

Family Violence

**Judge Brad Cummings
Hopkins County**

1

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Criminal Appeals

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2

Resource

Self-Paced Module: Family Violence and Other
Criminal History Reporting for Justice Courts

3

What is Family Violence?

- An act by a member of a family or household against another member of the family or household.
- Intended to result in:
 - Physical harm
 - Bodily injury
 - Assault
 - Sexual assault
 - A *threat* of those aforementioned

4

Family or Household Member

Family

- Related by consanguinity or affinity
- Former spouses
- Parents of the same child
- Foster children/parents

Household Member

- Includes persons who previously lived in a household

5

What is Dating Violence?

- Has or has had a dating relationship with
- Intended to result in:
 - Physical harm
 - Bodily injury
 - Assault
 - Sexual assault
 - A *threat* of those aforementioned

6

Dating Relationship

A relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature

Considering Factors:

- ✓Length
- ✓Nature
- ✓Frequency and type of interaction
- ✓Does not include casual acquaintanceship

7

1/2

Traditional – biological
children

Dating relationship

In-laws

8

2/2

Former spouses

Roommates

Adoptive –
parents/children

Same sex
relationship

9

- STATS
- 1 in 4 *women* and 1 in 7 *men* will experience Intimate Partner Violence (IPV)
- \$3.6 trillion in costs
- 1 in 6 *women* and 1 in 19 *men* have been stalked
- 116 million women and 11 million men first experience IPV before age 18
- Intimate Partner-related homicides in Texas (2023) = 204

10

What does Family Violence entail?

- Physical
- Emotional/Psychological
 - Coercive
 - Isolation
- Sexual
- Control
 - Economic
 - Technological
 - Terrorization/Intimidation

11

Cause and Affect of Family or Household Violence

12

Possible Reactions to Domestic Violence – Birth to age 5

- Sleep or eating disorders;
- Withdrawal or lack of responsiveness;
- Intense and pronounced separation anxiety;
- Crying inconsolably;
- Developed regression, loss of acquired skills such as toilet training, or reversion to earlier behaviors, such as asking for a bottle again;
- Intense anxiety, worries, or new fears;
- Increased aggression or impulsive behavior
- Acting out witnessed events in play, such as having one doll hit another doll.

13

Possible Reactions to Domestic Violence – Ages 6-11

Nightmares, sleep disruptions

Aggression and difficulty with
peer relationships in school

Difficulty with concentration
and task completion in school

Withdrawal and emotional
numbing

School avoidance or truancy

Stomachaches, headaches, or
other physical complaints.

14

Possible Reactions to Domestic Violence – Ages 12-18

Antisocial Behavior

School Failure

Impulsive or reckless behavior, such as

- Truancy
- Substance Abuse
- Running Away
- Involvement in violent or abusive dating relationships

Depression

Anxiety

Withdrawal

Self-destructive behavior like cutting

15

Recognizing Dangerousness

- The court is responsible for protecting the victim and the public
- Evaluate the facts of the case
 - Bail
 - Conditions of bond
 - MOEP
- Lethality
 - Handgun license
 - Employment status
 - Timeframe and continuation
 - Severity of the instant offense
 - Mental health of the defendant
 - Criminal history

16

Class C, fine-only, misdemeanors

Assault

- PC 22.01 (a)(2) - by contact
- PC 22.01 (a)(3) - by threat

Art. 27.14 – Plea of Guilty or Nolo must be made in open court.
Pleas on Fine-only offenses can be mailed to the court.

UNLESS.....

The offense involves family violence.

17

Art. 27.14. Plea of Guilty or Nolo Contendere in Misdemeanor.

(e)(1) Before accepting a plea of guilty or a plea of nolo contendere by a defendant charged with a misdemeanor involving family violence, as defined by Section 71.004, Family Code, the court shall admonish the defendant ...

18

Admonishment

"If you are convicted of a misdemeanor offense involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a handgun or long gun, or ammunition, pursuant to federal law under 18 U.S.C. Section 922(g)(9) or Section 46.04(b), Texas Penal Code. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney."

19

Art. 42.013. Finding of Family Violence.

In the trial of an offense under Title 5, Penal Code, if the court determines that the offense involved family violence, as defined by Section 71.004, Family Code, the court *shall* make an affirmative finding of that fact and enter the affirmative finding in the judgment of the case.

Title 5 offenses:

Chapter 19 – Criminal Homicide

Chapter 20 – Kidnapping, Unlawful Restraint, and Smuggling of Persons

Chapter 20A – Trafficking of Persons

Chapter 21 – Sexual Offenses

Chapter 22 – Assaultive Offenses –

➤ Assault by contact

➤ Assault by threat

20

- ❖ The 85th Texas Legislative session, in 2019, created Chapter 66 of the Code of Criminal Procedure.
- ❖ Justice Courts must report the disposition on all Class C family violence cases to DPS
- ❖ Within 30 days
- ❖ Must be made using the uniform incident fingerprint card

21

- Criminal Justice Purposes
- Statistics
- Grant Funding
- Domestic Violence High-Risk Team

22

In Texas, counties must have an average of 90% or above on both adult and juvenile disposition completeness and maintain timely reporting of all information as required by state law for any unit of government or non-profit within the county to be eligible for Criminal Justice Division (CJD) funding.

23

Texas Code of Criminal Procedure, Art. 66.252

At any time before the final disposition of the case, the justice or judge may order a law enforcement officer to use the uniform incident fingerprint card to take the fingerprints of an offender charged with a misdemeanor, *but* who is **not** under custodial arrest at the time of the offense.

The court clerk must report to DPS the applicable information within 30 days of disposition (acquittal, conviction, deferral, or dismissal)

Must use the uniform incident fingerprint card or another method approved by DPS.

24

Following the murder of Monica Deming

Enacted in 2019

Ex-boyfriend – subject to two previous protective orders

Texas Gov. Code 72.151-72.158

Closes jurisdictional gaps, alerts law enforcement, and empowers potential victims

25

Magistrate's Order of Emergency Protection

Magistrate's EPO is among the orders that would need to be entered into this registry.

Procedures include:

- Applications and orders (original or modified) must be entered as soon as possible, but not more than 24 hours after filing/issuance;
- A clerk can delay only to the extent that they lack the specific info required to be entered;

26

If an EPO is vacated or expired, the clerk shall update the status of the order in the registry. A vacated order may not be accessed by the public.

<https://www.txcourts.gov/judicial-data/protective-order-registry/>(opens in a new tab).

OCA-
legalsupport@txcourts.gov

*Government Code §
72.151–72.158.*

27

Further detention of certain persons

- **24 Hours** – Violence will continue
- **48 Hours** – Violence will continue, and in the ten years preceding the instant offense, the person has been arrested:
 - 1) On more than one occasion, for an offense involving family violence; or
 - 2) For any other offense, if a deadly weapon was used or exhibited during or in immediate flight afterward

CCP Art. 17.291

28

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