

Investigating a Family Violence Allegation

Objective:

Explorers should become familiar with Texas laws relating to family violence. Explorers should be able to respond to allegations of family violence, protect victims and make lawful arrests of violators.

Foreword:

The seriousness of family violence is demonstrated by the following statistics:

- 95% of family violence is committed by men against women (March of Dimes).
- In 60% of violent homes, children are also beaten (League of Women Voters).
- 85% of prisoners in the penitentiary come from violent homes (League of Women Voters, 1985).
- 30% of murdered women are killed by their partners. 10% of murdered men are killed by theirs (National Woman-Abuse Prevention Project pamphlet, 1987).
- Battering causes more injuries than rape, auto accidents, and muggings of women combined (Surgeon General, National Woman-Abuse Prevention Project, 1987).
- 60-75% of battered women eventually leave. Victims leave an average of six times before they leave permanently.

Identify typical characteristics of the offender.

The Offender; since 95% of family violence is male on female, "offender" in this context generally refers to a male offender. Source of some materials: Department of Human Services (DHS) "Understanding Family Violence" training:

- Extremely jealous
- Low self-esteem
- Believes myths about battering relationships
- Believes in male supremacy and dominance in family
- Blames others for actions
- Presents a very different public face as opposed to the face at home.
- Often unable to deal with stress; may turn to drug/alcohol abuse. Substance abuse may intensify the frequency and severity of domestic violence, but studies show that when substance abuse stops the beatings continue. There are batterers who are not substance abusers and substance abusers who do not batter.
- Uses sex as an act of aggression.
- Does not believe his behavior should have negative consequences.
- Is angry and socially isolated; a loner.
- Minimizes and denies the seriousness of the violence.
- Has a history of abuse.
- Believes in violence as a problem-solving technique.
- May have severe mood swings.

Impact of family violence on the victim.

- Physical, unexplained injuries.
- Guilt
- Low self-esteem
- Isolated and lacks trust
- Dependent, economically and emotionally

- Powerless feeling
- Blames self
- In denial
- Passive
- Stressful
- Fearful of being insane
- Uses sex to establish intimacy
- Accepts violence

Scene Approach / Initial Response

Explorers should approach the scene in a careful and cautious manner. Remember to listen to the disturbance before making contact. Often, in taking a few seconds to listen before making contact, you will be able to identify the aggressor in the disturbance. Explorers should evaluate information concerning family violence situations and identify the potential dangers of site approach.

Understand the need for caution when responding to family violence incidents.

- Position vehicle safely
- Listen as approaching on foot
- Separate the parties

Arriving on Scene:

Explorers should be aware of tell-tale noises:

- Vehicle, engine
- Parking unit too close to scene
- Radio volume too loud
- Letting unit door slam shut
- Equipment, i.e. keys, whistles, baton, handcuffs, portable radio

Be a skilled observer:

take in everything around a given situation and then sort out the relevant from the irrelevant.

- See everything there is to see and take it in quickly and accurately
- Look for clues in situations
- Be aware of everything around you constantly
- Draw conclusions about what you see
- Catalog what you see for possible future use also
- Use the other senses whenever possible to collect information and "see" everything around you:
- Smell, i.e., unusual odors, burning materials, alcoholic beverages.
- Touch, i.e., feeling of hood or muffler of automobile to determine how recently it was driven; feeling texture in fabrics; detecting fire and/or vibrations by touching pliable surfaces such as a wall.

Approaching suspects and victims:

- use effective verbal communications
- approach carefully: maintain visual contact with suspicious person, approach on right side since most people are right-handed, watch for furtive movements or attempts to flee, establish early eye contact, be aware of surroundings.

Emergency circumstances: when to make a forced entry

- sounds of violence, but nobody will open the door.
- pertinent dispatch information, such as hearing gun shots over the phone
- signs of violence, such as blood on the front walk
- credible witness information, neighbors hearing screams for help, sounds of violence, then silence.

- be sure the victim did not leave before making a forced entry. Check for vehicles that have left the residence, check with neighbors, ask children etc.

Interviewing Suspects and Victims

One Explorer with one person:

- Field interview position recommends the officer to place gun side away and stand approximately one arm's length or more from the person. Depending upon the situation and the size and disposition of the person, the officer may want to use discretion in positioning.
- The "gun hand" should remain free when practical, except when holding a pen or pencil.
- Maintain overall observation of the person.
- Be aware of surroundings.
- Interview in a safe area. Do not interview in the kitchen, knives may be easily accessed.
- Scan the area for weapons. If you see a weapon on a near-by counter or table, secure it.

One Explorer with two or more persons:

- Assume the recommended field interview position and speak to the person to be interviewed
- Stand in a safe position where persons can be restrained if necessary.
- Maintain overall observation of persons.
- Move as necessary to prevent persons from closing in or surrounding Explorer.

Two Explorers with one person:

- The officer initiating the contact should exercise all the precautions noted above.
- The second officer should take position to the right or left rear of the person being interviewed (avoid cross-fire situation).

Two Explorers with two or more persons:

- The officer initiating the contact should proceed as previously described.
- The second officer assumes a position, which allows maximum visibility of the persons, avoid lengthy conversations, which would detract from safety awareness, and communicate any observations of threat or hazard to the primary Explorer.

Explorer Safety:

- Have the suspect place hands in front of him/her and turn palms up. Do not allow subject to put hands in pockets.
- Do a visual "pat" down of clothing.
- Do an actual "pat" down of suspects, and if necessary, the victim. Remember, a lot of peace officers have been killed by the victim after the "bad guy" is arrested.
- Are suspects possibly hiding contraband (evidence) in pockets, weapon, and/or identifiable marks, scars, or tattoos?
- If hands are already in pockets, do not allow removal until you are in a position to respond.
- Always maintain eye contact with other Explorers and suspects.
- Keep the parties separated, don't let them argue or yell at each other

Diffuse the violence

- Be sensitive to unusual aspects
- Be nonjudgmental
- Do not blame the victim
- Locate the complaining party.
- Locate participants.
- Locate witnesses.

Observe and listen when responding to family violence situations.

- 80% of crisis situations can be diffused through listening.
- Demonstrates concern and allows them to vent somewhat. "How did you feel when s/he did ." "
- When they yell, you whisper. Talk quietly and confidently. Most of the time they will be quiet in order to hear you.
- Try not to infringe on others' personal "space" unless necessary.

Alternative actions (arrest, protective orders, civil remedies, referrals)

Inform all parties what action is to be taken. If arresting, advise victim of intention. Explain that arrest is taking place because the law has been broken.

Victim Service Information:

Issues the mandated information sheet labeled "NOTICE TO ADULT VICTIMS OF FAMILY VIOLENCE." Inform victims of family violence of referral services and family violence intervention programs. Give examples of community resources and services to be used in family violence incidents.

- Victim service units when investigating domestic violence incidents.
- Battered women's shelters.
- Rape crisis centers.
- Referral services for victims of domestic violence.
- Social Assistance, i.e., food stamps and Aid to Families with Dependent Children.
- Prosecutor's Office
- Texas Department of Human Services
- Texas Crime Victims' Clearinghouse
- Texas Council on Family Violence
- National Domestic Violence Hotline (1-800-779-7233)

Crime Scene

- Handle the family violence scene as a crime scene.
- Photograph victim's injuries, victims may later wish to drop the charges or recant their story. This evidence is necessary to prosecute a case.
- Photograph condition of the home. Evidence of furniture destruction or property will add to your case.

Temporary Ex Parte Orders:

Violation of a Temporary Ex Parte Order is NOT criminally enforceable, meaning a peace officer may not arrest for such a violation. Violation is enforceable only by contempt of court proceedings with a fine of not more than \$500 and/or confinement in jail for not more than six months.

Texas Laws Relating to Domestic Violence

§ 22.01. Assault (Penal Code)

(a) A person commits an offense if the person:

- (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;
- (2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or
- (3) 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.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor, except that the offense is a felony of the third degree if the offense is committed against:

- (1) a person the actor knows is a public servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant; or
- (2) a member of the defendant's family or household, if it is shown on the trial of the offense that the defendant has been previously convicted of an offense against a member of the defendant's family or household under this section.

(c) An offense under Subsection (a)(2) or (3) is a Class C misdemeanor, except that an offense under Subsection (a)(3) is a Class A misdemeanor if the offense was committed against an elderly individual or disabled individual, as those terms are defined by Section 22.04.

(d) For purposes of Subsection (b), the actor is presumed to have known the person assaulted was a public servant if the person was wearing a distinctive uniform or badge indicating the person's employment as a public servant.

(e) In this section:

- (1) "Family" has the meaning assigned by Section 71.003, Family Code.
- (2) "Household" has the meaning assigned by Section 71.005, Family Code.

(f) For the purposes of this section, a defendant has been previously convicted of an offense against a member of the defendant's family or a member of the defendant's household under this section if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision.

§ 22.02. Aggravated Assault (Penal Code)

(a) A person commits an offense if the person commits assault as defined in Section 22.01 and the person:

- (1) causes serious bodily injury to another, including the person's spouse; or

(2) uses or exhibits a deadly weapon during the commission of the assault.

(b) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if the offense is committed:

(1) by a public servant acting under color of the servant's office or employment;

(2) against a person the actor knows is a public servant while the public servant is lawfully

discharging an official duty, or in retaliation or on account of an exercise of official power or

performance of an official duty as a public servant; or

(3) in retaliation against or on account of the service of another as a witness, prospective witness,

informant, or person who has reported the occurrence of a crime.

(c) The actor is presumed to have known the person assaulted was a public servant if the person was wearing a distinctive uniform or badge indicating the person's employment as a public servant.

§ 25.07. Violation of Protective Order or Magistrate's Order (Penal Code)

(a) A person commits an offense if, in violation of an order issued under Section 6.504 or Chapter 85, Family Code, under Article 17.292, Code of Criminal Procedure, or by another jurisdiction as provided by Chapter 88, Family Code, the person knowingly or intentionally:

(1) commits family violence or an act in furtherance of an offense under Section 42.072;

(2) communicates:

(A) directly with a protected individual or a member of the family or household in a

threatening or harassing manner;

(B) a threat through any person to a protected individual or a member of the family or

household; and

(C) in any manner with the protected individual or a member of the family or

household except through the person's attorney or a person appointed by the court,

if the order prohibits any communication with a protected individual or a member

of the family or household; or

(3) goes to or near any of the following places as specifically described in the order:

(A) the residence or place of employment or business of a protected individual or a

member of the family or household; or

(B) any child care facility, residence, or school where a child protected by the order

normally resides or attends.

(b) For the purposes of this section, "family violence," "family," "household," and "member of a household" have the meanings assigned by Chapter 71, Family Code.

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

(d) Reconciliatory actions or agreements made by persons affected by an order do not affect the validity of the order or the duty of a peace officer to enforce this section.

(e) A peace officer investigating conduct that may constitute an offense under this section for a violation of an order may not arrest a person protected by that order for a violation of that order.

(f) It is not a defense to prosecution under this section that certain information has been excluded, as provided by Section 85.007, Family Code, or Article 17.292, Code of Criminal Procedure, from an order to which this section applies.

(g) An offense under this section is a Class A misdemeanor unless it is shown on the trial of the offense that the defendant has previously 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 event the offense is a third degree felony.

§ 71.003. Family (Family Code)

"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 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.

§ 71.004. Family Violence (Family Code)

"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(1)(C), (E), and (G) by a member of a family or household toward a child of the family or household.

§ 71.005. Household (Family Code)

"Household" means a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other.

§ 71.006. Member of a Household (Family Code)

"Member of a household" includes a person who previously lived in a household.

§ 71.008. Protective Order From Another Jurisdiction (Family Code)

"Protective order from another jurisdiction" means a protective order rendered by a military court or a court of another state, tribe, or territory related to protecting an individual from domestic or family violence and that meets the following requirements:

(1) the order is rendered by a court that has jurisdiction over the parties and the matter under the law of

the military, state, tribe, or territory; and

(2) the respondent is given notice and an opportunity to be heard consistent with due process either:

(A) before the date the order was rendered; or

(B) in the case of an ex parte order, within the time required by the jurisdiction rendering the order after the date the order is rendered, but not later than a reasonable time.

§ Art. 14.03. Authority of peace officers (Code of Criminal Procedure)

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

(1) persons found in suspicious places and under circumstances which reasonably show that such persons

have been guilty of some felony, violation of Title 9, Chapter 42, Penal Code, breach of the peace, or

offense under Section 49.02, Penal Code, or threaten, or are about to commit some offense against the laws;

(2) persons who the peace officer has probable cause to believe have committed an assault resulting in

bodily injury to another person and the peace officer has probable cause to believe that there is danger of further bodily injury to that person;

(3) 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; or

(4) persons who the peace officer has probable cause to believe have committed an assault resulting in

bodily injury to a member of the person's family or household.

(b) 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.

(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.

(d) A peace officer who is outside his jurisdiction may arrest, without warrant, a person who commits an offense within the officer's presence or view, if the offense is a felony, a

violation of Title 9, Chapter 42, Penal Code, a breach of the peace, or an offense under Section 49.02, Penal Code. A peace officer making an arrest under this subsection shall, as soon as practicable after making the arrest, notify a law enforcement agency having jurisdiction where the arrest was made. The law enforcement agency shall then take custody of the person committing the offense and take the person before a magistrate in compliance with Article 14.06 of this code.

(e) The justification for conduct provided under Section 9.21, Penal Code, applies to a peace officer when the peace officer is performing a duty required by this article.

(f) In this article, "family," "household," and "member of a household" have the meanings assigned to those terms by Section 71.01, Family Code.

(g) A peace officer listed in Subdivision (1), (2), (3), (4), or (5), Article 2.12, who is licensed under Chapter 415, Government Code, and is outside of the officer's jurisdiction may arrest without a warrant a person who commits any offense within the officer's presence or view, except that an officer who is outside the officer's jurisdiction may arrest a person for a violation of Subtitle C, Title 7, Transportation Code, only if the officer is listed in Subdivision (4), Article 2.12. A peace officer making an arrest under this subsection shall as soon as practicable after making the arrest notify a law enforcement agency having jurisdiction where the arrest was made. The law enforcement agency shall then take custody of the person committing the offense and take the person before a magistrate in compliance with Article 14.06.

§Art. 5.03. Family or household relationship does not create an exception to official duties (Code of Criminal Procedure)

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

§Art. 5.04. Duties of peace officers who investigates a family violence allegation (Code of Criminal Procedure)

(a) The primary duties of a peace officer who investigates a family violence allegation or who responds to a disturbance call that may involve family violence are to protect any potential victim of family violence, enforce the law of this state, enforce a protective order from another jurisdiction as provided by Chapter 88, Family Code, and make lawful arrests of violators.

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

(c) A written notice required by Subsection (b) of this article is sufficient if it is in substantially the following form with the required information in English and in Spanish inserted in the notice:

"NOTICE TO ADULT VICTIMS OF FAMILY VIOLENCE"

"It is a crime for any person to cause you any physical injury or harm EVEN IF THAT PERSON IS A MEMBER 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 the right to:

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

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

"(1) the abuser not commit further acts of violence;

"(2) the abuser not threaten, harass, or contact you at home;

"(3) directs the abuser to leave your household; and

"(4) establishes temporary custody of the children and directs the abuser not to interfere with the children or any property.

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

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

"

"_____"