact person: Martha M. Vara
(713) 567-9000

**Western District of Texas**
U.S. Attorney: Mark Lane
VAWA contact person: Kathy West
(512) 916-5858
To Protect and Serve: Law Enforcement’s Response to Family Violence

Attachment Q

Case Law on Law Enforcement Liability
Case Law on Law Enforcement Liability

ESTATE OF MACIAS V. SHERIFF MARK IHDE, ET AL. 9TH CIRCUIT FEDERAL COURT OF APPEALS, (CA 2000)

Maria Teresa Macias was shot to death by her estranged husband in Sonoma, California. For more than a year prior to her murder, Maria Teresa had repeatedly sought help from the Sonoma County Sheriff’s Department regarding her husband’s years of violence against her and their three children. After receiving a restraining order and just three months before her death, Maria Teresa called the Sheriff’s Department for help at least 14 times. The $15 million federal civil rights lawsuit alleged that the Sheriff’s Department discriminated against Maria Teresa as a Latina, as a woman and as a victim of family violence. The suit also alleges that the Sheriff’s Department denied her constitutional right to equal protection of the law by failing to take reports, ignoring evidence and discouraging her from calling them for help. In addition, deputies never arrested the husband despite ample legal authority and their own written policy to do so. The 9th Circuit Federal Court of Appeals remanded the case to the District Court. Sonoma County and The Sonoma County Sheriff’s Department were named as defendants. In June, 2002, The Sheriff’s Department settled the case for 1 million dollars.

Elements of special relationship: Restraining order, notice of danger.

Culpable behavior: Failure to train; failure to protect, violation of constitutional right to equal protection.

For more information go to the following web sites: www.justicewomen.com or www.purpleberets.org

DUDOSH V. CITY OF ALLENTOWN, 722 F. SUPP. 1233 (E.D. PA. 1989)

Kathleen Dudosh’s former boyfriend had assaulted her in the past and threatened to kill her. The police had failed to protect her from the man, despite the existence of a court order of protection. On the day of her death Kathleen learned that the former boyfriend had broken into her apartment and remained there. She went to the premises with two police officers that told her to open the door of the apartment. The boyfriend fatally shot Kathleen and then killed himself. In a civil rights action against the municipality and officers, the court held that liability might attach if the police department had failed to train the officers and this failure led to Ms. Dudosh’s death in violation of her civil rights. The case was settled out of court; award to estate of Ms. Dudosh not revealed.

Elements of special relationship: Protection order, notice of danger.

Culpable behavior: Failure to train; affirmatively placing battered woman in danger; failure to protect
SORICCHETTI V. CITY OF NEW YORK, 482 N.E. 2D 70 (NY 1985)

An estranged husband of known dangerous tendencies repeatedly threatened his estranged wife and daughter. A court order of protection had been issued. The police failed to investigate when the daughter did not return home from a visit with her father, despite the mother’s pleas and evidence that the child was in danger. When the police belatedly responded, they discovered that the father had attacked the child with a knife and tried to saw off her leg. The assault on the child occurred after she was due back from the visit. The New York Court of Appeals, that state’s highest court, upheld a $2 million award to the daughter.

Elements of special relationship: Protection order; notice of danger.

Culpable behavior: Failure to act in a timely fashion after the expiration of visitation schedule; failure to respond to the risk of lethal violence; failure to protect

THURMAN V. CITY OF TORRINGTON, 595 F. SUPP 1521 (D.CONN. 1984)

A wife had been continuously brutalized by her estranged husband. The police refused to act on her complaints, even though she had obtained a court order of protection. One officer stood by and watched as her husband beat and kicked her while she was suffering from stab wounds inflicted by the husband. A jury awarded the victim/plaintiff $2.3 million.

Elements of the special relationship: Protection order; notice of danger

Culpable behavior: Failure to respond to call for help; stood by and watched assault; failure to protect
1. **First District Reverses Trial Court’s Dismissal of Estate’s Complaint Against Sheriff Who Released Defendant Arrested for Domestic Violence Despite Order of No Bond.** (Opinion included in its entirety)

**Estate of Robert BROWN, Through Shannon Brown, Personal Representative, v. W.A. WOODHAM, in his official capacity as Gadsden County Sheriff.**

No. 1D02-2281, March 18, 2003. 2003 WL 1203917 (Fla. 1st DCA)

ERVIN, J.

*1 This is an appeal from an order dismissing a complaint with prejudice due to the failure of appellant, the Estate of Robert Brown, to state a cause of action against appellee, W.A. Woodham, Sheriff of Gadsden County, Florida. The lower court ruled that the sheriff owed no statutory, general, or special duty of care to Brown. We cannot agree and therefore reverse the dismissal and remand the case for further proceedings.

The Estate alleged a breach of a duty of care owed to Robert Brown, who was murdered by the irate husband of the woman Brown was visiting at the time of the tragedy. The husband, William Stroba, had been confined to the custody of the sheriff as an inmate in the Gadsden County Jail as a result of several charges filed against him for committing domestic violence upon his estranged wife. During his one-week incarceration in jail, Stroba wrote several letters to his wife threatening her with numerous acts of violence, which the sheriff's office retained in Stroba's file. Despite the lower court's order on March 6, 2000, that no bond be given Stroba, the sheriff released him from custody on bond one week later, whereupon Stroba returned to his home where he found the victim in the company of his wife, and perpetrated the homicide.

In Count I of the complaint, the personal representative alleged Sheriff Woodham's duty of care as follows:

22. The Gadsden County Sheriff had a duty to timely enter the circuit court's order stating that William Stroba was to be held without bond.

23. The Gadsden County Sheriff had a duty to maintain and review all records concerning William Stroba, including the graphic and threatening letters which William Stroba wrote to Michelle Stroba while he was in custody, in one file or database at the time of his release.

24. The Gadsden County Sheriff owed a special duty to Michelle Stroba, as a victim of domestic violence.

25. It is reasonably foreseeable that a victim of domestic violence, such as Michelle Stroba, would seek protection for herself and her family while under threat of physical violence and harm from William Stroba. The Gadsden County Sheriff owed a special duty to Michelle Stroba, as a victim of domestic violence, and to her reasonably foreseeable protector, Robert Brown.

26. The Gadsden County Sheriff had a duty not to release William Stroba.


The plaintiff alleged that the sheriff's negligent release of William Stroba was the proximate cause of Robert Brown's death.

In defending the lower court's action, the sheriff relies largely upon the following rule of law set out in Everton v. Willard, 468 So.2d 936, 938 (Fla.1985) (emphasis added), and pertinent cases following it, stating:

A law enforcement officer's duty to protect the citizens is a general duty owed to the public as a whole. The victim of a criminal offense, which might have been prevented through reasonable law
enforcement action, does not establish a common law duty of care to the individual citizen and resulting tort liability, absent a special duty to the victim. *2

In Everton, the plaintiff brought an action against the sheriff of Pinellas County, among others, seeking damages arising out of a death caused by an intoxicated motorist who had been released on citation rather than arrested by a deputy sheriff. The court emphasized that the decision whether to arrest is a basic discretionary governmental function that is immune from liability. Id. at 937.

The facts before us are different. The sheriff's decision at issue here does not involve whether he should have arrested Stroba. That action had already been taken. We are confronted only with whether the sheriff's act in releasing an inmate from custody in the face of an order commanding him not to do so subjected him to any potential liability to the victim's estate. Without deciding whether the dismissed complaint sufficiently states a common-law duty owed by Sheriff Woodham to Brown, we are firmly convinced it alleges a statutory duty of care, and that such duty falls within the special-duty exception recognized in Everton.

The Restatement (Second) of Torts section 315 explains that there is no duty to control a third person to prevent him or her from harming another unless:

(a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or (b) a special relation exists between the actor and the other which gives to the other a right to protection.

The Restatement enumerates a number of situations that establish a special relation, including a custodian's taking charge of persons known to be dangerous. The Restatement (Second) of Torts provides in section 319:

One who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm.

The comment to the above section explains that the duty described applies if the actor knows or should know from personal experience that a third person under his or her control has a tendency to act injuriously.

In our judgment, pertinent Florida statutes relating to the taking into custody of persons accused of domestic violence, when considered together, codify the special-duty exception mentioned in both Everton and the Restatement. For example, section 741.2902(1), Florida Statutes (2000), states that it is the responsibility of the trial court, in considering the release of an offender, to consider the safety of any person who might be endangered by the release. Subsection (1) provides:

It is the intent of the Legislature, with respect to domestic violence cases, that at the first appearance the court shall consider the safety of the victim, the victim's children, and any other person who may be in danger if the defendant is released, and exercise caution in releasing defendants. (Emphasis added.) The legislative intent is further manifested in section 741.2901(3), Florida Statutes (2000) (emphasis added), providing: *3

When a defendant is arrested for an act of domestic violence, the defendant shall be held in custody until brought before the court for admittance to bail in accordance with chapter 903. In determining bail, the court shall consider the safety of the victim, the victim's children, and any other person who may be in danger if the defendant is released.

The protection described in the above statutes is obviously not limited to family members who may happen to be victims of domestic violence, as appellee contends, but extends as well to persons who the sheriff knows or should have reason to know might be placed at risk upon an offender's release from custody.

In the case at bar, the plaintiff alleged sufficient facts establishing a special duty, created by statute, that Sheriff Woodham owed to Brown. The Estate alleged that the threatening letters Stroba wrote while in jail were retained by the Gadsden County Jail and were in Stroba's file. In the letters,
Stroba said he intended to kill his wife, that he wanted to accomplish his purpose as soon as he was released, and, more to the point, he made his intent clear to so act if he found her with another man. By retaining these letters in Stroba's file instead of showing them to Michelle, the defendant's wife, or informing her of their content, and then releasing Stroba and merely informing Michelle Stroba that her husband had been released, the sheriff deprived her of critical information that might have saved the victim's life.

These pertinent facts distinguish the instant case from cases such as Everton and others, [FN1] precluding the imposition of liability upon governmental entities when the duty owed to the injured persons in such cases was no different from that owed to the public in general. In view of the above statutes and the facts alleged, we conclude that a special duty of care was placed on the sheriff to prevent the misconduct of William Stroba toward Robert Brown, a person who the sheriff should have reasonably foreseen would be placed in danger if Stroba were released from custody without sufficient warning.

As previously stated, the lower court's final order of dismissal decided only that Sheriff Woodham owed no duty to plaintiff's decedent. It did not reach the next step in the analysis required by Henderson v. Bowden, 737 So.2d 532, 537 (Fla.1999), and Trianon Park Condominium Ass'n v. City of Hialeah, 468 So.2d 912, 919 (Fla.1985), which is to determine whether the bar of sovereign immunity applied, i.e., whether the actions of the sheriff were discretionary or operational. Because the court did not address this issue, and there may be pertinent factual matters not before us that are necessary to resolve it, we do not reach it here. The order dismissing the complaint with prejudice is REVERSED and the case is REMANDED for further proceedings.

WOLF and VAN NORTWICK, JJ., CONCUR.

FN1. See Vann v. Dep't of Corrections, 662 So.2d 339 (Fla.1995); Mills v. Duggar, 601 So.2d 634 (Fla. 4th DCA 1992); Parker v. Murphy, 510 So.2d 990 (Fla. 1st DCA 1987).
To Protect and Serve: 
Law Enforcement’s Response to 
Family Violence 

Attachment R 
Quick Reference to Criminal Charges 
Applicable to Family Violence 
Texas Family Violence Laws 

- The 2003 amendments made by the 78th 
  Legislature are in bold type and marked 
  “NEW”.
# Quick Reference to Some Criminal Charges Applicable to Family Violence

<table>
<thead>
<tr>
<th>CHARGE (Penal Code)</th>
<th>LEVEL</th>
<th>DEFINITION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder (19.02)</td>
<td>1st Degree Felony</td>
<td>Intentionally or knowingly causes death</td>
</tr>
<tr>
<td>Murder (19.02)</td>
<td>2nd Degree Felony</td>
<td>Causes death under “sudden passion” arising from an “adequate cause”</td>
</tr>
<tr>
<td>Manslaughter (19.04)</td>
<td>2nd Degree Felony</td>
<td>Recklessly causes death of an individual</td>
</tr>
<tr>
<td>Criminally (19.05)</td>
<td>State Jail Felony</td>
<td>Causes the death of an individual by criminal negligence</td>
</tr>
<tr>
<td>Negligent Homicide</td>
<td>3rd Degree Felony</td>
<td>Intentionally or knowingly restrains (restrict movements without consent) another person</td>
</tr>
<tr>
<td>Unlawful Restraint (20.02)</td>
<td>Class A Misdemeanor to 3rd Degree Felony</td>
<td>Intentionally or knowingly restrain (restrict movements without consent) another person</td>
</tr>
<tr>
<td>Kidnapping (20.03)</td>
<td>3rd Degree Felony</td>
<td>Abducts (restrains a person with intent to prevent liberation by secreting or using or threatening to use deadly force)</td>
</tr>
<tr>
<td>Aggravated Kidnapping (20.04)</td>
<td>2nd or 3rd Degree Felony</td>
<td>Abducts with intent to hold a person for ransom, use as a shield or hostage, facilitate the commission of a felony or flight, terrorize a person or a third person, or interfere with the performance of any governmental or political function inflict bodily injury or to sexually abuse and uses a deadly weapon</td>
</tr>
<tr>
<td>Assault (22.01)</td>
<td>3rd Degree Felony</td>
<td>Against public servant</td>
</tr>
<tr>
<td>Sexual Assault (22.011)</td>
<td>2nd Degree Felony</td>
<td>Sexual penetration of anyone under 17 or of adult without consent</td>
</tr>
<tr>
<td>Aggravated Sexual Assault</td>
<td>1st Degree Felony</td>
<td>Sexual assault with serious bodily injury (s.b.i.), death, or kidnapping; use of deadly weapon; or victim under 14 or over 65; or by more than one person</td>
</tr>
<tr>
<td>Aggravated Assault (22.02)</td>
<td>2nd to 1st Degree Felony</td>
<td>Causes s.b.i. or uses or exhibits a deadly weapon. 1st degree if committed by a public servant, or by anyone against a witness or informant or public servant</td>
</tr>
<tr>
<td>Injury to a Child, Elderly Person or Disabled Individual (22.04)</td>
<td>State Jail Felony to 1st Degree Felony</td>
<td>Serious bodily injury, disfigurement or mental deficiency, omission causing such to child under 14 or adult over 65 or disabled individual</td>
</tr>
<tr>
<td>Deadly Conduct (22.05)</td>
<td>Class A Misdemeanor to 3rd Degree Felony</td>
<td>Recklessly engages in conduct, placing another in danger of s.b.i presumed if pointing firearm, discharges a firearm at or in the direction of one or more individual, habituation, building, or vehicle</td>
</tr>
<tr>
<td>Terroristic Threat (22.07)</td>
<td>Class A Misdemeanor to 3rd Degree Felony</td>
<td>Threat of violence with intent to place in fear of imminent serious bodily injury</td>
</tr>
<tr>
<td>Violation of a Protective Order or Magistrate’s Order (25.07)</td>
<td>Class A Misdemeanor up to 3rd Degree Felony</td>
<td>Violation of criminally enforceable portion of Protective Order or Magistrate’s Order; 2 priors, assault, or stalking enhances to 3rd degree felony</td>
</tr>
<tr>
<td>Criminal Trespass (30.05)</td>
<td>Class A or Class C Misdemeanor</td>
<td>Remaining on the property of another without the person’s consent</td>
</tr>
<tr>
<td>Obstruction/ Retaliation (36.06)</td>
<td>3rd Degree Felony</td>
<td>Intentionally prevents, delays, harms or threatens to harm another for service as a public servant, witness, prospective witness, informant, or person who has reported or who the actor knows intends to report the occurrence of a crime</td>
</tr>
<tr>
<td>Interference with Emergency Telephone Call (42.062)</td>
<td>Class A Misdemeanor to State Jail Felony</td>
<td>Knowingly preventing or interfering with a person’s ability to make an emergency telephone call to request assistance in an emergency from a law enforcement agency, medical facility or other agency or entity the primary purpose of which is to provide for the safety of individuals or recklessly rendering a telephone unusable that would otherwise be used to place an emergency telephone call.</td>
</tr>
<tr>
<td>Harassment (42.07)</td>
<td>Class B Misdemeanor</td>
<td>Obscene telephone, email, fax or written communications, threats of inflicting serious bodily injury with intent to harass, annoy, alarm, abuse, torment, or embarrass another person.</td>
</tr>
<tr>
<td>Stalking (42.072)</td>
<td>3rd Degree Felony for first offense and 2nd degree felony if previous stalking conviction</td>
<td>Conduct knowingly engaged in by the actor, on more than one occasion, pursuant to the same scheme or course of conduct, directed specifically at another person, including following, that the actor knows or reasonably believes the other person will regard as threatening bodily injury or death to the person or the person’s family or household, or threatening damage to the person’s property, that causes the other person to fear one of the things listed above, and that would cause a reasonable person to fear one of the things listed above.</td>
</tr>
<tr>
<td>Unlawful Possession of Firearm (46.04)</td>
<td>Class A misdemeanor or 3rd degree felony</td>
<td>Possession of a firearm by a convicted felon, a convicted family violence offender (Class A or higher), or a respondent in a protective order (unless respondent is an on duty, sworn full time paid peace officer). Possession prohibited for five years if convicted felon or family violence offender (Class A or higher) and for the duration of the protective order, if a respondent.</td>
</tr>
</tbody>
</table>

### Class Levels

- **Class C Misdemeanor**
  - Fine up to $500

- **3rd Degree Felony**
  - 2 - 10 years and a fine up to $10,000

- **State Jail Felony**
  - 180 days - 2 years and/or a fine up to $10,000

- **2nd Degree Felony**
  - Jail up to 180 days and/or fine up to $2,000

- **Class B Misdemeanor**
  - Jail up to 180 days and/or fine up to $2,000

- **1st Degree Felony**
  - Life or 5 - 99 years, and a fine up to $10,000

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Chapter 5
Family Violence Prevention Act

ART. 5.01 - LEGISLATIVE STATEMENT:
Family violence is a serious danger and threat to society and its members. Victims are entitled to maximum protection. Law enforcement and judicial officers shall protect the victim, without regard to the relationship between the alleged offender and victim.

ART. 5.03 - FAMILY OR HOUSEHOLD RELATIONSHIP DOES NOT CREATE AN EXCEPTION OF OFFICIAL DUTIES:
The family or household relationship between an alleged violator and the victim of family violence is not relevant to the duties of officers which is to prevent the commission of criminal offenses.

ART. 5.04 - DUTIES OF PEACE OFFICERS:
Primary duties are to protect any potential victim of family violence, enforce the law of this state, enforce a protective order from another jurisdiction as provided by Chapter 88, Family Code, and make lawful arrests of violators. The officer shall also advise any adult victim of all reasonable means to prevent further family violence, including giving written notice of the victim’s legal rights and remedies and of the availability of shelter or other community services for family violence victims.

The Legislature expanded this section in 1997 to include the enforcement of protective orders from other states as provided by Chapter 88 of the Family Code. The written notice to victims was also expanded to instruct victims specifically that, if they are a victim of an assault by a family or household member, they may request a magistrate’s order for emergency protection, and that they need not be present when the order is issued.

ART. 5.045 - STANDBY ASSISTANCE: LIABILITY:
At the discretion of a peace officer, the officer may stay with a victim of family violence to protect the victim and allow the victim to take the personal property of the victim or of a child in the care of the victim to a place of safety in an orderly manner. A peace officer who provides this assistance cannot be held civilly liable for any act that occurs because of the assistance, or any act that occurs because the officer chose not to provide the assistance. An officer cannot be held civilly or criminally liable for the wrongful appropriation of any personal property.

ART. 5.05 - REPORTS AND RECORDS:
A peace officer who investigates a family violence incident or who responds to a disturbance call that may involve family violence shall make a written report (Family Violence Incident Report) and each agency shall establish a departmental code for identifying and retrieving such reports as well as establishing procedures to inform their officers of protective orders. A certified copy of a protective order is valid as proof of the protective order.

ART. 5.06 - DUTIES OF PROSECUTING ATTORNEYS AND COURTS:
Prosecuting attorneys and courts are prohibited from dismissing or delaying any family violence criminal proceeding because a civil proceeding is pending and from requiring proof that a party is involved in a suit affecting the parent-child relationship or a dissolution of a marriage prior to proceeding with the case. A prosecutor’s decision to file a protective order should be made without regard to whether a criminal complaint has been filed.
ART. 5.07 - VENUE FOR PROTECTIVE ORDER OFFENSES:
A criminal violation of a protective order can be prosecuted in either the county where the order was violated or the county where the order was issued.

ART. 5.08 - MEDIATION IN FAMILY VIOLENCE CASES:
In a criminal prosecution arising from family violence, as that term is defined by Section 71.004, Family Code, a court shall not refer or order the victim or the defendant involved to mediation, dispute resolution, arbitration, or other similar procedures.

Chapter 6
Preventing Offenses by the Act of Magistrates and Other Officers
ART. 6.08 - PROTECTIVE ORDER PROHIBITING OFFENSE CAUSED BY BIAS OR PREJUDICE:
At any proceeding in a county or district court related to an offense against the person, arson, criminal mischief or graffiti, where it is alleged that the defendant committed the offense because of bias or prejudice against a group identified by race, color, disability, religion, national origin or ancestry, age, gender, or sexual preference, the victim may request the court to enter a protective order under Title 4, Family Code.
The court must make a finding that the occurred because of the foregoing bias or prejudice and is likely to occur in the future. Proceedings, duties of the court, clerks, and law enforcement, as well as penalties for violations, are the same as under Title 4.

CHAPTER 7A-PROTECTIVE ORDER FOR VICTIM OF SEXUAL ASSAULT
(NEW) Chapter 7A will be added to Title 1, Code of Criminal Procedure to include a provision for victims of sexual assault to get a protective order without regard to the relationship between the victim and the offender.

Chapter 12
Limitation
Art. 14.03(a)(4) – FELONIES:
The statute of limitations for sexual assault is extended to ten years, up from five years. If DNA evidence is collected, there is not limitation to the statute.

Chapter 14
Arrest Without Warrant
ART. 14.01(A):
A peace officer may arrest an offender without warrant for any offense committed in his presence or view.

Art. 14.03(a)(2):
Allows any peace officer to arrest, without warrant, a person who the officer has probable cause to believe has committed an assault resulting in bodily injury to another person and the officer has probable cause to believe there is danger of further bodily injury to that person.

Art. 14.03(a)(3):
Allows any peace officer to arrest, without warrant, a person the officer has probable cause to believe has committed an offense under Section 25.07, Penal Code (violation of a protective order), even if the violation was not committed in the officer’s view.

ART. 14.03(A)(4):
Allows any peace officer to arrest, without warrant, a person who the peace officer has probable cause to believe has committed an assault resulting in bodily injury to a member of a person’s family or household.

(NEW) ART. 14.03(A)(5):
Authorizes an arrest without warrant if the officer has probable cause to believe that the offense of interference with an emergency telephone call has occurred, even if the offense was not committed in the presence of the peace officer.
ART. 14.03(B):
The first mandatory warrantless arrest directive in Texas law states that a peace officer shall arrest a person the peace officer believes has committed an offense under Section 25.07, Penal Code (violation of a protective order), if the offense is committed in the presence of the peace officer.

ART. 14.03(C):
If reasonably necessary to verify an allegation of a violation of a protective order, or of the commission of an assault against a member of the family or household, a peace officer shall remain at the scene of the investigation to verify the allegation and to prevent the further commission of family violence.

ART. 14.04 - WHEN FELONY HAS BEEN COMMITTED:
Where it is shown by satisfactory proof to a peace officer that an offender who has just committed a felony is about to escape, they’re no time to procure a warrant, a peace officer may pursue and arrest the accused without a warrant.

Chapter 15
Arrest Under Warrant
ART. 15.051:
Polygraph Examination of Complainant Prohibited: Amended in 1997 to prohibit either a peace officer or a state’s attorney from requiring a polygraph of a sexual assault survivor who seeks to charge a person with a sex offense. Allows either a peace officer or a state’s attorney to request a survivor to submit to a polygraph, as long as the survivor is first warned in writing that she does not have to take the polygraph. Also, the complaint cannot be dismissed solely because of a refusal to take it or because of the results of the test.

Chapter 17
Bail
ART. 17.29 - ACCUSED LIBERATED:
Before an arrested family violence or stalking perpetrator can be released on bail, the agency holding the offender shall make a “reasonable attempt” to notify the victim or a designee of the impending release. At the time of arrest, the arresting officer shall collect the victim’s address and telephone number (or a person designated by the victim), and pass this information along to the agency holding the perpetrator.

ART. 17.291(B) - FURTHER DETENTION OF OFFENDERS:
Immediate release of an accused is not mandated after posting bond if there is probable cause to believe that violence will continue if the person is immediately released. The arresting agency may hold such person for up to four additional hours after bond is posted.

Since 1999, a magistrate may detain a defendant for up to 48 hours if s/he concludes that the violence would continue if the person is released, that probable cause exists to believe that the person committed the instant offense and that, during the 10-year period preceding the date of the instant offense, the person has been arrested on more than one occasion for an offense involving family violence or any other offense, if a deadly weapon was used or exhibited.

ART. 17.292 - MAGISTRATE’S ORDER FOR EMERGENCY PROTECTION:
Magistrates can issue an order for emergency protection for up to 61 days but for no less than 31 days against perpetrators of family violence or stalking crimes.

Victims of dating violence, as defined in section 71.0021 of the Family Code, are eligible for magistrate’s orders of emergency protection. (Article 17.292 authorizes these orders for victims of family violence assaults and “family violence” includes “dating violence.”)

Since 1999, magistrates have been required to issue an order for emergency protection if the
arrest is for a family violence offense that also involves serious bodily injury to the victim or the use of a deadly weapon.

In other words, if an offense involving family violence constitutes an aggravated assault, the magistrate is allowed no discretion and must issue a Magistrate’s Order for Emergency Protection.

The magistrate’s emergency protective order may be based upon the request of the victim, victim’s guardian, peace officer, prosecutor, or on the magistrate’s own motion if the person is charged with a family violence or stalking offense. The victim need not be present in court when the order is issued.

If not, the magistrate shall order the appropriate peace officer to make a good faith effort to deliver notice of the order to the victim within 24 hours, and the court clerk shall send a copy of the order to the victim.

Magistrates may prohibit the defendant from possessing a firearm while subject to the order. Possession of a firearm while subject to a protective order is a Class A misdemeanor. See section 46.06, Penal Code, infra.

Beginning in 1999, magistrates are authorized to suspend the defendant’s license to carry a concealed handgun. Additionally, the magistrate or the magistrate's clerk must immediately send a copy of the order suspending the concealed handgun license to the Department of Public Safety. The Department is then required to record the suspension of the license in its records, report the suspension to local law enforcement agencies, and demand surrender of the suspended license from the license holder. (Texas law had already precluded a person subject to a protective order from obtaining a concealed handgun license.)

Written warnings on a magistrate’s order for emergency protection must state that: violation of the protective order is punishable as a Class A misdemeanor; violations by

 Possession of a firearm while subject to the order may be punishable as a separate offense (Violation of Magistrate’s Order or a Protective Order can be found in Section 25.07 of the Texas Penal Code).

(NEW) H.B.297-CONFLICTING CONDITIONS IN MAGISTRATE’S ORDERS AND OTHER PROTECTIVE ORDERS. Amends Article 17.292 Code of Criminal Procedure and clarifies that when there are conflicting provisions in a Protective Order issued subsequent to a Magistrate’s Order for Emergency Protection (MOEP), the conditions in the protective order prevail. When Temporary Ex-parte protective order is issued subsequent to a MOEP, the conditions in the MOEP prevail unless it is otherwise specifically noted and authorized by the court.

Chapter 42
Judgment and Sentencing

SEC. 42.014 – FINDING THAT OFFENSE WAS COMMITTED BECAUSE OF BIAS OR PREJUDICE:
If the trier of fact determines beyond a reasonable doubt that the defendant chose the victim because of the defendant’s bias or prejudice against a group identified by race, color, disability, religion, national origin, age, gender, or sexual preference, the punishment for the offense is enhanced. This legislation also created the “hate crime protective order.” See Art. 6.08, Code of Criminal Procedure.
ART. 56.02 – CRIME VICTIMS’ RIGHTS:
A victim has the right to be informed of appellate proceedings, to request victim-offender mediation, and to have the victim impact statement considered by the prosecutor and judge before sentencing and/or entry of a plea bargain.

ART. 56.045 – PRESENCE OF ADVOCATE OR REPRESENTATIVE DURING FORENSIC MEDICAL EXAMINATION:
Medical personnel conducting a forensic medical exam for a victim of sexual assault must offer the victim the opportunity to have a trained advocate from a sexual assault program present during the exam, if an advocate is available at the time of the exam. The advocate’s role is limited to providing counseling, support and information regarding the rights of crime victims. The advocate may not impede the exam. All costs for providing the advocate shall be provided by the sexual assault program.

ART. 56.07 – NOTIFICATION:
(NEW) LAW ENFORCEMENT REFERRAL TO SEXUAL ASSAULT PROGRAM. Law enforcement officers are now required to provide written information and referrals to victims of sexual assault.

ART. 56.11 – NOTIFICATION TO VICTIM OF RELEASE:
The Texas Department of Criminal Justice or the sheriff must give notice to the victim and local law enforcement of the release of a defendant convicted of an offense involving family violence, stalking, or violation of a protective order or magistrate’s order.

ART. 56.12 – NOTIFICATION OF ESCAPE:
The Texas Department of Criminal Justice shall “immediately notify” the victim or her designee if the offender escapes or is transferred from any of the TDCJ facilities (rather than make a “reasonable attempt” to notify the victim).

Subchapter B. Crime Victims’ Compensation

(NEW) H.B. 1895 ART. 56.32 (A)(2) AND (9)-DEFINITIONS:
Authorizes Crime Victims Compensation to reimburse for travel expenses related to attending the victim’s funeral and up to 10 work days or $1,000 of lost wages as a result of bereavement leave.

ART. 56.42(D) – PAYMENT OF RELOCATION EXPENSES FOR VICTIM:
A victim of family violence or sexual assault occurring at the victim’s place of residence may receive a onetime-only assistance payment in an amount not to $2,000 to be used for relocation expenses; including expenses for rental deposit, utility connections, expenses relating to the moving of belongings, motor vehicle mileage expenses, and for out-of-state moves, transportation, lodging, and meals; and $1,800 to be used for housing rental expenses.

ART. 56.54(K) – COSTS OF FORENSIC SEXUAL ASSAULT EXAMINATION:
The attorney general may use crime victims’ compensation funds to reimburse law enforcement agencies for the reasonable costs of forensic sexual assault examinations.

Chapter 62
Sex Offender Registration Program

ART 62.03(E)-(F) – REGISTRATION REQUIREMENTS:
As of 1999, school superintendents are required to provide notices from law enforcement to all appropriate school district personnel. Local law enforcement authority must include in the newspaper notice the person’s full name; numeric street address and photo.

- Reportable conviction or adjudication means a conviction or adjudication, regardless of the pendency of appeal.
- Compelling prostitution and crimes under the Uniform Code of Military Justice are added to the list that triggers registration.
- Persons on juvenile probation are added to the list.
• If the victim is under 17, the law enforcement agency must also send the required notices to the administrator of any private or public secondary school located in the public school district in which the offender intends to live.

• A two-time offender must report to the local law enforcement agency once every 90 days to verify the registration data. Everyone else must check in once a year within 30 days of his or her registration anniversary.

• Registration requirement extended back to all convictions on or after September 1, 1970, except that the publication requirement applies only to convictions on or after September 1, 1995 (1997 for compelling prostitution).

• For a “sexually violent offense,” the registration requirement ends when the person dies. For all other offenses, 10 years after the criminal justice supervision ends.

THE TEXAS PENAL CODE

Chapter 1
General Provisions

SEC. 1.07(A)(8) - BODILY INJURY:
Means physical pain (as perceived by the victim), illness, or any impairment of physical condition.

(NEW) S.B. 319, SEC. 1.07 (A)(26) - DEFINITIONS:
Changes the definition of an individual to an unborn child at every stage of gestation form fertilization until birth.

SEC. 1.07(A)(46) - SERIOUS BODILY INJURY:
Means injury creating a substantial risk of death or causing death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

Chapter 22
Assaultive Offenses

SEC. 22.01 - ASSAULT:
A person commits an offense if the person:

• Intentionally, knowingly, or recklessly causes bodily injury to another, including the person’s spouse;

• Intentionally or knowingly threatens another with imminent bodily injury,

• Including the person’s spouse; or

• Intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

An offense under Subsection (a)(1) is a Class A misdemeanor.

Beginning in 1999, an assault is punishable as a felony of the third degree if the offense was committed against a family member and the defendant has been previously convicted of an offense against a member of the defendant's family or household. Deferred adjudication counts as the first offense.

This penalty enhancement is a significant increase; previously the third conviction was only a state jail felony.
SEC. 22.02 - AGGRAVATED ASSAULT:
This section defines aggravated assault as an assault that causes serious bodily injury to another or where a deadly weapon is used or exhibited during an assault. An offense under this section is a second-degree felony, and it becomes a first-degree felony if the offense is committed in retaliation against a witness, prospective witness, informant, public servant or person who has reported the occurrence of a crime.

SEC. 22.011 - SEXUAL ASSAULT OF ADULTS AND CHILDREN:
An offense under this section is a second-degree felony. Sexual assault of a child includes the actor causing the mouth of a child to contact (penetration is not necessary for the assault to have occurred) the anus or sexual organ of another person, including the actor.

A health care provider (licensed physician, chiropractor, nurse, physical therapist, or physician assistant) commits sexual assault if he causes a patient or former patient to participate in sex by exploiting the person’s emotional dependency on the actor. (Note: The proof of injury or threat of injury requirement for prosecution in the spousal rape statute has been removed.)

SEC. 22.021 - AGGRAVATED SEXUAL ASSAULT OF ADULTS:
An aggravated sexual assault is a sexual assault in which the following also occurs: serious bodily injury or an attempt to cause death which places the victim in fear that death, serious bodily injury, or kidnapping of any person will occur; or in which a deadly weapon is exhibited during the same criminal episode. An offense under this section is a first-degree felony.

(NEW) S.B. 837 amends Penal Code, 22.021 to include disabled individuals as a specially protected class of victims for the purposes of aggravated sexual assault prosecutions.

(NEW) SEC. 22.07 - TERRORISTIC THREAT:
Terroristic threat is now a Class A misdemeanor if committed against a member of the person’s family or household or otherwise constitutes family violence or if the offense is committed against a public servant. It is a Class B misdemeanor if a person threatens to commit any offense involving violence to any person or property with intent to place any person in fear of imminent serious bodily injury.

Chapter 25
Offenses Against The Family

(NEW) SEC. 25.07 - VIOLATION OF PROTECTIVE ORDER OR MAGISTRATE’S ORDER:
A person commits an offense if, in violation of a protective order issued by a court of this state or by another jurisdiction, the person knowingly or intentionally:

- Commits family violence;
- Communicates in a prohibited way with a protected individual;
- Goes to or near a prohibited location; or
- Engages in conduct directed specifically toward a person who is a member of the family or household, including following the person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass that person.

Out-of-state protective orders are given “full faith and credit” in Texas under Chapter 88 of the Family Code, and they will be enforced under this section just as a Texas protective order will be enforced.

An offense under this section is a Class A misdemeanor unless it is shown at trial that the defendant has been convicted under this
section two or more times or has violated the protective order by committing an assault or the offense of stalking in which case it becomes a 3rd degree felony. It is the duty of a peace officer to enforce the order by arresting the violator, even if persons affected by the order have made reconciliatory actions or agreements. An officer may not arrest a person protected by that order on a violations charge.

Chapter 42
Disorderly Conduct and Related Offenses

(NEW) SECTION 42.062 — INTERFERENCE WITH EMERGENCY TELEPHONE CALL:
The Penal Code 42.062 (d) definition of an emergency is now a situation in which a person is in “fear of imminent assault.”

An individual commits an offense if the individual knowingly prevents or interferes with another’s ability to place an emergency telephone call or recklessly renders unusable a telephone that would otherwise be used to place an emergency telephone call. Violation of this offense is a Class A misdemeanor.

SEC. 42.07 - HARASSMENT:
Provides that a person commits a Class B misdemeanor (or a Class A offense if previously convicted) if the perpetrator, with intent to harass, annoy, alarm, abuse, torment, or embarrass another, commits the following acts:

1. Initiates obscene communication, either by telephone, in writing, or by electronic communication (including e-mails and faxes);
2. Threatens, by telephone, in writing, or by electronic communication to cause bodily injury to the victim, or to commit a felony against the victim, a member of the victim’s family, or to the victim’s property;
3. Gives false report that someone suffered death or serious bodily injury, which is known by the conveyor to be false;
4. Repeatedly rings another’s phone or repeatedly makes anonymous telephone calls;
5. Makes a telephone call and intentionally fails to hang up the connection;
6. Knowingly permits his phone to be used by another person to commit an offense under this section;
7. Or sends repeated electronic communications.

SEC. 42.072 - STALKING:
A person commits stalking if the following elements are met:

1. On more than one occasion, pursuant to the same scheme or course of conduct, directed specifically at another person, the actor knowingly engages in conduct, including following the victim:
2. That the actor knows or reasonably believes the other person will regard as threatening bodily injury or death to the person or the person’s family or household, or threatening damage to the person’s property,
3. That causes the other person to fear one of the things listed above, and
4. That would cause a reasonable person to fear one of the things listed above.

A first offense under this section is a felony of the third degree and a subsequent offense is a felony of the second degree.

Other stalking laws are related to victim notification and civil liability of stalkers. Victim Notification (See Texas Criminal Procedure – Code and Rules, Art. 17.29) states that before an arrested stalker can be released on bail, the agency holding the offender must make a reasonable attempt to
notify the victim or her designee of the impending release.

Civil Liability of Stalkers (Civil Practices and Remedies Code, Chapter 83) allows the victim of stalking to sue the stalker in civil court to recover “actual and exemplary” financial compensation for the crime. The victim must show the stalking occurred on more than one occasion.

Chapter 46
Weapons

SECTION 46.04 — UNLAWFUL POSSESSION OF FIREARM:
Persons convicted of a Class A misdemeanor family violence assault commit an offense if they possess a firearm during the 5-year period after the person’s release from confinement or community supervision following conviction.

Persons subject to a final protective order, a magistrate’s order of emergency protection or a valid foreign protective order commit an offense if they possess a firearm while subject to the order. As with the corresponding federal law, full-time, paid, peace officers engaged in active duty are exempt from the protective order firearms prohibition. A violation of this offenses is a Class A misdemeanor.

This Penal Code section is the same as the federal ban on firearms possession by family violence offenders. (18 U.S.Code 922(g)(8), (9)).

SECTION 46.06 — UNLAWFUL TRANSFER OF CERTAIN WEAPONS:
A person commits an offense if the person knowingly purchases, rents, leases, or receives as a loan or gift from another a handgun while an active protective order is directed to the actor.
THE TEXAS FAMILY CODE

The Marriage Relationship

CAPACITY OF SPOUSE - SECTION 1.104
Once married, a minor is “emancipated” and treated as an adult for all purposes. A married woman may make a valid contract without her husband’s approval or consent. The right to contract applies to any married or common-law married person, regardless of age.

PARENTAL CONSENT OF UNDERAGE APPLICANT - SECTION 2.102
Persons under 18 years of age may obtain a marriage license if they are 14 years of age or older and have the consent of a parent in writing. Persons under 18 years of age may also file suit in the district court for an order granting permission to marry.

PROOF OF INFORMAL (COMMON LAW) MARRIAGE - SECTION 2.401
Generally, persons wanting to establish a common-law marriage must show that they were each 18 years of age or older at the time they began living together as husband and wife; agreed to be husband and wife; lived together as husband and wife after that agreement; and held each other out to the public as husband and wife.

Within two years of the date the parties “separated and ceased living together,” one of the parties must begin a “proceeding, such as a suit for divorce, in which a marriage is to be proved,” or it will be presumed the “parties did not enter into an agreement to be married.” In other words, a suit for divorce must be brought within two years after parties to a common-law marriage stop living together as husband and wife.

Title 4. Protective Orders and Family Violence

CHAPTER 71. DEFINITIONS
Except as provided by this chapter, the definitions in Chapter 101 apply to terms used in this title.

SECTION 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 (added back into statute in 1997), or other court expressly given jurisdiction under this title.

DATING VIOLENCE - SECTION 71.0021
“Dating violence” means an act by an individual against another with whom the individual has or has had a dating relationship that is a threat of or is intended to result in bodily injury, assault or sexual assault.

“Dating relationship” means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. Factors for the court to consider include the length and nature of the relationship as well as the frequency and type of interaction between individuals. A casual acquaintanceship or “ordinary fraternization” is excluded.

The definition of “dating relationship” mirrors the federal definition found in the Violence Against Women Act of 2000 (42 U.S.C.A. 3796), as well as the definitions found in 29 other state statutes. The factors listed for consideration by the court also track those of other states.
SECTION 71.003 - "FAMILY" includes individuals related by consanguinity or affinity, as determined under Sections 573.022 and 573.024, Government Code, individuals who are former spouses of each other, individuals who are the parents of the same child, without regard to marriage, and a foster child and foster parent, without regard to whether those individuals reside together.

SECTION 71.004 - "FAMILY VIOLENCE" means:

1.) An act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself;

2.) Abuse, as that term is defined by Sections 261.001(1)(C), (E), and (G) of this code, by a member of a family or household toward a child of the family or household; or

3.) Dating violence, as that term is defined in Section 71.0021

SECTION 71.005 - "HOUSEHOLD" means a unit composed of persons living together in the same dwelling, whether or not they are related to each other.

SECTION 71.006 - "MEMBER OF A HOUSEHOLD" includes a person who previously lived in a household. Services in a subsequent action involving that party.
the community justice assistance division of the Texas Department of Criminal Justice) if a program is available;

b) Counsel with a social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor if a program under Subdivision (1) is not available; or

c) Perform acts specified by the court that the court determines are necessary or appropriate to prevent or reduce the likelihood of family violence.

2.) In a protective order, the court may prohibit the person found to have committed family violence from:

[The following are criminally enforceable; See Section 25.07 of the Texas Penal Code:]

a) Committing family violence;

b) Communicating:

1.] Directly with a member of the family or household in a threatening or harassing manner;

2.] A threat through any person to a member of the family or household; and

3.] If the court finds good cause, in any manner with a member of the family or household except through the party’s attorney or a person appointed by the court;

c) Going to or near the residence or place of employment or business of a member of the family or household;

d) Going to or near the residence, child care facility, or school where a child protected under the order normally resides or attends;

e) Engaging in conduct directed specifically toward a person who is a member of the family or household, including following the person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the person; and

f) Possessing a firearm, unless the person is a peace officer actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision.

This subsection conforms to 2001 amendments to the Penal Code that create an offense for possession of a firearm while subject to an active protective order. The same legislation made it illegal to possess a firearm for five years following conviction of a family violence assault punishable as a Class A misdemeanor. See section 46.04, Penal Code. The “official use exemption” for on-duty peace officers subject to a protective order mirrors the exception provided under federal law. 18 U.S.C. 922(a).

3.) In an order under Subsection (b)(3) or (4), the court shall specifically describe each prohibited location and the minimum distances from the location, if any, that the party must maintain. This subsection does not apply to an order in which Section 85.007 applies (which allows a court to exclude the specific locations of the applicant upon request).
SUSPENSION OF CONCEALED HANDGUN LICENSE – SECTION 85.022(D)

In a protective order, the court may suspend a license to carry a concealed handgun that is held by a person found to have committed family violence.

The Texas Government Code, Section 411.172(13) already restricts eligibility for a concealed handgun license to a person who "is not currently restricted under a court protective order or subject to a restraining order affecting the spousal relationship…"

In addition, Texas Penal Code, Section 46.06(a)(5) states that a person commits an offense if the person sells, rents, leases, loans, or gives a handgun to any person knowing that an active protective order is directed to the person to whom the handgun is to be delivered.

Finally, Title 18, U.S.C.A., Section 922 also prohibits from possessing any firearm or ammunition any person who is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person.

DURATION OF PROTECTIVE ORDER - SECTION 85.025

Since 1999, the maximum duration of a protective order has been two years, or until the second anniversary of the date the order was issued.

The 76th Legislature also provided the Respondent with the right to request a review of the protective order after one year has expired:

Not earlier than the first anniversary of the date on which the order was rendered, a person who is the subject of a protective order may file a motion requesting that the court review the protective order and determine whether there is a continuing need for the order. After a hearing, if the court finds there is a continuing need for the protective order, the protective order remains in effect until the date the order expires. If the court finds there is no continuing need for the protective order, the court shall order that the protective order expire on a date set by the court.

If a person who is the subject of a protective order is confined or imprisoned on the date the protective order would expire, the period for which the order is effective is extended, and the order expires on the first anniversary of the date the person is released from confinement or imprisonment.

WARNING ON PROTECTIVE ORDER - SECTION 85.026

In addition to the standard warnings below, all protective orders must contain the following language:

“IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A FIREARM OR AMMUNITION.”

1.) Each protective order issued under this subtitle, including a temporary ex parte order, must contain the following statement printed in bold-faced type, capital letters or underlined:

“A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF AS MUCH AS $500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH.”

2.) Each protective order issued under this subtitle, except for a temporary ex parte order, must contain the following statement printed in bold-faced type or in capital letters:
“A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS $4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS.”

3.) Each protective order issued under this subtitle, including a temporary ex parte order, must contain the following statement printed in bold-faced type or in capital letters:

“NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER.”

CHAPTER 86. LAW ENFORCEMENT DUTIES RELATING TO PROTECTIVE ORDERS

ADOPTION OF PROCEDURES BY LAW ENFORCEMENT AGENCY - SECTION 86.001

1.) To ensure that law enforcement officers responding to calls are aware of the existence and terms of protective orders issued under this subtitle, each law enforcement agency shall establish procedures in the agency to provide adequate information or access to information for law enforcement officers of the names of each person protected by an order issued under this subtitle and of each person against whom protective orders are directed.

2.) A law enforcement agency may enter a protective order in the agency’s computer records of outstanding warrants as notice that the order has been issued and is currently in effect. On receipt of notification by a clerk of court that the court has vacated or dismissed an order, the law enforcement agency shall remove the order from the agency’s computer record of outstanding warrants.

NOTIFICATION OF SUSPENSION OF CONCEALED HANDGUN LICENSE – SECTION 85.042

The clerk of the court issuing an original or modified protective order under Section 85.022 that suspends a license to carry a concealed handgun shall send a copy of the order to the appropriate division of the Department of Public Safety at its Austin headquarters. On receipt of the order suspending the license, the department shall:

1. Record the suspension of the license in the records of the department;
2. Report the suspension to local law enforcement agencies, as appropriate; and
3. Demand surrender of the suspended license from the license holder.
DUTY TO ENTER INFORMATION INTO STATEWIDE LAW ENFORCEMENT INFORMATION SYSTEM – SECTION 86.0011

On receipt of an original or modified protective order, a law enforcement agency shall immediately, but not later than the 10th day after the date the order is received, enter the required information into the Texas Crime Information Center at DPS.

The law enforcement agency with jurisdiction over the protected person is charged with the duty of registering the order with T.C.I.C. See §85.042(a).

DUTY TO PROVIDE INFORMATION TO FIREARMS DEALERS - SECTION 86.002

1.) On receipt of a request for a law enforcement information system record check of a prospective transferee by a licensed firearms dealer under the Brady Handgun Violence Prevention Act, 18 U.S.C. Section 922, the chief law enforcement officer shall determine whether the Department of Public Safety has in the department’s law enforcement information system a record indicating the existence of an active protective order directed to the prospective transferee.

2.) If the department’s law enforcement information system indicates the existence of an active protective order directed to the prospective transferee, the chief law enforcement officer shall immediately advise the dealer that the transfer is prohibited.

COURT ORDER FOR LAW ENFORCEMENT ASSISTANCE UNDER FINAL ORDER - SECTION 86.003

On request by an applicant obtaining a temporary ex parte protective order that excludes the respondent from the respondent’s residence, the court granting the temporary order shall render a written order to the sheriff, constable or chief of police to provide a law enforcement officer from the department of the sheriff, constable, or chief of police to:

1.) Accompany the applicant to the residence covered by the order;

2.) Inform the respondent that the court has ordered that the respondent be excluded from the residence;

3.) Protect the applicant while the applicant takes possession of the residence; and

4.) Protect the applicant if the respondent refuses to vacate the residence while the applicant takes possession of the applicant’s necessary personal property.

COURT ORDER FOR LAW ENFORCEMENT ASSISTANCE UNDER TEMPORARY ORDER - SECTION 86.004

On request by an applicant obtaining a final protective order that excludes the respondent from the respondent’s residence, the court granting the final order shall render a written order to the sheriff, constable or chief of police to provide a law enforcement officer from the department of the sheriff, constable, or chief of police to:

1.) Accompany the applicant to the residence covered by the order;

2.) Inform the respondent that the court has ordered that the respondent be excluded from the residence;

3.) Protect the applicant while the applicant takes possession of the residence and the respondent takes possession of the respondent’s necessary personal property; and

4.) If the respondent refuses to vacate the residence:
a) Remove the respondent from the residence; and

b) Arrest the respondent for violating the court order.

**PROTECTIVE ORDER FROM ANOTHER JURISDICTION - SECTION 86.005**

To ensure that law enforcement officers responding to calls are aware of the existence and terms of a protective order from another jurisdiction, each law enforcement agency shall establish procedures in the agency to provide adequate information or access to information for law enforcement officers regarding the name of each person protected by an order rendered in another jurisdiction and of each person against whom the protective order is directed.

**CHAPTER 88. Uniform Interstate Enforcement of Protective Orders Act**

**SHORT TITLE - SECTION 88.006**

This chapter should be cited by the title, “Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.”

**DEFINITIONS - SECTION 88.002**

In this chapter, a "foreign protective order" means an injunction or other order issued by a tribunal of another state to prevent an individual from engaging in violent or threatening acts or harassing, contacting or communicating with, or being in physical proximity to another individual. "State" includes a military tribunal of the United States, an Indian tribe or band, and an Alaskan native village that has jurisdiction to issue protective orders.

**JUDICIAL ENFORCEMENT OF ORDER – SECTION 88.003**

(a) A tribunal of this state must enforce all terms of a foreign protective order, including a term that is not authorized by the laws of this state but for this section. Procedures of this state for the enforcement of protective orders are controlling.

(b) Provisions governing the possession of and access to a child are enforceable if entered in accordance with the issuing state’s jurisdictional requirements.

(c) Provisions relating to child support are enforceable if issued in accordance with the jurisdictional requirements of Chapter 159 and the federal Full Faith and Credit for Child Support Orders Act, 28 U.S.C. Section 1738B, as amended.

(d) A foreign protective order is valid if the protected individual and the respondent are named; is currently in effect; was rendered by a tribunal with jurisdiction over the parties and the subject matter; and the respondent was given reasonable notice and an opportunity to be heard before the tribunal issued the order or, in the case of an ex parte order, within a reasonable time after the order was rendered.

(e) A protected individual seeking enforcement of a foreign protective order establishes a prima facie case for validity by presenting an order valid on its face.

(f) Failure to meet any of the requirements in subsection (d) constitutes an affirmative defense to enforcement of the foreign protective order.
(g) Provisions of a mutual foreign protective order that favor a respondent will only be enforced if the respondent filed a written pleading and the tribunal of the issuing state made specific findings in favor of the respondent.

(e) Registration is not required for the enforcement of a valid foreign protective order.

Title 5. The Parent-Child Relationship and the Suit Affecting The Parent-Child Relationship

NONJUDICIAL ENFORCEMENT OF ORDER – SECTION 88.004

(a) Upon determining probable cause exists that a foreign protective order is valid and that the order has been violated, law enforcement officers must enforce the foreign protective order as if a court of this state issued it. Probable cause is established if the protected individual presents a foreign protective order that identifies both the protected individual and the respondent and, on its face, is currently in effect.

(b) A foreign protective order may be on paper or stored in an electronic medium. Presentation of a certified copy of a protective order is not required for enforcement.

(c) If a copy of the order is not available, the law enforcement officer may determine that there is probable cause to believe that a valid order exists by relying on any relevant information.

(d) If an order cannot be enforced because the respondent has not been notified or served with the order, the law enforcement officer shall inform the respondent of the order, make a reasonable effort to serve the order and allow the respondent a reasonable opportunity to comply before enforcing the order.

CHAPTER 105 Settings, Hearings and Orders

(NEW) H.B. 227, CONTENTS OF FINAL ORDER-SEC. 105.006:
Authorizes peace officers to use reasonable efforts to enforce a final child custody order issued under 105.006, Family Code, provides immunity if officer acts in good faith and provides criminal penalties for a person who requests enforcement of an order the person knows is no longer valid.

REGISTRATION OF PROTECTIVE ORDER – SECTION 88.005

An individual may register a foreign protective order by presenting a certified copy of the order and an affidavit certifying that the order is still in effect to the law enforcement agency responsible for the registration of protective orders with D.P.S., or by sending it directly to D.P.S. A fee may not be charged for registration of a foreign protective order.

IMMUNITY – SECTION 88.006

All governmental officials acting in an official capacity are immune from civil and criminal liability for an act or omission done in good faith arising from the registration or enforcement of a foreign protective order or the detention or arrest of a person alleged to have violated a foreign protective order.
(NEW) S.B. 1665, CHAPTER 262 FAMILY CODE-SEC. 269.009:
PROCEDURES IN SUIT BY GOVERNMENTAL ENTITY TO PROTECT HEALTH AND SAFETY OF CHILD

Authorizes an employee or a volunteer with a law enforcement agency, who successfully completes a background and criminal history check to assist in providing temporary care of a child who is taken into possession by a governmental entity without a court order until more permanent arrangements can be made.

THE TEXAS GOVERNMENT CODE

PROTECTIVE ORDER REGISTRY - SECTION 411.042

As of January 1, 1996, the Texas Department of Public Safety began collecting information on all active protective orders issued and maintaining a data bank of all pertinent information regarding the protective order. This database is kept by the Texas Crime Information Center (TCIC), which then registers the protective orders with the National Crime Information Center (NCIC) maintained by the FBI. Law enforcement agencies nationwide are able to check on the existence and terms of protective orders, which have been entered into NCIC. This assists with compliance of the federal Violence Against Women Act provision mandating that protective orders issued in one state are valid and enforceable in any other state.

All gun shop owners and individuals are required to check with the DPS Protective Order Registry to verify whether or not a protective order exists against the person seeking a gun.

(NEW) SECTION 552-CONFIDENTIALITY OF CERTAIN INFORMATION IN A CRIME VICTIMS IMPACT STATEMENT.

The name, social security number, address, telephone number and any other identifying information in a victim impact statement must be kept confidential.

PUBLIC INFORMATION ACT EXCEPTION: FAMILY VIOLENCE SHELTER CENTER AND SEXUAL ASSAULT PROGRAM INFORMATION – SECTION 552.136

Identifying information of current and former clients, employees, volunteers, donors and board members of family violence shelter centers and sexual assault programs are exempt from disclosure under the Public Information Act (formerly the Open Records Act). Current and former client records relating to the provision of services, including counseling and sheltering, as well as records relating to the location or physical layout of a shelter is exempt.
OTHER RELEVANT TEXAS LAW

LAW ENFORCEMENT TRAINING – OCCUPATION CODE, SECTIONS 1701.253

Peace officers must receive training every 24 months in family violence (among other crimes, such as child abuse and sexual assault), unless it is determined “to be inconsistent with the officer’s assigned duties.”

Beginning September 1, 2001, as part of the current training on family violence officers are required to have, the curriculum must include instruction in “preventing dual arrest whenever possible and conducting a thorough investigation to determine which person is the predominant aggressor when allegations of family violence from two or more persons are received arising from the same incident.”

Training must now be conducted on crime victims’ rights and the duty of law enforcement officers to ensure that a victim is afforded those rights.

FATALITY REVIEW TEAM – HEALTH AND SAFETY CODE, CHAPTER 672

Counties may establish a fatality review team (modeled after child fatality review teams) to investigate adult intentional fatalities, particularly domestic violence homicides and suicides. This statute provides for confidentiality of information obtained by team members as well as civil and criminal liability for disclosure of this information or these records.

INTERNMENT OF A VICTIM OF DOMESTIC VIOLENCE - TEXAS PROBATE CODE, SECTION 525

When a surviving spouse is suspected in the death of a family member, the court can order the burial plans be the privilege of the remaining family members of the deceased and not at the discretion of the suspect. If an executor of the deceased person’s will, or the next of kin of the deceased, files an application under this section, the court may prohibit the surviving spouse from having control over the burial. Any application under this section must be under oath and must establish whether:

- The deceased died with or without a will;
- The surviving spouse is alleged to be a principal or accomplice in a willful act that resulted in the death of the deceased; and
- Good cause exists to limit the right to the surviving spouse to control the burial and internment or cremation of the deceased spouse.

NEW DRIVER’S LICENSE NUMBER: TRANSPORTATION CODE - SEC. 521.275

When presented with a court order stating that the applicant has been a victim of domestic violence, the Texas Department of Transportation must issue a new driver’s license number or personal identification number.

(NEW) S.B. 319-DEATH OR INJURY TO AN UNBORN CHILD: CIVIL PRACTICE AND REMEDIES CODE-SEC. 71.001

Authorizes civil remedies for the death or injury to an unborn child. Defines individual in this section and in Section1.07, Penal Code, as an unborn child at every stage of gestation from fertilization until birth.

(NEW) S.B. 92- RESIDENTIAL TENANT’S RIGHT TO SUMMON POLICE OR EMERGENCY ASSISTANCE: PROPERTY CODE-SEC. 92.

Prohibits a landlord from imposing penalties for, or otherwise prohibiting or limiting a tenant’s right to, call for police or other emergency assistance in response to family violence. Also prohibits the landlord from requiring the tenant to waive these rights in order to be eligible to rent. Effective 6/20/03.
To Protect and Serve:
Law Enforcement’s Response to Family Violence

Attachment S
Family Violence Call Dispatchers List
Family Violence Call
Dispatchers List

1. Dispatcher should give family violence calls the highest priority and the same priority as any other life threatening call.

2. Whenever possible and consistent with department policy, the dispatcher should assign a back-up unit.

3. The dispatcher receiving a family violence call should attempt to keep the caller on the telephone to elicit as much of the following information as possible, and to relay the appropriate information to the responding officers:

During the initial call for assistance, the dispatcher should use these questions as a guide

(a) Where is the emergency?

(a) What address? What apartment number?

(b) Who am I speaking to?

(c) What is your phone number in case we get cut off?

(d) What has happened?

(e) Is anyone hurt? Is an ambulance or EMS needed?

(f) Are you the victim? If no, are you a witness?

(g) Is the suspect present?

(h) What is his/her name?

(i) What type of vehicle is the suspect driving?

(j) Describe the suspect including exact location in the building if known and, if not present, his/her expected whereabouts.

(k) Are weapons involved? What kind?

(l) Where are the weapons located?

(m) Is the suspect under the influence of drugs or alcohol? What kind?

(n) Are children present?

(o) Are there previous incidents of domestic violence involving the suspect and victim?

(p) Have the police been to this address before? If yes, how many times?
(q) Is there a protective order in effect?
(r) Is the suspect on probation or parole?
(s) Is there anything else you can tell me?

4. When the officers indicate that they are in position to meet with the caller, the dispatcher should instruct the caller to meet with the officers at the entrance. If the caller has hung up, the dispatcher should call back and ask the caller to allow entry by the officers.

5. The dispatcher should continue to update the responding officers as the information changes, until such time as the officers have contact with the victim.

6. No dispatcher or 911 operator, in speaking with a victim of family violence, should inquire as to the victim's desire to "prosecute," or "press charges." Any comment or statement which seeks to place the responsibility for enforcement action with the victim is inappropriate.

The safety of family violence victims, whether the threat of violence is immediate or remote, should be the primary concern of 911 operators. The 911 operators should advise the victim to ensure the victim’s safety. For example, a victim could wait for officers at a neighbor's house or remain on the 911 line.
To Protect and Serve:
Law Enforcement’s Response to Family Violence

Attachment T
Family Violence Statistics in Texas
Protecting Battered Women Saves the Lives of Men
Family Violence Statistics in Texas
For more information, call the Texas Council on Family Violence at 512/794-1133
Updated August 7, 2002

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</thead>
<tbody>
<tr>
<td>Family violence incidents(^1)</td>
<td>183,440</td>
<td>180,385</td>
<td>175,282</td>
<td>177,176</td>
<td>175,725</td>
<td>181,773</td>
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<tr>
<td>Women killed by intimate male partners(^2)</td>
<td>117</td>
<td>113</td>
<td>104</td>
<td>99</td>
<td>110</td>
<td>102</td>
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</table>

*Texas Department of Public Safety*

\(^1\) TDPS reports on a calendar year basis, January 1 - December 31, 2001.

\(^2\) Defined as husbands, ex-husbands, common-law husbands and boyfriends.

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</thead>
<tbody>
<tr>
<td>Adults sheltered</td>
<td>11,257</td>
<td>12,589</td>
<td>11,841</td>
<td>11,423</td>
<td>11,872</td>
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<td>Children sheltered</td>
<td>17,629</td>
<td>16,838</td>
<td>15,779</td>
<td>15,066</td>
<td>15,188</td>
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<tr>
<td>Adults receiving nonresidential services (i.e., counseling, legal advocacy, etc.)</td>
<td>33,403</td>
<td>32,267</td>
<td>29,362</td>
<td>28,196</td>
<td>25,555</td>
</tr>
<tr>
<td>Children receiving nonresidential svcs</td>
<td>14,480</td>
<td>12,653</td>
<td>10,330</td>
<td>10,104</td>
<td>8,200</td>
</tr>
<tr>
<td>Adults denied shelter (due to lack of space)</td>
<td>19%</td>
<td>16%</td>
<td>23%</td>
<td>23%</td>
<td>24%</td>
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<tr>
<td>Hotline calls answered</td>
<td>184,245</td>
<td>156,518</td>
<td>162,809</td>
<td>157,248</td>
<td>136,008</td>
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<tr>
<td>Referrals and information provided to batterers</td>
<td>6,923</td>
<td>7,332</td>
<td>7,911</td>
<td>8,601</td>
<td>11,035</td>
</tr>
</tbody>
</table>

*Texas Department of Human Services, 2001*

In Texas
- Batterers between the ages of 20 and 24 accounted for the highest number of family violence incidents in Texas in 2000, with the second highest being batterers between the ages of 25 and 29. — Texas Department of Public Safety
- The majority of victims of family violence in Texas in 2000 were between the ages of 20 and 24. — Texas Department of Public Safety
- In 2000, there were more than 615 Texas law enforcement officers assaulted during the course of reported family violence incidents. — Texas Department of Public Safety
- The most common weapon involved in family violence cases in 2000 in Texas was physical force through the use of hands, feet and fists. That accounted for 77 percent of the incidents. — Texas Department of Public Safety
- Of all the women killed in 1997 in Texas, 35% were murdered by their intimate male partners. This is higher than the national average of 28% reported by the FBI. — Texas Department of Public Safety

National Prevalence
- The National Domestic Violence Hotline (NDVH) has received more than 950,000 calls since February 1996. — NDVH, February, 2003.
- Approximately 1.5 million women are raped and/or physically assaulted by an intimate partner each year in the United States. — National Institute of Justice, July 2000

Updated 5/03
Estimates range from 960,000 incidents of violence against a current or former spouse, boyfriend, or girlfriend per year to 4 million women who are physically abused by their husbands or live-in partners per year. —Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends and Girlfriends, U.S. Department of Justice, March, 1998

**Family Violence Statistics**

For more information, call the Texas Council on Family Violence at 512/794-1133

- **While women are less likely than men to be victims of violent crimes overall, women are 5 to 8 times more likely than men to be victimized by an intimate partner.** —Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends and Girlfriends, U.S. Department of Justice, March, 1998

- **Violence by an intimate accounts for about 21% of violent crime experienced by women and about 2% of the violence experienced by men.** —Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends and Girlfriends, U.S. Department of Justice, March, 1998

- **In 1994, women separated from their spouses had a victimization rate 1 1/2 times higher than separated men, divorced men, or divorced women.** —Sex Differences in Violent Victimization, 1994, U.S. Department of Justice, September 1997

**Homicide**

- **On average, more than three women are murdered by their husbands or boyfriends in this country every day. In 1998, approximately 1,830 murders were attributed to intimates; nearly three out of four of the murder victims (1,320 total) were women.** - U.S. Department of Justice, Intimate Partner Violence, May 2000

- **In 1996, among all female murder victims in the U.S., 30% were slain by their husbands or boyfriends.** —Uniform Crime Reports of the U.S. 1996, Federal Bureau of Investigation, 1996

- **31,260 women were murdered by an intimate from 1976-1996.** —Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends, and Girlfriends, U.S. Department of Justice, March 1998

**Children**

- **Studies show that child abuse occurs in 30-60% of family violence cases that involve families with children.** —“The overlap between child maltreatment and woman battering.” J.L. Edleson, Violence Against Women, February, 1999

- **A child’s exposure to the father abusing the mother is the strongest risk factor for transmitting violent behavior from one generation to the next.** —Report of the American Psychological Association Presidential Task Force on Violence and the Family, APA, 1996

- **Forty percent of teenage girls age 14 to 17 report knowing someone their age who has been hit or beaten by a boyfriend.** —Children Now/Kaiser Permanente poll, December, 1995

**Stalking**

- **It is estimated that 503,485 women are stalked by an intimate partner each year in the United States.** —National Institute of Justice, July 2000

- **Seventy-eight percent of stalking victims are women. Women are significantly more likely than men (60 percent and 30 percent, respectively) to be stalked by intimate partners.** —Center for Policy Research, Stalking in America, July 1997

**Domestic Violence and the Workplace**

- **Family violence costs the nation from $5 to $10 billion annually in medical expenses, police and court costs, shelters and foster care, sick leave, absenteeism, and non-productivity.** —Medical News, American Medical Association, January, 1992

- **Husbands and boyfriends commit 13,000 acts of violence against women in the workplace every year.** —Violence and Theft in the Workplace, U.S. Department of Justice, July, 1994

- **The majority of welfare recipients have experienced domestic abuse in their adult lives and a high percentage are currently abused.** —Trapped by Poverty, Trapped by Abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare, The Taylor Institute, April, 1997

Updated 5/03
WASHINGTON (Reuters) - Efforts to protect women in the United States against domestic violence has had the ironic effect of reducing the murder rate of men by their partners by almost 70 percent over the past 24 years, according to new figures released on Thursday.

The data, compiled by James Alan Fox, a professor of criminal justice at Northeastern University, show homicides by women of their spouses, ex-spouses or boyfriends has declined steadily to 424 in 1999 from 1,357 in 1976.

Fox compiles the figures every year from FBI and other data sources for the Bureau of Justice Statistics at the U.S. Department of Justice. He was due to post the 1999 data on the Bureau's Internet site later on Thursday.

The Internet address is: (http://www.ojp.usdoj.gov/bjs/homicide/intimates.htm).

Homicides of women by their male partners has also declined in the same period but by a far less dramatic degree, to 1,218 in 1999 from 1,600 in 1976 -- a 24 percent reduction.

Fox and other researchers attribute the 69 percent fall in the number of male victims of domestic homicides to the availability of alternatives for battered women.

``We have given women alternatives, including hotlines, shelters, counseling and restraining orders. Because more battered women have escape routes, fewer wife batterers are being killed," Fox told Reuters in an interview.

Women who in the past may have felt the only way to end their own victimization was to kill their partner now have other options. The greater availability and reduced stigma of divorce and the improved economic independence of women may also have contributed to the decline.

Alfred Blumstein of Carnegie-Mellon University said, ``Our society has been paying more attention to protecting women from domestic violence and this has produced a major decline in male victims of homicide."

**80 PERCENT OF MALE VICTIMS ABUSED PARTNERS**

He cited a 1999 study sponsored by the National Consortium on Violence Research which suggested that the greater the availability of hotlines and other resources for battered women, the greater the decline in homicide of their male partners.

That study found that four in five male domestic homicide victims had physically abused
their partners prior to the murder. Nearly two-thirds of female murder victims had been abused before they were killed.

About one-third of female murder victims in the United States are killed by a domestic partner or boyfriend. Only 4 percent of male murder victims are killed by an intimate.

Breaking down the 1999 figures by race, Fox found the greatest decline was among black male murder victims. In 1976, 846 black males were killed by their partners. In 1999, that figure was down to 190.

Blumstein said part of that decline might reflect the fact that so many young black males of the type who might have the propensity to commit domestic violence had been incarcerated.

Among whites, the domestic murder rate of women by men was about the same in 1999 as it had been in 1976. The murder rate of men by women had fallen to 221 in 1999 from 493 in 1976.

Looking at the weapons used to commit such murders, the data showed the major decline among men and women has been in the use of guns. Non-gun murders of men by women has fallen by about 35 percent, while gun murders fell by 73 percent between 1976 and 1998. But while gun murders of women by men fell by 28 percent, non-gun murders rose by 6 percent.

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To Protect and Serve:
Law Enforcement’s Response to Family Violence

Attachment U
Dynamics of Family Violence
Progressive Effects of Abuse
Excuses and Tactics Used by Batterers
Some Barriers to Leaving an Abusive Relationship
PROGRESSIVE EFFECTS OF ABUSE

1. **At first victims stay because they love or care about their abusers.** Victims believe that the violence is temporary and/or caused by unusual circumstances. They hope that the violence will soon stop. (This hope is typically reinforced by periods of time in which there is no abuse and their partner is loving or at least civil.)

2. **The belief that victims should understand their attackers needs and help them** stop the abuse. For women especially, this is part of the spousal role. She may believe that her inability to help her partner means that she is failing in the role of nurturer.

3. **The value of holding the family together** may be more important than the victim’s personal physical or emotional pain, fear of injury, etc. Victims may feel pressure/ responsibility from family, religion, and others to “hold” family together.

4. **Feelings of personal incompetence** such as believing that one must have a partner to get by in the world, even if they are abusive.

5. **Self-blame.** Victims believe that they are in part responsible for the abuse. Their abuser punishes them for their inability to act properly or to meet the abuser’s expectations. **NOTE:** Self-blame is a recognized side effect of repeated traumatic stress.

6. **Increasing mental and physical exhaustion due to unpredictability of abuse.** Victims experience increased confusion and difficulty in thinking clearly as a result of the pressure of living with someone who changes from kind to cruel without warning. Victims never know what’s going to set the abuser off next. They live in a continual state of alert.

7. **Growing self-doubt about their value as a person,** their judgement, capabilities, and attractiveness as the effects of abuse eat away at their self-esteem. (Maybe he’s right, maybe I’m exaggerating and anyway, how could I manage on my own?” “How will I ever find anybody else?”, etc)

8. **Need to defend the abuser.** Battering reduces faith in oneself and increases isolation. Victims come to feel that they cannot survive without the abuser. At this point any threat to the abuser may be perceived as a threat to them, and the victim may act to protect the abuser.

9. **Belief that all men are abusive.** Growing up in a culture in which physical aggressiveness is considered manly reinforces this. It may also come from growing up with an abusive parent(s).

10. **Belief in omnipotence of abuser** caused by abuser’s control tactics. (This may be stronger if the victim has separated and been forced or enticed into returning only to have abuse continue).

11. **Terror** induced by prolonged abuse.

“**There is no better way of making people compliant then beating them up on an intermittent basis.**”

Richard Gelles, Director of the Family Violence Research Program, University of Rhode Island
EXCUSES AND TACTICS USED BY BATTERERS

Family violence offenders may try to use many excuses or tactics to shift the focus from them. The responding law enforcement officer(s) should try to identify these tactics and be careful not to allow the offender to use you to further control and abuse his/her partner.

- **Denial:** refusing to admit violent behavior. “I didn’t do anything.” “She bruises easily.” “She did it to herself.”
- **Minimization:** admitting less than what actually happened. “I just gave her a little push.” “It was only a love tap.” “I didn’t hurt her that bad.”
- **Focusing on intentions:** defending behavior by focusing on good intentions. “She was out of control and I didn’t want her to hurt herself.” “She was hysterical and I had to restrain her.”
- **Victim blaming:** the most common excuse used; the batterer focuses on the victim’s character defects with hopes that law enforcement will focus on the victim instead of the batterer. “I caught her in bed with another man.” “She is a bad mother.” “She is an alcoholic.”
- **Loss of control:** the offender does not take responsibility for what happened. “I exploded, I don’t remember what happened.” “I blacked out.” “I was intoxicated.”
- **Provocation:** the offender claims that the victim drove him to commit the offense. “She made me do it.” “She knew I was stressed and she kept on pushing.”
- **Lack of money and time:** often batterers use the lack of time and money as an excuse to participate in treatment.
- **Distortion of communication:** convinces his partner that he is a changed man and then has partner talk to law enforcement, the judge, the county attorney, etc.

## TACTICS OF POWER AND CONTROL USED BY BATTERERS

- ✔️ Lying
- ✔️ Manipulation
- ✔️ Alcohol and drugs
- ✔️ Hiding true feelings
- ✔️ Screaming
- ✔️ Breaking things
- ✔️ Denial of abusive behavior
- ✔️ Isolates victim from family and friends
- ✔️ Doesn’t come home
- ✔️ Power trips
- ✔️ Attempting suicide
- ✔️ Public/Private personality
- ✔️ Silence
- ✔️ Focus on sex
- ✔️ Obsessive behavior
- ✔️ Intense jealousy
- ✔️ Following victim
- ✔️ Accusing of affairs
- ✔️ Taking car keys
- ✔️ Laughing at you
- ✔️ Threatening divorce
- ✔️ Punching holes in walls
- ✔️ Driving recklessly
- ✔️ Not allowing access to money
- ✔️ Not allowing victim to maintain employment
Some Barriers to Leaving an Abusive Relationship

1. **Financial dependence** on the abuser makes it difficult for the victim to imagine how to survive on her own. If there are children, the victim fears that they will be deprived.

2. **Lack of an available support system** to assist victims in recognizing and escaping abuse. Friends/family who have never seen the abuser’s negative side may not believe the victim at first or may minimize the situation. Friends/family who have tried to help in the past only to see the victim return to the abuser may be disappointed or angry and less inclined to offer help again.

3. **Failure by societal institutions to understand spouse abuse**, to take the problem seriously and to take appropriate actions.
   
   **Examples:** Clergy who focus on sanctity of marriage and emphasize maintaining the relationship at all cost. Counselors who subtly or overtly side with the abuser. Law enforcement officers who minimize and do not arrest abusers or do not treat victims with respect. Doctors who do not address obvious signs of abuse in their patients.

4. **Criminal Justice System Response**
   
   The victim may have been arrested in the past for assault, public intoxication, hot checks, etc. It appears as if the abuser never gets any real consequences. Victim may have been told by responding law enforcement, that if they have to come back they are both going to jail

5. **Fear due to Increased threats by abusers when victims try to leave.** Threats by abuser to kill the victim, children or other family members, and/or to commit suicide. This fear is reinforced by knowledge of other battered women who were killed after separating from their abusers.

6. **Love**-Loves the abuser, but wants the violence to stop. Abuser tells victim that he loves her so much he cannot live without her. She is convinced that she can change him.

7. **Children** feels the children need their father, children may blame her if they leave, afraid of losing custody of the children

8. **Immigrant Victims**-When immigrants, especially undocumented ones, experience family violence, they often have additional barriers to leaving the abusive relationship. The batterer may tell the victim, “if you leave I will call INS or the police and have you deported.” This threat, combined with language, cultural, religious and economic barriers makes it unlikely that immigrant victims of family violence will approach law enforcement for help. Immigrant women may also fear and distrust law enforcement because the police in their country of origin were abusive and corrupt.
To Protect and Serve:
Law Enforcement’s Response to Family Violence

Attachment V
Victim’s Assistance

Five Things to Say to a Victim of Family Violence

Personal Safety Plan (English/Spanish)
Five Things to Say to a Victim of Family Violence Staying with or Returning to an Abuser

Hundreds of battered women who left abusive relationships were asked what people said that made the most difference to them. The following five items had the greatest impact on their lives.

1. I’m afraid for your safety.
2. I’m afraid for the safety of your children.
3. It will only get worse.
4. I/We are here for you when you are ready to talk.
5. You do not deserve to be abused!
Domestic Violence

Personal Safety Plan

Checklist

What you need to take when you leave

Identification
- Driver's License
- Birth Certificate
- Children's Birth Certificates
- Social Security Cards

Financial
- Money and/or credit cards (in your name)
- Checking and/or savings account books

Legal Papers
- Protective Order
- Lease, rental agreement and house deed
- Car registration and insurance papers
- Health and life insurance papers
- Medical records for you and your children
- School records
- Work permits/Green Card/Visa
- Passport
- Divorce and custody papers
- Marriage license

Other
- Medications
- House and car keys
- Valuable jewelry
- Address book
- Pictures and sentimental items
- Change of clothes for you and your children
- Other

Emergency numbers

Police Emergency Number 911

National Domestic Violence Hotline
1/800/799-SAFE (7233)
1/800/787-3224 (TTY) for the Deaf

Women's Advocacy Project
Family Violence Hotline
1/800/374-HOPE (4673)

Texas Department of Human Services
Abuse Hotline
1/800/252-5400

Telephone numbers in your area

Police Department

County Attorney's Office

Battered Women's Shelter Hotline

Hospital

Taking precautions and making plans to stay safe
You have a right to be safe!
No one deserves to be hit or threatened. If you are being hurt by someone you love, make plans and take precautions to keep yourself and your children safe. Here are some suggestions that have helped other people in situations like yours.

Safety in your own residence
A. If you stay in your home, lock your windows and change the locks on your doors as soon as possible.
B. Develop a safety plan with your children for when you are not with them.
C. Inform your child’s school, day care, etc., about who has permission to pick up your child.
D. Inform neighbors and the landlord that your partner no longer lives with you, and they should call the police if they see him/her near your home.
E. Never call the abuser from your home, the abuser may find out where you live. Never tell the abuser where you live.
F. Request an unlisted/unpublished number from the telephone company.

Safety on the job and in public
A. Decide who at work you will inform of your situation. Include the security officers at work (if possible, provide them with a picture of your batterer).
B. When at work, if possible, have someone screen your telephone calls.
C. Have someone escort you to and from your car, bus, or train.
D. If at all possible, use a variety of routes to come and go from home.

Safety during an explosive incident
A. If there is an argument, try to be in a place that has an exit and not in a bathroom, kitchen, or room that may contain weapons.
B. Practice getting out of your home safely. Identify which doors, windows, elevator, or stairwell to use.
C. Pack a bag, and have it ready at a friend’s or relative’s house.
D. Identify one or more neighbors you can tell about the violence, and ask them to call the police if they hear a disturbance coming from your home.
E. Devise a code word to use with your children, family, friends, and neighbors when you need the police.
F. Decide and plan where you will go if you ever have to leave home.
G. Use your instincts and judgment. In some dangerous situations, give the abuser what he wants to calm him down.

Remember, leaving your batterer is a dangerous time!

Safety with a protective order
A. If you or your children have been threatened or assaulted, you can request a protective order from the District/County Attorney’s Office.
B. Always keep your protective order with you.
C. Call the police if your partner violates the protective order.
D. Inform family members, friends and neighbors that you have a protective order in effect.
E. Think of alternative ways to keep safe if the police do not respond immediately.

Remember, you don’t deserve to be hit or threatened!
Números de emergencia
Numero de Emergencia de la Policía
911
Línea Nacional Sobre La Violencia Doméstica
1/800/799-7233
1/800/787-3224 (TTY)

Proyecto de Abogacía de Mujeres - Línea de 24 horas sobre Violencia Familiar (Women’s Advocacy Project - Family Violence Hotline)
1/800/374-4673

Departamento de Servicios Humanos de Tejas - Línea de Abuso de 24 horas
1/800/252-5400

Números de teléfono importantes en su area:
Departamento de Policía 911

Oficina de Procurador del Distrito o Condado
Línea de 24 horas del Albergue (casa de refugio)

Hospital

Licencia de manejar
Certificado de nacimiento
Certificados de nacimiento de los niños
Tarjetas de Seguro Social

Dinero o tarjetas de crédito (en su nombre)
Talonario de cheques y/o libreta de ahorros

Orden de Protección
Contrato de arrendamiento/propiedad de la casa
Papeles de registración y aseguración de su auto
Papeles de aseguración de salud y vida
Archivos de historias médicas
Archivos de historias escolares
Permisos para trabajar/tarjeta verde/Visa
Pasaporte
Documentos de divorcio/papeles de custodia de los niños
Licencia de matrimonio

Medicinas
Llaves de la casa y del auto
Joyas
Libro de direcciones
Fotográficas y cosas sentimentales
Cambio de ropa para usted y los niños
Otras cosas

El Consejo sobre Violencia Familiar de Tejas
P.O. Box 161810
Austin, Texas 78716
512/ 794-1133
www.tcfv.org
Su seguridad en su propia residencia

A. Si se queda en su hogar, asegúre las ventanas y cambie las cerraduras de las puertas de su casa lo más pronto posible.
B. Mantenga y discuta un plan de seguridad con sus hijos para cuando usted no este con ellos.
C. Informe a la escuela, la guardería, o la persona que cuida a sus hijos sobre quien tiene autorización para recogerlos.
D. Informe a sus vecinos y al propietario de su casa que su compañero ya no vive con usted y que deben llamar a la policía si lo ven cerca de su hogar.
E. Nunca llame al agresor de su hogar porque el agresor podrá descubrir donde vive. Nunca le diga al agresor donde vive.
F. Pida, a la compañía de teléfono, un número de teléfono que sea totalmente privado y que no sea publicado.

Su seguridad en el trabajo y en el público

A. Si se queda en su hogar, asegúre las ventanas y cambie las cerraduras de las puertas de su casa lo más pronto posible.
B. Mantenga y discuta un plan de seguridad con sus hijos para cuando usted no este con ellos.
C. Informe a la escuela, la guardería, o la persona que cuida a sus hijos sobre quien tiene autorización para recogerlos.
D. Informe a sus vecinos y al propietario de su casa que su compañero ya no vive con usted y que deben llamar a la policía si lo ven cerca de su hogar.
E. Nunca llame al agresor de su hogar porque el agresor podrá descubrir donde vive. Nunca le diga al agresor donde vive.
F. Pida, a la compañía de teléfono, un número de teléfono que sea totalmente privado y que no sea publicado.

La seguridad con una orden de protección

A. Si usted o sus hijos han sido amenazados usted puede solicitar una Orden de Protección de la Oficina del Procurador del Distrito o Condado (District/County Attorney).
B. Siempre mantenga la Orden de Protección en su posesión.
C. Llame a la policía si su compañero viola la Orden de Protección.
D. Avísele a su familia, amistades, y a sus vecinos que usted tiene una Orden de Protección en efecto.
E. Piense en alternativas para poder estar segura si la policía no responde inmediatamente.

Su seguridad durante un incidente explosivo

A. Si hay un argumento trate de estar en un sitio que tenga salida y no en un baño, una cocina o en ningún sitio donde hay armas.
B. Practique cómo salir de su casa con seguridad. Identifique qué puertas, ventanas o escaleras serían las mejores.
C. Tenga una maleta preparada y manténgala en casa de un familiar o amistad.
D. Identifique a uno o más vecinos que pueda usted decirles de la violencia y pídales que llamen a la policía si oyen disturbios que vienen de su hogar.
E. Tenga una clave para usar con sus niños, familia, amigos o vecinos para darles a entender que necesita que llamen a la policía.
F. Decida y planeé adónde se irá si tiene que dejar su hogar.
G. Use sus propios instintos y su juicio. Si la situación es muy peligrosa, considere darle al abusador lo que quiera para calmarlo.

Siempre recuerde:
Usted no merece ser golpeada o amenazada

Su seguridad cuando está preparándose a dejar su pareja

A. Abra un cuenta de banco de cheques o de ahorros bajo su propio nombre.
B. Deje dinero, un juego de llaves adicional, copias de documentos importantes, medicinas, y ropa adicional con alguien de confianza.
C. Mantenga un buzón de correo.
D. Determine quién podrá dejarla quedarse con ellos o prestarle dinero.
E. Siempre mantenga el número de la casa de refugio cerca y tenga cambio o una tarjeta de la compañía de teléfono para poder hacer llamadas de emergencia.
F. Si tiene animales domésticos, haga arreglos para dejarlos en un lugar seguro y con una persona de confianza.

Siempre recuerde:
El momento más peligroso es al separarse de su agresor

Siempre recuerde:
Su seguridad en su propia residencia

Siempre recuerde:
Su seguridad durante un incidente explosivo

Siempre recuerde:
La seguridad con una orden de protección

Siempre recuerde:
Su seguridad cuando está preparándose a dejar su pareja

Siempre recuerde:
Su seguridad en el trabajo y en el público

Siempre recuerde:
To Protect and Serve:
Law Enforcement’s Response to Family Violence

Attachment W
Model Policy on Police Officer Domestic Violence
I. PURPOSE
This policy acknowledges that some police officers commit domestic violence against their intimate partners. The purpose of this policy is to establish procedures for handling matters of domestic violence and abuse involving police officers. This policy will provide police executives and officers guidance in addressing incidents where one (or more) party to a possible domestic violence incident is an employee, whether sworn or civilian, of any rank in the department.

Although the language of the policy speaks to police officers, departments are encouraged to apply the principles to all employees whenever appropriate.

II. POLICY
The policy takes a continuum approach, seeking first to educate at all phases of an officer's career, then prevent, or interdict, domestic abuse situations early on in order to reduce victimization of the partner and increase the chances of officer career stability.

Where incidents of domestic violence are alleged to have occurred, the department will act quickly to protect the victim, arrest the perpetrator, and conduct parallel administrative and criminal investigations. This policy delineates a position by the department of absolute intolerance (i.e., zero tolerance) of domestic violence. An officer found guilty of domestic violence, either through criminal court or an administrative hearing, shall have his/her police powers revoked.

Once implemented, the policy will apply to past convictions, and existing and future police officer domestic violence crimes.

III. DEFINITIONS
Domestic violence: For the purposes of this policy, refers to any act of violence (threatened or actual) including but not limited to:

* bodily injury or threat of imminent bodily injury
* sexual battery
* physical restraint
* property crime directed at the victim
* violation of a court order of protection, or similar injunction
* death perpetrated by a police officer (on or off duty) or any police department employee upon his or her partner. Partner is defined as any individual with whom the officer:
  * is or was legally married
  * has a child in common
  * is or has cohabitated
  * has or had a dating relationship
  * is specified as such by state law.

Note: Departmental policies concerning all other forms of family violence committed by a police officer should parallel this policy.
IV. PROCEDURES
This policy applies to past convictions for domestic violence, as well as existing and future offenses. In the process of adopting this policy of zero tolerance, departments must review the records of all officers to ensure they are free of domestic violence convictions.

Federal law prohibits police officers who have been convicted of misdemeanor domestic violence crimes from possessing a firearm.

A. Prevention, Education, and Training
The department will adhere to a zero tolerance policy towards police officer domestic violence and violations of the policy will not be tolerated. The department will provide training to officers on domestic violence and the zero tolerance policy throughout all phases of a police officer's career.

1. Prevention Through Collaboration
   a. The department shall collaborate with local domestic violence victim advocacy organizations, coordinating councils, and state domestic violence coalitions in the development of domestic violence training curricula and shall use local advocates in the training of officers.
   b. The department shall collaborate with local and national law enforcement agencies that have already implemented domestic violence training. The information gathered can serve as a guideline for the development of domestic violence training curricula, and experienced officers from these jurisdictions can assist in training within the department.
   c. The department shall provide copies of all departmental protocols and policies on domestic violence to local domestic violence victim advocacy organizations.
   d. The department shall provide training where requested to local domestic violence victim advocacy organizations on the department's domestic violence policies and protocols.

2. Education
   a. Upon implementation of the policy, all Recruit, Patrol, Internal Affairs Officers, Dispatchers/Communications Officers, Field Training Officers, and Administrative Command/Supervisors shall receive instruction on the following issues/topics:
      * General Domestic Violence Training (to include cultural, racial, gender, and same-sex issues)
      * Domestic Violence Dynamics, Tactics and Behavior Patterns
      * Cultural Dynamics and Potential Barriers to Assistance/Intervention
      * Stalking Tactics and Behavior Recognition
      * Warning Signs of Domestic Violence by Police Officers
      * Domestic Violence Response Protocol
      * Command Notification and Reporting Procedures
      * General Domestic Violence Investigation and Evidence Collection
      * Primary or Dominant Aggressor Determination
      * Officer Safety
      * Victim Rights and Safety
      * Confidentiality Issues
      * Ethical Considerations
      * Criminal and Civil Liability
      * Lethality Assessment and Safety Planning
      * Working with Advocates, Collaboration and Assistance
      * Weapons Removal and Seizure—Legal Issues
      * Cross-jurisdictional Policies and Protocol
      * Intra/Interstate Enforcement of Protective Orders
* Federal Stalking, Domestic Violence, Immigration and Gun Control Laws

b. Additional Administrative Command/ Supervisor training related to domestic violence should address the following:

* Department Legal Considerations and Liability
* Media and Public Relations
* Criminal versus Administrative Investigations
* Conducting Lethality/Dangerousness Assessments

3. Training

a. In-Service Training
Departments shall select a series of effective and concise materials on domestic violence for routine dissemination to all personnel. Periodic in-service trainings on domestic violence and stalking shall be held to review policies and discuss their implementation.

b. Roll-Call Training
Officers shall receive regular instruction about domestic violence and stalking during roll call.

4. Program Evaluation
To enhance the effectiveness of the training, departments should work with internal or external research resources to evaluate the training being provided.

B. Early Warning and Intervention

1. Pre-Hire Screening and Investigation

a. Departments shall conduct thorough background investigations of all potential new employees to determine if elder abuse, child abuse, and/or domestic violence issues exist.

b. All candidates shall be asked about past arrests or convictions for elder abuse, child abuse, and/or domestic violence-related incidents and past civil protection orders.

c. Those candidates with a history of perpetrating elder abuse, child abuse or domestic violence shall be screened out at this point in the hiring process.

2. Post-Conditional Offer of Employment

a. The department shall require a psychological examination of all viable candidates to be performed by an experienced psychologist and/or psychiatrist.

b. The psychological screening will focus on indicators of violent or abusive tendencies or behaviors in their background.

3. Post-Hire Intervention
When new officers are hired, the department will offer training that includes families of the recruits to discuss this policy and other issues. Families shall be instructed on whom to call in the department if problems occur.

4. Department Responsibilities

a. The department shall either in response to observed warning signs or at the request of an officer provide non-punitive avenues of assistance to officers, their partners, and other family members before an act of domestic violence occurs.
b. The department shall identify a procedure for making confidential referrals to confidential counseling services either internally or in collaboration with existing community services that have specific expertise in domestic violence.

c. Officers who disclose to any member of the department that they have personally engaged in domestic violence are not entitled to confidentiality. The report of such criminal conduct must be treated as an admission of a crime and shall be investigated both criminally and administratively.

5. Supervisor Responsibilities

a. Demonstration of inappropriate aggressive behaviors while conducting police business shall be documented for consideration by supervisors. These behaviors include the following: stalking and inappropriate surveillance activities, unusually high incidences of physical altercations, injuries, or verbal disputes.

1. Supervisors shall maintain close supervision of officers whose behavior is inconsistent with acceptable standards for on-duty problem resolution.

2. Supervisors shall monitor frequent tardiness and absences.

3. Supervisors shall proactively inquire about all on- or off-duty officer injuries.

4. Supervisors shall immediately make their ranking supervisor aware of any and all such behaviors.

b. Supervisors shall be cognizant of and document all behavior, on or off duty, where officers may be exhibiting signs of possible domestic violence-related problems; including increased use of force during arrests, alcohol and/or drug abuse, increase in controlling behaviors, stalking activity, citizen and fellow officer complaints of unwarranted aggression and verbal abuse, and inappropriate aggression toward animals.

1. Supervisors shall immediately make their ranking supervisor aware of any and all such behaviors.

2. The chief of police shall be informed of such circumstances or concerns in a timely manner through the department's chain of command.

3. Supervisors shall prepare and submit written requests for evaluating an officer's mental and physical well-being by suitable professionals when behaviors or circumstances deem appropriate.

6. Police Officer Responsibilities

a. Officers are encouraged and entitled to seek confidential assistance from the department to prevent a problem from escalating to the level of criminal conduct against an intimate partner.

b. Officers with definitive knowledge of abuse and/or violence involving fellow officers must report such information in a timely manner to their supervisor. Failure to do so will subject the officer to investigation, disciplinary action, and possible sanction and/or criminal charges.

c. All officers shall be aware of possible witness or victim intimidation/coercion. Whenever an officer suspects this is occurring, he/she shall prepare a written report and immediately deliver it to the investigator in charge of the case through the proper chain of command.

d. Officers who engage in threatening, harassing, stalking, surveillance or other such behavior designed to interfere with cases against fellow officers or intimidate witnesses will be subject to investigation, disciplinary action, and possible sanction and/or criminal charges.
e. Officers who fail to cooperate with the investigation of a police officer domestic violence case will be subject to investigation, and possible sanction and/or criminal charges.

f. An officer who falsely reports that a victim of police officer domestic violence has committed a crime (such as child abuse or neglect) will be subject to investigation, and possible sanction and/or criminal charges.

g. An officer who is the subject of a criminal investigation, protective or restraining order related to domestic violence, regardless of jurisdiction, is required to report him/herself to his/her supervisor and provide notice of the court dates, times, appearances, and proceedings in a timely manner.

h. An accused officer who is the subject of any civil protective order proceeding, whether or not the order is issued and regardless of jurisdiction, shall notify his/her supervisor in a timely manner and provide a copy of the order, if issued, to his/her supervisor.

C. Incident Response Protocols

1. Department-wide Response

a. The department shall accept, document, and preserve all calls or reports, including those made anonymously, involving possible police officer domestic violence as "on-the-record" information.

b. All reports of possible criminal activity implicating police officers in domestic violence shall be documented in accordance with the policies governing the handling of all reports of domestic violence by citizens. A criminal incident report shall be completed including details on date, time, location, circumstances, names (if known), officials notified, and actions taken; a case file number shall be assigned and the report filed.

c. A copy of the report detailing the possible criminal activity implicating an officer in domestic violence shall be directed to that officer's immediate supervisor.

d. All such incident reports shall be made available by the department to the involved victim without cost.

2. Communications Response

a. Communications officers/dispatchers shall be instructed to assign top priority to all domestic violence calls, including those that involve or appear to involve a police officer of any department.

b. Communications officers/dispatchers shall document all domestic violence calls received that involve, or appear to involve, a police officer and immediately notify the supervisor, regardless of the involved officer's jurisdiction.

c. Communications officers/dispatchers shall prepare and preserve documentation of the facts and circumstances of the call, including the 911 tape, for use in potential criminal or administrative investigations.

d. Communications officers/dispatchers shall have available current lists of local domestic violence victim advocacy organizations for on-scene supervisors to provide to victims.

3. Patrol Response

a. Upon arrival on the scene of a domestic violence call/incident involving a police officer, the primary patrol unit shall immediately notify dispatch and request a supervisor be sent to the scene, regardless of the involved officer's jurisdiction.
b. If the alleged offender has left the scene and probable cause exists, the responding officers shall
1. search the area as appropriate
2. obtain information from victim, family, and witnesses as to where the offender may have gone
3. seek an arrest warrant.

4. On-Scene Supervisor Response
   a. A supervisor shall report to the scene of all police officer domestic violence situations, regardless of the involved officer's jurisdiction.
   b. The on-scene supervisor shall assume command, ensure that the crime scene is secure and that all evidence is collected, including color photographs. Video documentation of the victim and scene shall be recorded where such resources are available.
   c. In cases where probable cause exists, the on-scene supervisor shall ensure an arrest is made.
   d. If the offender has left the scene, the supervisor shall ensure a search is conducted and an arrest warrant is obtained.
   e. Arrest of both parties involved in a domestic violence incident should be avoided. The supervisor shall ensure that a thorough investigation is conducted and an arrest of the primary aggressor is made in accordance with state law.
   f. Whenever an officer is arrested, the supervisor shall relieve the accused officer of his/her service weapon regardless of whether the officer is a member of the responding department. Where allowable under federal, state, or local ordinances, all other firearms owned or at the disposal of the accused officer shall be removed to ensure the victim's safety.
   g. Whenever a police officer domestic violence call does not result in an arrest, the on-scene supervisor shall submit a written report explaining any and all reasons why an arrest was not made or a warrant was not sought.
   h. The on-scene supervisor shall ensure the victim is informed of the following:
      1. The availability of an on-scene advocate.
      2. Confidential transportation to a safe house, shelter, or any other location that ensures victim safety.
      3. Procedures for obtaining restraining and/or protective orders and victim rights.
      4. The standard of probable cause for arrest including the signature to appear on the complaint.
      5. Judicial process, victim rights, and compensation following an arrest.
      6. Written information on community resources and local domestic violence victim advocacy organizations.

5. Additional Critical Considerations
   a. When responding to a domestic violence complaint involving a police officer from another jurisdiction, all responding officers, investigators, and supervisors shall follow the same procedures that are to be followed in responding to a domestic violence complaint involving an officer from their own department. The responding supervisor shall notify the chief of police, or his/her designee, in the accused officer's
jurisdiction verbally as soon as possible and in writing within 24 hours.

b. In the event that the reported incident involves the chief of police or commissioner, the supervisor shall immediately notify the individual in government who has direct oversight for the chief, for example, the mayor.

c. In responding to domestic violence situations where the victim is a police officer, standard domestic violence response and investigation procedures should be followed.

d. In responding to domestic violence incidents where the parties involved are both police officers, standard domestic violence response and investigation procedures should be followed. After probable cause and dominant aggressor are determined, an arrest should be made and all service weapons of the accused officer confiscated.

Note: State law may provide for the seizure of additional weapons.

6. Department Follow-Up

a. The supervisor shall in a timely manner debrief all officers who respond to a police officer domestic violence call. During the debriefing, the supervisor shall

1. Review department confidentiality guidelines.

2. Reaffirm that officers share information only on a need-to-know basis.

3. Establish a clear delineation of assignments in order to assist victims in a coordinated and consistent manner.

b. Arrest warrants charging police officers with domestic assault and civil protective orders issued at a later time shall be served by no fewer than two officers with at least one being of senior rank to the officer being served.

c. On-scene and follow-up investigators shall proactively seek out information on existing restraining and/or protective orders and, if found, shall enforce them.

d. Following the reported incident, the department shall designate a member of the command staff specifically trained in conducting lethality assessment and safety planning to act as a principal contact for the victim. The assigned officer will keep the victim apprised of the case throughout the adjudication process and provide the victim with a copy of the incident report.

e. A specially trained member of the command staff shall conduct an assessment to determine the potential for further violence on the part of the accused officer. Based on the outcome, the department will need to make decisions concerning referrals, duty assignments, and administrative actions.

D. Victim Safety and Protection

1. Working with community resources and advocacy agencies, the department shall make available all necessary and appropriate services to each victim.

2. All officers shall keep all information concerning victims confidential, including their whereabouts, safety plan, and any communications.

3. The command staff officer shall inquire whether the victim wants any weapons removed from his/her home for safekeeping by the department.
4. The command staff officer designated as the victim's principal contact shall conduct a lethality assessment with the victim. The information gained shall be incorporated into the safety plan developed with the victim.

5. All officers shall be aware of the increased danger to victims when the victim leaves an abusive partner, and the designated command officer shall caution the victim to be alert to stalking activities on the part of the abuser and assist in safety planning.

6. The command staff designated as principal contact for the victim shall inform the victim of confidentiality policies and their limitations, and ensure that confidentiality is maintained throughout the case.

7. All officers shall be aware of possible witness or victim intimidation/coercion. Whenever an officer suspects this is occurring, he/she shall prepare a written report and immediately deliver it to the investigator in charge of the case through the proper chain of command.

   a. In order to ensure coercion is not being attempted, the investigator in charge shall seek out secondary sources of information.

   b. Given the likelihood that a victim will recant, supplemental evidence should be sought out and preserved.

E. Post-Incident Administrative and Criminal Decisions
Departments shall conduct separate parallel administrative and criminal investigations of alleged incidents of police officer domestic violence. If the facts of the case indicate that domestic violence has occurred or any departmental policies have been violated, administrative action shall be taken separate and distinct from any criminal proceedings as soon as practicable. Independent of the outcome of the criminal case, the department shall adhere to all positions and policies relating to the incident.

The department will adhere to/observe all necessary protocols to ensure an accused officer's departmental, union, and legal rights are upheld during the administrative and criminal investigations.

1. Administrative Investigations and Decisions

The responsibility to complete the administrative investigation of a police officer domestic violence incident shall rest with the Internal Affairs Division of the department, or in the event that no such unit exists, the chief shall appoint an investigator.

   a. The investigating official shall conduct an administrative investigation utilizing standard elements of criminal investigations. Witnesses shall be contacted, re-interviewed, and statements recorded; crime scene evidence, photographs and medical records accessed, 911 tapes requested, and all information fully documented.

   b. Where sufficient information exists, the department shall take immediate administrative action to intervene, which can include removal of badge, removal of weapon, reassignment, administrative leave with or without pay, or termination.

   c. Where an arrest was not made, but sufficient concern exists, the department shall initiate an independent administrative investigation and decide the officer's status based on the outcome of the investigation.

   d. In determining the proper course of administrative action, a department shall consider factors such as level of danger an officer poses to the victim (based on risk assessment measures), an officer's history of compliance with departmental rules, history of aggressive behaviors, and existence of an alcohol or substance abuse problem.

   e. Pending the administrative and criminal investigations for alleged acts of domestic violence and/or violation of departmental policies, the department shall assign the accused officer to duties that do not
require response to domestic violence cases.

2. Criminal Investigations and Decisions
The responsibility to complete a criminal investigation of an incident of police officer domestic violence shall rest with the domestic violence unit of the department, or in the event that no such unit exists, the criminal investigations unit or detective division.

a. The investigating official shall conduct criminal investigations as she/he would for any other criminal violation. Witnesses shall be contacted, statements recorded, evidence collected, photographs taken of the scene and injuries, medical records accessed, 911 tapes requested, and all information fully documented.

b. When appropriate, the investigating official or department shall conduct sufficient interviews (taped) to support criminal charges, to include family members, friends, neighbors, colleagues, or others who may have information in accordance with the officer's and victim's privacy rights.

c. Even though an initial report may already exist concerning a police officer, if the victim reports any subsequent or additional criminal activity, each incident shall be documented separately, assigned a case number, and investigated thoroughly.

d. The department shall completely investigate the charges and where warranted seek prosecution even if the victim recants the charges.

e. The department shall establish a liaison to work with the prosecuting/district attorney for each case. This officer shall present the information to the prosecuting or district attorney for proper action in a timely fashion and request that the prosecuting attorney in turn make timely decisions about the adjudication of the case.

f. Filing of court papers/complaints shall be requested by the investigating officer, as with any other case for criminal prosecution.

3. Criminal Conviction

a. Federal law prohibits officers convicted of misdemeanor domestic violence assaults from carrying firearms. The department shall ensure compliance with federal law.

b. Any police officer convicted of a domestic violence crime as defined herein shall have his/her police powers revoked.

Every effort has been made by the IACP Research Center and the Police Response to Violence Against Women Advisory Group to ensure that this model policy incorporates the most current information and contemporary professional judgment on the issue. However, law enforcement administrators should be cautioned that no "model" policy can meet the needs of any given law enforcement agency. Each law enforcement agency operates in a unique environment of federal court rulings, state laws, local ordinances, regulations, judicial and administrative decisions and collective bargaining agreements need to be considered.

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