



SAFVIC

Sexual Assault Family Violence
INVESTIGATOR COURSE

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A WORD ABOUT LANGUAGE

Do all men batter? Are all victims of battering women? Of course, the answer to both these questions is “no”. Certainly most men do not batter, and not *all* victims of battering are women—some are men. In this curriculum you may find that where pronouns are used, or other gender-specific terms, victims of battering are referred to as women and the batterers as men.¹ In 2018, there were 212,885 victims involved in family violence incidents in the state of Texas. Of the incidents in which the sex of the victims was known, 71.6% were women and 28.4% were men.² It is always critically important to remember that legal protections and opportunities described in this curriculum for victims of family violence are *equally applicable* to *all* victims of family violence, regardless of gender. Similarly, the legal consequences of committing family violence are applicable to women who are perpetrators as well as to men who are perpetrators.

A NOTE FROM SAFVIC

The Sexual Assault Family Violence Investigator Course (SAFVIC) is designed to provide law enforcement around the state with the tools they need to effectively investigate and prevent sexual assault and family violence. The terms “victim” and “survivor” are often used interchangeably to describe an individual who has experienced sexual assault and/or family violence. For the criminal justice purposes of this curriculum, the term “victim” will be utilized as a term most often used in the context of criminal investigations and in acknowledgement of a crime committed. The word “victim” is not used in judgment of an individual’s experience. We respect the way in which all individuals affected by violence choose to self-identify and discuss their story. By educating law enforcement, the SAFVIC Program strives to empower all survivors, support them in healing, and ease the process of reporting for those who choose to speak out.

¹ Laura Wolf. “A Word About Language,” Texas Advocates’ Guide: Laws, Policies & Protocols (Texas Council on Family Violence, 2005).

² Texas Department of Public Safety. (2019). The Texas Crime Report for 2018, Family Violence, Chapter 5.

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CHAPTER ONE: COURSE OVERVIEW

PROGRAM GENESIS

The Office of the Texas Governor's Criminal Justice Division recognized the need to provide advanced, high quality, standardized, and affordable training in family violence, sexual assault, and stalking investigations to law enforcement officers from around the state. In 2001, the Governor's Office assembled a statewide steering committee composed of representatives from law enforcement, victim services, and prosecution to address training deficits. The statewide steering committee determined that a new level of training was necessary for first responders and investigators that satisfies law enforcement's need for information, resources, and tools to deal with family violence, sexual assault, and stalking.

The Governor's Criminal Justice Division and the U.S. Department of Justice's Office on Violence Against Women provided grant funding to support this project and allow for the training to be administered free of charge to local law enforcement officers around the state.

GRANT ADMINISTRATION

Multidisciplinary organizations were selected to participate in a statewide steering committee created to administer the program. From the participants, the steering committee chose the Texas Municipal Police Association (TMPA) to be the lead organization and administer the grant program. A curriculum development committee was assembled to research and identify resources necessary for the advanced training. Committee members include:

- Criminal investigators from the fields of sexual assault, family violence, and stalking;
- Specialists in law enforcement training and response to these crimes;
- Experts in victim services for family violence, sexual assault, and stalking; and
- Prosecutors assigned to prosecute both sexual assault and family violence cases.

EXPANSION OF THE SAFVIC PROGRAM

After a few years, the role of telecommunication professionals (TCPs) and their service as *true* first responders to sexual assault and family violence was introduced. Victims rely on TCPs as their first point of contact when attempting to get help; law enforcement officers rely on TCPs to provide key information to ensure their safety; prosecutors rely on TCPs to exceptionally handle calls for criminal sentencing. In the interest of better investigation, prevention, and prosecution of family violence, sexual assault, and officer safety, the SAFVIC Program proposed to develop a course to provide TCPs with better tools for handling such calls. In February of 2008, the SAFVIC Program began the process of creating this training program. Multidisciplinary organizations were selected to participate in a statewide steering committee.

The SAFVIC for Telecommunication Professionals Steering Committee met to create the course and determined the best method for delivery of information: an 8-hour course taught by telecommunication professionals. The committee created the 8-hour curriculum which was

then reviewed by a curriculum development committee for content. The course was launched in a *train-the-trainer* format in the fall of 2009.

Shortly after, the SAFVIC Program recognized the widespread prevalence of human trafficking and the need for valuable training offered to Texas peace officers. In November of 2010, the SAFVIC Program assembled a multidisciplinary statewide human trafficking steering committee. The need for a new level of training to combat human trafficking, create awareness, and assist victims was determined during the meeting. Specifically, the committee identified the need for adequate training that met funding and time constraints. In the interest of better investigation, prevention, and prosecution of human trafficking, as well as increased victim safety, the SAFVIC Program proposed to develop a course that would provide Texas peace officers with better tools for handling such cases. In early 2011, the SAFVIC Program began the process of creating this training program.

The SAFVIC — Human Trafficking Steering Committee met to create the course and determined the best method of delivery of information: an 8-hour course taught by law enforcement officers. The 8-hour SAFVIC — Human Trafficking curriculum was then reviewed by a curriculum development committee for content. The course was launched in a *train-the-trainer* format in November of 2013.

SAFVIC PHILOSOPHY AND MISSION STATEMENT

SAFVIC PHILOSOPHY

The Sexual Assault Family Violence Investigator Course (SAFVIC) was created to target law enforcement officers and telecommunication professionals and is designed to improve their ability to investigate these crimes and provide the necessary victim services to reduce violence against women.

These courses are intended to be different from other family violence, sexual assault, human trafficking, and stalking trainings currently available. The main philosophical difference is the focus on a successful combination of three components: 1) an understanding of the dynamics involved in family violence, sexual assault, human trafficking, and stalking; 2) strong knowledge of the best investigative techniques; and 3) strong community commitment to dealing with these problems.

This training focuses on the needs of peace officers and how they can better serve the victim and community. Although many departments have implemented forms of community policing, family violence, sexual assault, human trafficking, and stalking crimes must have a coordinated community effort to prevent the occurrence whenever possible. When a crime occurs, law enforcement must provide services to the victims and hold offenders accountable.

These trainings are taught from professional perspectives to motivate and educate officers and TCPs whom can return to their respective departments and act as role models and trainers. Officers and TCPs must realize that their own attitudes toward family violence, sexual assault, human trafficking, stalking, and women affect their perception of the victims of these crimes. Generally, officers and TCPs are no different than society and hold many of the same

stereotypes regarding family violence, sexual assault, human trafficking, and stalking. In addition, these professions come with high call loads and reporting responsibilities. These circumstances combine to minimize the effectiveness in response. Additionally, for many victims, the first person they cry out to for help is the officer or TCP. Their attitude and level of professionalism has a lasting impact on the victim and can not only affect the success of the case but can also affect the victim's healing process and wellbeing.

SAFVIC MISSION STATEMENT

SAFVIC's mission is to provide a comprehensive training program that emphasizes trauma-informed response, identification, and investigations of family violence, sexual assault, human trafficking, and stalking in collaboration with community resources.

PROJECT OUTLINE AND SUMMARY

SAFVIC PROGRAM CURRICULA

Sexual assault and family violence are two problems that present unique challenges for law enforcement officers and often leave an officer feeling defeated or useless. Current training efforts focus on mandatory courses designed to provide officers with a general knowledge of the subjects and are often rushed through or not given the proper importance. However, few Texas peace officers and TCPs can finish a shift without answering at least one family violence call, and the amount of physical and psychological damage done by sexual assault demands highly trained professionals.

The goals of the SAFVIC Program curricula are to:

- Provide a comprehensive training program that emphasizes professional response, identification, and investigations in cooperation with community resources;
- Provide law enforcement officers and TCPs with the knowledge, tools, and resources to effectively identify, investigate, and report sexual assault, family violence, human trafficking, and stalking cases;
- Teach law enforcement officers and TCPs the value of community resources and involvement;
- Instill a sense of confidence and understanding in law enforcement officers and TCPs charged with responding to and investigating sexual assault, family violence, human trafficking, and stalking; and
- Improve the quality of cases and the effective administration of justice for the victims.

The SAFVIC Program borrows heavily from other sources and combines the most credible information to facilitate officer and TCP training, understanding, and encouragement of participation with community resources. The curricula also relies on the experience of Texas peace officers who have been charged with investigating these crimes. The curricula covers:

- The History and Dynamics of Sexual Assault and Family Violence
- Sexual Assault and Family Violence Laws
- Investigative Techniques (24-hour SAFVIC only)

- Special Topics: Stalking, Violence in Immigrant and Tribal Communities, Sexual Assault/Family Violence & People with Disabilities and/or Older Adults, Drug-Facilitated Sexual Assault, and Sexual Assault and Family Violence in the Military
- Understanding Victims and Community Response
- Investigations and Prosecution of Human Trafficking Cases (SAFVIC – HT only)
- Best Practices for Handling Sexual Assault and Family Violence Calls (SAFVIC for TCPs only)

Curricula and resource material will be constantly updated as new laws, statistics, information, and investigative techniques become available. You are encouraged to submit recommendations to the SAFVIC Program staff for potential inclusion in subsequent additions.

SAFVIC PROGRAM OUTLINE

The Sexual Assault Family Violence Investigator Course (SAFVIC) consists of:

- The SAFVIC Instructor Course which provides potential instructors with the curriculum material, teaching techniques, and procedures they will need to follow to administer the SAFVIC in their areas. Upon successful completion of the course, participants are certified as Intermediate Instructors and enter contractual agreement with TMPA to be compensated for administering the SAFVIC in their regional area and throughout Texas.
- The SAFVIC which is composed of a three-day, 24-hour training curriculum designed to provide peace officers with the information and knowledge they need to conduct effective investigations of sexual assault and family violence cases. Upon completion of the course, students are tested on their knowledge. Officers successfully completing the SAFVIC will receive 24 hours of credit from TCOLE (Course Reporting Number 3264). The course is designed to satisfy the requirements of TCOLE's Special Investigative Topics (Course Reporting Number 3232) and successful students will be eligible for a TCOLE Sexual Assault/Family Violence Investigator Certificate.
- The SAFVIC – Human Trafficking which is an 8-hour course designed to create awareness, effective investigations, and assist victims of human trafficking. This course satisfies the TCOLE mandated training courses Human Trafficking (TCOLE Course Reporting Number 3270) and Advanced Human Trafficking (TCOLE Course Reporting Number 3271).
- The SAFVIC for Telecommunication Professionals which is an 8-hour course with the primary objectives to respond to calls appropriately and ensure victim and officer safety. The SAFVIC for TCPs is designed to provide call takers with the tools they need to effectively identify and facilitate sexual assault and family violence calls.

{For more information regarding the curricula objectives or TCOLE Proficiency Certificate, or to host a SAFVIC, please go to www.safvic.org.}

RESOURCE MATERIAL

In addition to the SAFVIC Student Manual, the SAFVIC Program has compiled a wealth of resource material that may benefit an officer or TCP looking to make a difference in the community. If you are interested in additional material, please visit www.safvic.org.

CHAPTER TWO: FAMILY VIOLENCE AND SEXUAL ASSAULT STATISTICS

Learning Objectives: Understanding Family Violence and Sexual Assault Statistics

By the end of this chapter, the student will be able to identify and discuss the following terms, concepts, and practices as they relate to the family violence and sexual assault statistics:

- A. The Impact of Stereotypes and Myths
- B. Family Violence Statistics
- C. Sexual Assault Statistics

“There are three kinds of lies: lies, damned lies, and statistics.” –Mark Twain

A CAVEAT

Statistics can be valuable in teaching any topic, but many times statistics conflict with each other. Statistics should be used to illustrate the scope of the problem and give the audience an idea of the available research. Statistics can also be used to demonstrate stereotypes held by the audience. Unfortunately, most people have been confronted with statistical information that was not correct or seemed so outlandish that it lost its credibility. This chapter is intended to be a resource. We will use statistics to illustrate the problem and identify stereotypes that are inhibiting the way law enforcement conducts investigations.

THE IMPACT OF STEREOTYPES AND MYTHS

The Dictionary by Merriam-Webster defines a *stereotype* as “a standardized mental picture that is held in common by members of a group and that represents an oversimplified opinion, prejudiced attitude, or uncritical judgment.”¹ It defines a *myth* as “a popular belief or tradition that has grown up around something or someone; *especially*: one embodying the ideals and institutions of a society or segment of society [or as] an unfounded or false notion.”²

Stereotypes and myths often provide erroneous support for poorly formulated *schemas*, a set of logical rules we use to help us analyze situations or events we are not familiar with. Stereotypes and myths evolve to deal with unfamiliar or uncomfortable circumstances.³

No one is immune to falling victim to a stereotypical viewpoint or one that is perpetuated by a myth. The only real defense is to educate yourself on all the facts that surround the issue. Law

¹ “stereotype”. Merriam-Webster.com. Merriam-Webster, 2020. Web. 3 April 2020.

² “myth”. Merriam-Webster.com. Merriam-Webster, 2020. Web. 3 April 2020.

³ Bordalo, P., Coffman, K., Gennaioli, N., and Shleifer, A. (2016). “Stereotypes”. Quarterly Journal of Economics 131 (4): 1753-1794.

enforcement officers are also not immune to stereotypes and myths. For example, how many times have you been called “Barney”? Or how many times have you heard that undercover cops must tell you they are cops if you ask them directly? While these are usually stereotypes and myths held and perpetuated by the general public, law enforcement officers develop and maintain stereotypes and myths as well.

These stereotypes and myths affect the way we view the events we deal with daily. For example, how many officers would think there is a high rate of false reporting among sexual assault cases? The data does not support that idea. In addition, many officers have taken that same myth and incorporated it in their interview techniques, stating, “You know ma’am, it is an offense to make a false report,” which clearly sends a message of disbelief to the victim. As we said before, the only way to combat stereotypes and myths is to become armed with the facts.

FAMILY VIOLENCE STATISTICS

PREVALENCE: DOMESTIC VIOLENCE CROSSES ETHNIC, RACIAL, AGE, NATIONAL ORIGIN, SEXUAL ORIENTATION, RELIGIOUS, AND SOCIOECONOMIC LINES

- In the U.S., an estimated 23% of women and 24% of men have experienced physical violence *alone* by an intimate partner.⁴
- A total of 5,353,434 adult Texans, or 1 in 3, have experienced intimate partner violence (IPV) in their lifetime.⁵
- From 1994 to 2010, about 4 in 5 victims of intimate partner violence were female. Females aged 18 to 24, and 25 to 34, generally experience the highest rates of intimate partner violence.⁶
- In 2018, the total number of family violence incidents in Texas was 197,023, with a total of 212,885 victims (28.4% male and 71.6% female). In the incidents where the sex of the offender was known, 72.9% of the offenders were male and 27.1% were female.⁷
- In 2018, 143 Texas law enforcement officers were assaulted when responding to family violence calls.⁸
- Individuals who self-identify as lesbian, gay, or bisexual report levels of intimate partner violence at rates equal to or higher than those who self-identify as heterosexual.⁹

⁴ The State of Texas Health and Human Services Commission. (September 2015). Task Force on Domestic Violence Report.

⁵ Ibid.

⁶ Catalano, S. (Rev. September 2015). Intimate Partner Violence, 1993-2010. U.S. Department of Justice. Bureau of Justice Statistics. (Special Report NCJ 239203).

⁷ Texas Department of Public Safety: The Texas Crime Report for 2018, Family Violence, Chapter 5.

⁸ Ibid.

⁹ National Center for Injury Prevention & Control, Division of Violence Prevention. (2010). The National Intimate Partner and Sexual Violence Survey: An Overview of 2010 Findings on Victimization by Sexual Orientation. Special Report.

- In a statewide Texas survey, more than 25% of women reported experiencing two or more incidents of abuse, and more than 9% experienced six or more incidents.¹⁰
- A 2017 study showed that 89% of female victims who had companion animals during the abusive relationship reported their animals were threatened, harmed, or killed by their abuser.¹¹

HOMICIDE TRENDS: DOMESTIC VIOLENCE IS OFTEN THE CULMINATION OF AN ESCALATING HISTORY OF ABUSE

- Between 2008 and 2017, there was a reduction in intimate partner homicide of women involving all weapons except guns, which increased by 15%.¹²
- In 2017, 92% of female homicide victims were murdered by a male they knew, and 62% were murdered by their husband or intimate partner.¹³
- A person with a history of committing domestic violence is five times more likely to murder their intimate partner when there is a firearm in the home.¹⁴
- In 2018, 22.52% of all murder victims were female. However, a large portion of female murder victims were killed by an intimate partner.¹⁵
- From 2009 to 2018, at least 54% of mass shooting perpetrators shot a current or former intimate partner, or family member.¹⁶
- One study found that 44% of women murdered by their intimate partner had visited the emergency room within 2 years of their murder.¹⁷
- In 70-80% of intimate partner homicide, no matter which partner was killed, the man physically abused the woman before the murder.¹⁸
- Texas is 15th in the nation in the rate of women killed by men. Alaska is ranked 1st in the nation.¹⁹

¹⁰ Noel B. Busch-Armendariz, et al. (June 2011). Statewide Prevalence of Intimate Partner Violence in Texas. Institute on Domestic Violence and Sexual Assault Center for Social Work Research, University of Texas at Austin.

¹¹ National Sheriffs' Association. Animal Cruelty and Domestic Violence. 2019.

¹² Everytown for Gun Safety. (October 2019). Guns and Violence Against Women: America's Uniquely Lethal Intimate Partner Violence Problem.

¹³ Violence Policy Center. (September 2019). When Men Murder Women: An Analysis of 2017 Homicide Data.

¹⁴ J.C. Campbell, S.W. Webster, J.Kozioł-McLain, et al., Risk factors for femicide in abusive relationships: results from a multi-state case control study, 93 Amer. J. of Public Health 1089-97 (2003).

¹⁵ United States Department of Justice, Federal Bureau of Investigation. (September 2019). *Crime in the United States, 2018*. Retrieved April 6, 2020 from <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/downloads/download-printable-files>

¹⁶ Everytown for Gun Safety. (November 2019). Ten Years of Mass Shootings in the United States.

¹⁷ Huecker MR, Smock W. Domestic Violence. [Updated 2019 Oct 27]. In: StatPearls [Internet]. Treasure Island (FL): StatPearls Publishing; 2020 Jan. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK499891/>

¹⁸ Campbell, et al. (2003). Assessing Risk Factors for Intimate Partner Homicide. Intimate Partner Homicide, NIJ Journal, 250, 14-19. Washington, D.C.: National Institute of Justice, U.S. Department of Justice.

¹⁹ Violence Policy Center. (September 2019). When Men Murder Women: An Analysis of 2017 Homicide Data.

- In 2018, 174 women were murdered by an intimate partner in the state of Texas. In 59% of the homicides, a firearm was used by the perpetrator.²⁰
- According to a 2017 report from the Centers for Disease Control and Prevention, about half of women and girls who die by homicide are killed by a current or former male intimate partner.²¹

CONSEQUENCES: THE EFFECTS OF DOMESTIC VIOLENCE

- Women who have experienced domestic violence are 80% more likely to have a stroke, 70% more likely to have heart disease, and 60% more likely to develop asthma compared to women who have not experienced intimate partner violence.²²
- Intimate partner rape, physical assault, and stalking exceed \$5.8 billion dollars annually due to higher medical and mental health care services.²³
- Domestic violence affects more than just the perpetrator and victim. In 2018, of the 174 women killed by their intimate partner in Texas, 24 family members, friends, or bystanders were also murdered, 27 family members and/or friends were injured, and 290 children lost a parent.²⁴

CHILDREN: DOMESTIC VIOLENCE HAS IMMEDIATE AND LONG-TERM DETRIMENTAL EFFECTS ON CHILDREN

- Approximately 15.5 million children are exposed to domestic violence each year.²⁵
- In a single day in 2019, 22,161 children were living in a domestic violence shelter or transitional housing facility. Additionally, 6,170 children received non-residential services.²⁶
- A child who witnesses or experiences multiple adversities, such as marital problems between parents or abuse, could have their lifespan reduced by up to 20 years.²⁷

²⁰ Texas Council on Family Violence. Honoring Texas Victims: Family Violence Fatalities in 2018.

²¹ Petrosky, E., Blair, J.M., Betz, C.J., Fowler, K.A., Jack, S.P., Lyons, B.H. Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence — United States, 2003-2014. *Morbidity and Mortality Weekly Report*, 2017; 66:741-746. DOI: <http://dx.doi.org/10.15585/mmwr.mm6628a1>

²² Centers for Disease Control and Prevention. Adverse Health Conditions and Health Risk Behaviors Associated with Intimate Partner Violence — United States, 2005. *Morbidity and Mortality Weekly Report*, 2008; 57(05):113-117.

²³ National Center for Injury Prevention and Control. Costs of Intimate Partner Violence Against Women in the United States. Atlanta (GA): Centers for Disease Control and Prevention; 2003.

²⁴ Texas Council on Family Violence. Honoring Texas Victims: Family Violence Fatalities in 2018.

²⁵ McDonald, R., Jouriles, E.N., Ramisetty-Mikler, S., et al. 2006. Estimating the Number of American Children Living in Partner-Violent Families. *Journal of Family Psychology*, 20(1):137-142.

²⁶ The National Network to End Domestic Violence. (2020). 14th Annual Domestic Violence Counts Report. Washington, DC. Retrieved from: NNEDV.org/DVCounts

²⁷ Bryan, R. H. Getting to Why: Adverse Childhood Experiences' Impact on Adult Health. *The Journal for Nurse Practitioners*, 2019; 15(2)

DATING VIOLENCE: YOUNG ADULT DATING VIOLENCE AFFECTS YOUTH IN EVERY COMMUNITY ACROSS THE NATION

- 1.5 million high school students in the United States experience physical abuse at the hands of their dating partner in a single year.²⁸
- The severity of intimate partner violence is often greater when the pattern of the abuse is established in adolescence.²⁹
- In 2018, 8 Texas teens under the age of 19 were murdered by their former or current dating partner.³⁰

STALKING: BATTERERS MAY ATTEMPT TO FRIGHTEN OR CONTROL THEIR VICTIMS THROUGH STALKING

- Nationally, it is estimated that 25.5 million people (19.1 million women; 6.4 million men) have been victims of stalking in their lifetime.³¹
- Among female victims, 60.8% were stalked by a current or former intimate partner, 24.9% were stalked by an acquaintance, and 6.2% were stalked by a family member.³²
- Among male victims, 43.5% were stalked by an intimate partner, about 31.9% were stalked by an acquaintance, and 9.9% were stalked by a family member.³³
- Over 60% of female stalking victims and almost 50% of male stalking victims were approached at their home or work. Over 50% of male and female victims received unwanted messages through texts, calls, or voicemail. Additionally, almost 49% of female victims and 32% of male victims were watched, followed, or spied on via a camera, GPS, or a listening device.³⁴

The American Bar Association Commission on Domestic & Sexual Violence has compiled a comprehensive statistical list that is quite comprehensive. Most of the statistics are derived from their publication with permission: https://www.americanbar.org/content/dam/aba/administrative/domestic_violence1/Workplace/Updated%20112a.pdf.

²⁸ Love is Respect. Dating Abuse Statistics Fact Sheet.

²⁹ Ibid.

³⁰ Texas Council on Family Violence. Honoring Texas Victims: Family Violence Fatalities in 2018.

³¹ Smith, S. G., Zhang, X., Basile, K. C., Merrick, M. T., Wang, J., Kresnow, M., and Chen, J. (2018). The National Intimate Partner and Sexual Violence Survey (NISVS): 2015 Data Brief – Updated Release. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.

³² National Center for Injury Prevention & Control, Division of Violence Prevention. (Sept. 2014). Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization – National Intimate Partner and Sexual Violence Survey, United States, 2011. (Surveillance Summaries 63(SS08); 1-18).

³³ Ibid.

³⁴ Ibid.

SEXUAL ASSAULT STATISTICS

THE VICTIMS

- In the U.S., more than 23 million women (19.3%) and almost 2 million men (1.7%) have been raped during their lifetime.³⁵
- In 2018, an estimated 139,380 rapes in the U.S. were reported to law enforcement.³⁶
- It is estimated that 6.3 million Texans have experienced some form of sexual assault in their lifetime.³⁷
- In 2015, 413,000 Texans experienced some form of sexual assault.³⁸
- 91% of sexual assault victims did not report to law enforcement.³⁹
- Almost 80% of female rape or sexual assault victims stated the offender was an intimate partner, other relative, a friend, or an acquaintance.⁴⁰
- Young women aged 20 to 24 experience the highest rates of rape and sexual assault, followed by those 16 to 19.⁴¹
- It is estimated that 25% of college women will be victims of rape or attempted rape before they graduate within a four-year college period, and that women between the ages of 16-24 will experience rape at a rate that's four times higher than the assault rate of all women.⁴²
- Even though male sexual assault remains vastly underreported, the United States Department of Justice documents more than 13,000 cases of male rape every year.⁴³
- Male victims of rape or sexual assault were 74% more likely to have been victimized by strangers than by non-strangers (*Criminal Victimization, 2009*).

³⁵ Breiding, M. J., Smith, S. G., Basile, K. C., Walters, M. L., Chen, J., and Merrick, M. T. Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization — National Intimate Partner and Sexual Violence Survey, United States, 2011. *Morbidity and Mortality Weekly Report*, 2014;63(8):1-18.

³⁶ United States Department of Justice, Federal Bureau of Investigation. (September 2019). *Crime in the United States, 2018*. Retrieved April 6, 2020 from <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/downloads/download-printable-files>

³⁷ Busch-Armendariz, N.B., Olaya, D., Kerwick, M., Wachter, K. & Sulley C. (2015). *Health and Well-Being: Texas Statewide Sexual Assault Prevalence*. The University of Texas at Austin, Institute on Domestic Violence & Sexual Assault: Austin, Texas.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ *Criminal Victimization, 2009*

⁴¹ Katrina Baum, et al. (2009). *Stalking Victimization in the United States*. U.S. Department of Justice, Bureau of Justice Statistics.

⁴² McFadden, C. (2010). *Many Campus Assault Victims Stay Quiet, or Fail to Get Help*. ABC News Nightline.

⁴³ Texas Association Against Sexual Assault, *Male Survivors Of Sexual Assault Brochure 2007*

- In one survey, 65% of 16- to 24-year-old respondents said that women who wear “revealing” clothing (i.e. short skirts and tight tops) make themselves more vulnerable to unwanted sexual advances.⁴⁴
- Sexual violence often has psychological, emotional, and physical effects on the victim, such as PTSD, self-harm, sexually transmitted infections, depression, substance abuse, and flashbacks.⁴⁵
- Almost 2.9 million U.S. women experienced rape-related pregnancy during their lifetime.⁴⁶

HUMAN TRAFFICKING: PROFIT FROM THE CONTROL AND EXPLOITATION OF OTHERS

- Federally funded human trafficking task forces opened 2,515 suspected incidents of human trafficking for investigation between January 2008 and June 2010.⁴⁷
- 40% of all incidents investigated between January 1, 2008 and June 30, 2010, involved prostitution of a child or child sexual exploitation.⁴⁸
- The average age of entry into prostitution is 12–14 years old.⁴⁹
- 600,000 – 800,000 people are bought and sold across international borders each year; 50% are children (most are female). Most of these victims are forced into the commercial sex trade.⁵⁰
- In 2018, The National Human Trafficking Hotline reported 41,088 contacts and 10,949 cases.⁵¹
- There are an estimated 313,000 victims of human trafficking in Texas.⁵²
- Approximately 79,000 minors and youths are victims of sex trafficking in Texas.⁵³

⁴⁴ National Center on Domestic and Sexual Violence. (2005). Lifetime Anti-Violence Youth and Young Adult Survey.

⁴⁵ Rape, Abuse, & Incest National Network (RAINN). Effects of Sexual Assault.

⁴⁶ Rape-Related Pregnancy and Association With Reproductive Coercion in the U.S. (2018) American Journal of Preventive Medicine 018 Dec;55(6):770-776.

⁴⁷ U.S. Department of Justice. Office of Justice Programs. Bureau of Justice Statistics, (NCJ-233732), April 2011.

⁴⁸ Ibid.

⁴⁹ U.S. Department of Justice. Child Exploitation and Obscenity Section.

⁵⁰ U.S. Department of State, 2004, Trafficking in Persons Report, Washington, D.C.

⁵¹ Polaris. 2018 Statistics from the National Human Trafficking Hotline. 2019.

⁵² The Statewide Human Trafficking Mapping Project of Texas, December 2016.

⁵³ Ibid.

CHAPTER THREE: HISTORY OF FAMILY VIOLENCE AND SEXUAL ASSAULT

LEARNING OBJECTIVES: UNDERSTANDING THE HISTORY OF FAMILY VIOLENCE AND SEXUAL ASSAULT

By the end of this chapter, the student will be able to identify and discuss the following terms, concepts, and practices as they relate to the history of family violence and sexual assault:

- A. The Origins of Patriarchy
- B. The Role and Status of Women in Ancient Cultures
- C. Historical Facts Regarding the Physical and Sexual Abuse of Women
 - 1. The Middle Ages (5th to 14th centuries)
 - 2. Witch Hunts
 - 3. The Industrial Revolution
- D. Rape and its Punishment
- E. Slavery, Rape, and Racism in the United States
- F. History of the Domestic Violence and Sexual Assault Movements

History provides us with numerous examples of the injustice, maltreatment, and oppression of women. The core of family violence and sexual assault, particularly against women, is the subordination of women and their subjection to male control and authority.¹ This chapter will provide many examples of how poorly women have been treated throughout history. It will also look at the progress made towards changing public policy, laws, and attitudes about violence against women.

ORIGINS OF PATRIARCHY

Women were not always viewed as the property of men or perceived as less competent. There is archeological evidence that in the Stone Age, women were held in high esteem and regard. Women were the givers of life and the way in which a family's lineage could be traced. Patriarchy was not the result of one event, but occurred over a period of approximately 2,500 years, at different times, in different societies.²

The Dictionary by Merriam-Webster defines *patriarchy* as a “social organization marked by the supremacy of the father in the clan or family, the legal dependence of wives and children, and the reckoning of descent and inheritance in the male line.”³ In a wide sense it is defined as control by men of a disproportionately large share of power.

During the agricultural revolution, egalitarian societies that divided labor by gender developed

¹ Karen Wilson, *When Violence Begins at Home: A Comprehensive Guide to Understanding and Ending Domestic Violence*, Hunter House, Alameda, CA, 1997.

² Ibid

³ “patriarchy.” *Merriam-Webster.com*. Merriam-Webster, 2020. Web. 3 April 2020.

into societies where the exchange of women (due to incest taboos) was a common occurrence. As the later, more complex societies developed, labor was no longer only divided by gender, but also by the status and power of some men over other men and all women. Many researchers agree that this new power based on division of labor coincides with the creation of the Archaic States where slavery, private ownership of property, and the subduing of women were common practices.⁴

THE ROLE AND STATUS OF WOMEN IN ANCIENT CULTURES

In many ancient civilizations, women were viewed as property of their fathers, and later of their husbands. Marriage was often a monetary transaction, with the suitor or his family paying the “bride-price” to the father/owner. The wife was essentially purchased and was then owned by her husband. Any damage to his property was a direct offense against the husband. If an unmarried woman was raped, her bride-price was lowered as she was now seen as “damaged goods”. Once women were viewed as something to be bought, sold, and used as the owner wished, they were not seen as human beings, but rather as commodities.⁵

There are many other examples in ancient civilizations of the oppression of women and girls, including:

- In Rome, baby girls were regularly killed because The Laws of the Twelve Tables ordered fathers to raise one daughter and the rest sons.
- Early Roman husbands had the legal right to kill, divorce, or hit their wives for drinking from the family wine cellar or going to an event without their husband’s permission.
- Women were not allowed to participate in government, philosophy, law, or any other activity that men and custom deemed inappropriate.

HISTORICAL FACTS REGARDING THE PHYSICAL AND SEXUAL ABUSE OF WOMEN

THE MIDDLE AGES (5TH TO 14TH CENTURIES)

Rape only became a criminal offense after a monetized economy developed. A violation of a virgin caused an economic hardship on families because it reduced her value. The word “rape” is derived from the Latin word *rapere*, meaning “to steal, seize, or carry away”. The word was used when a man “seized” or “stole” a wife in ancient western societies. It constituted enforced marriage. A man simply took whatever woman he wanted, raped her, and brought her into his tribe or nation. The word “family” first referred to the servants of a household and then to both the servants and the descendants of a common ancestor. It comes from the Latin word *familia*, meaning “household; household servants,” which came from another Latin term *famulus*, or “servant.”

It was not until 1667 that the term was used specifically for the group of persons consisting of parents and their children.⁶

⁴ Karen Wilson, *When Violence Begins at Home: A Comprehensive Guide to Understanding and Ending Domestic Violence*, Hunter House, Alameda, CA, 1997.

⁵ Ibid.

⁶ Lohumi, S., and Lohumi, R. *Sociology for Nurses*. Elsevier, India, 2015.

Other examples of the abuse of women in the Middle Ages include:

- The 13th century French law code, “Coutumes de Beauvaisis,” stated that: “Men may be excused for the injuries they inflict on their wives, nor should the law intervene. Provided he neither kills nor maims her, it is legal for a man to beat his wife when she wrongs him.”⁷
- Under common law and in Great Britain, the “Right of Husband to Chastise Wife” allowed a husband to beat his wife, though there had to be an element of moderation in the “discipline.”⁸
- During Ivan the Terrible’s reign of 16th century Russia, a husband could murder his wife for “disciplinary” purposes and the Russian Church issued the “Household Ordinance” which was basically a handbook on when and how best to beat one’s wife.⁹
- European men often performed infibulation on their wives, which involved fastening the woman’s labia majora together with a lock, ring, or buckle of some type. Commonly referred to as a “chastity belt,” it was horribly painful and often resulted in diseases and infections because the women could not take the contraptions off in order to bathe properly.¹⁰

WITCH HUNTS

The witch hunts occurred during most of the 16–18th centuries. This warrants attention because of the sheer magnitude of the number of women killed in the most horrible ways possible with what was often fabricated evidence.

Examples of the abuse of women during the witch hunt period include:¹¹

- Women were burned at the stake for talking back to their husbands, scolding, nagging, and miscarrying.
- Women were required to pay fees associated with their torture and murder, including fees to the witch finder, fees for her incarceration, fees for the torture equipment, and fees for food and drinks for all the people involved in her arrest.
- The accused were rarely told what their “crime” was and were not allowed to put on any type of defense.
- The torture often had strong sexual overtones and included sadistic sexual behaviors. Women were made to bare their breast prior to being whipped in public and had their genitals inspected for signs of the devil.
- During the witch hunt period, women learned that if they were accused, even their families would likely not stand up for them. They learned that silent obedience to their husbands and men in general was the key to staying safe.

⁷ Perry, M., et al. *Western Civilization: Ideas, Politics, and Society* (Eleventh Edition). Cengage Learning, 2015.

⁸ Stedman, B. *The Virginia Law Register*. New Series; 3(4):241-248. 1917.

⁹ Wilson, K. J. *When Violence Begins at Home: A Comprehensive Guide to Understanding and Ending Domestic Violence*, Hunter House, Alameda, CA, 2005.

¹⁰ Ibid.

¹¹ Ibid.

THE INDUSTRIAL REVOLUTION

The Industrial Revolution period was a time when technological and social changes occurred very rapidly. It was also the time when intimate partner violence began to be addressed as a social problem. The laws began to change to make physical and sexual assault of women less acceptable. By the 1870s, nearly every state had laws against wife beating, but they were not enforced because it was considered a private family matter. The following examples illustrate the first steps in officially declaring that abusing one's wife was not acceptable:

- A Mississippi court ruling in 1824 said that a husband, in cases of "great emergency," had the right to discipline his wife physically "without being subjected to vexatious prosecution" so long as it was done in a moderate manner (*Bradley v. State*, 1 Miss. 157).
- Alabama became the first state to rescind a husband's legal right to beat his wife. In 1871, the court declared: The privilege, ancient though it be, to beat her with a stick, to pull her hair, choke her, spit in her face or kick her about the floor, or to inflict upon her like indignities, is not now acknowledged by our law. The wife is entitled to the same protection of the law that the husband can invoke for himself (*Fulgham v. State*, 46 Ala. 146-147).
- In 1882, Maryland became the first state to pass a law that made wife beating a crime, punishable by 40 lashes or a year in jail.¹²

RAPE AND ITS PUNISHMENT

Rape laws varied from colony to colony, but in early colonial New England, rape and sexual intercourse with a child under age 10 were capital offenses. The courts were reluctant to enforce the death penalty and rapists were rarely executed. Making the rapist pay restitution in the form of monetary payments was much more likely than an execution. If damages were awarded, payments were made to the husband or father of the victim rather than to the victim herself.¹³

Historically, the degrees of the assailant's punishment meted out to the assailant depended on three factors: (1) the social status of the victim and/or offender; (2) society's judgment of her consent or resistance; and (3) sometimes, the location of the rape.¹⁴

Many of these ancient guidelines still apply today when we ask questions or make statements like: "Well, she was in *that* part of town by herself?" or "He is an upstanding member of the community who could have any girl he wanted, why would *he* rape *her*?" or "Did she even try to scream for help or get away?"

In early English law, the punishment for rape depended on social position. If a man lay with a maiden belonging to the king, he was fined 50 shillings. If the victim was a grinding slave, he

¹² Burger, W. R. *Human Services in Contemporary America* (Tenth Edition). Cengage Learning, 2017.

¹³ Donna Macnamara (additions and editing by Bonnie Clairmont and Carthen Germaine Warner, RN, PHN), *History of Sexual Violence*, From the *History of Sexual Assault* section of the Minnesota Coalition Against Sexual Assault's training manual.

¹⁴ Ibid.

only had to pay 25 shillings. Victims were also penalized. In the 13th century, rape victims fell under the same rules as those who had illicit sex. They were publicly named and fined for the “offense” of being violated.¹⁵

Sometimes, the rapist’s “punishment” was to marry the woman he had raped. This allowed him to escape any real consequences. This became a means of upward mobility for certain landless men. They could rape an heiress, be forced to marry her, and thereby inherit the family property.¹⁶

The word “chivalry” is often thought of as synonymous with good manners and respectful treatment of women, but historically, this respectful behavior only applied towards upper class women. Andreas Capellanus, author of *The Art of Courtly Love*, suggested that a knight or nobleman who wanted a peasant woman should rape her on the spot since chivalry and persuasion would be wasted on her.¹⁷ Noble offenders received only fines, never jail terms, and their fines were lower than the average, especially if an offense was committed against a lower-class woman.¹⁸

Sir Matthew Hale, Lord Chief Justice of England in the mid-1600s, made the “cautionary rule” statement about rape which, in some respect, is still accepted today. “It must be remembered that [rape] is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho never so innocent.” Hale also stated that husbands may not be charged with the rape of their wives.¹⁹

SLAVERY, RAPE, AND RACISM IN THE UNITED STATES

The subordination and enslaving of black people in the United States was effective partly because this model of oppression had already proved to be successful against women and girls. The domestic subordination of women was the model out of which slavery evolved.²⁰ Although all slaves belonged to the men who had purchased them, slave women and girls were particularly vulnerable. They had no legal protection and no right to refuse any demand for sex acts. Slave women’s sexual services were considered part of their labor services and accepted as part of their purchase price.

Slave children were expected to work as soon as they were able to and were sold as individual slaves as soon as they were old enough to work alone, usually between the ages of 8 and 10.²¹

¹⁵ Ibid.

¹⁶ Susan Brownmiller, *Against Our Wills: Men, Women and Rape*, Simon and Schuster, New York, 1975.

¹⁷ Madigan, T. J. *Promethean Love: Paul Kurtz and the Humanistic Perspective on Love*. Cambridge Scholars Press, Newcastle, UK, 2006.

¹⁸ Guido Ruggiero, “Sexual Criminality in the Early Renaissance Venice, 1338-1358,” *Journal of Social History*, 8 (Summer 1975), pp. 18-27.

¹⁹ Mathew Hale, *Historia Placitorum Coronae*. Mitt and Gosling, London, 1734, p. 635.

²⁰ Karen Wilson, *When Violence Begins at Home: A Comprehensive Guide to Understanding and Ending Domestic Violence*. Hunter House, Alameda, CA, 1997, p. 255.

²¹ James Walvin, *The Atlas of Slavery*. Longman Publishing, New York, NY, 2005.

High standards for the conduct and protection of white women were developed and institutionalized during and after slavery. Black men could not even glance in the direction of a white woman for fear of being killed. It was generally believed that no white woman would ever willingly interact with a black man so if it did happen, the black man must have forced himself on her. These standards of conduct did not apply to white men and black women were regularly raped by white men. With the encouragement of the Ku Klux Klan (KKK), the South became obsessed with the interaction between black men and white women.²² Massive propaganda was spread portraying all black men as rapists and all white women were in danger from them.²³ Following the Civil War, when freed slaves were granted the right to vote and own property, violence against black men and women was common and severe. Laws against interracial marriage were passed in the South and thousands of black men were lynched between Emancipation and World War II with the false charge of rape, a common accusation. Rape laws made rape a capital offense only for a black man found guilty of raping a white woman. The rape of a black woman was not even considered a crime, regardless of the race of her assailant.²⁴

HISTORY OF THE DOMESTIC VIOLENCE AND SEXUAL ASSAULT MOVEMENTS

While discussing the history of violence against women, it should be noted that there is also a long history of women's resistance to it. The women's movement in the United States started in the 1800s partly in response to women's outrage at being treated as second class citizens. The initial goals of the movement were for women to simply be treated equal to men and have the right to vote. Child protection and abuse prevention agencies (i.e. The New York Society for the Prevention of Cruelty to Children) were the first social service agencies to address family violence. While they were created to deal only with child abuse, it was clear that fathers who beat their children were also likely to beat their wives. Battered women asked for help from the child protection agencies when their less-formal networks were unable to help.²⁵ Additionally, battered women experienced sexual violence from their husbands and other men. Rape crisis centers evolved out of the women's movement. As more women began to speak out about their experiences, they realized that other women were being assaulted and sought to do something about it.

There has been much progress towards reducing violence against women in this country. There are laws, policies, protocols, and some changes in the general public's understanding of the unique dynamics involved in violent crimes against women, but there is still much work to do. The next few pages are a sampling of the many events that have taken place over the last 150 years that have influenced the law, public policy, and societal attitudes about family violence and sexual assault.

²² Donna Macnamara (additions and editing by Bonnie Clairmont and Carthen Germaine Warner, RN, PHN), *History of Sexual Violence*, From the *History of Sexual Assault* section of the Minnesota Coalition Against Sexual Assault's training manual.

²³ Deb Friedman, "Rape, Racism and Reality," Quest 1 (1979) via California Coalition Against Sexual Assault (<http://www.calcasa.org>).

²⁴ Ibid.

²⁵ Karen Wilson, *When Violence Begins at Home: A Comprehensive Guide to Understanding and Ending Domestic Violence*, Hunter House, Alameda, CA, 1997.

<u>YEAR</u>	<u>EVENT</u>
1875	Martha McWhirter opens a battered wives refuge in Belton, Texas. Known as the Belton Woman's Commonwealth, it grew out of meetings of a small group of Protestant women who wished, in part, for advice on how to deal with authoritarian husbands who sometimes drank and physically abused them.
1904	President Theodore Roosevelt in his annual message to Congress recognized the need to create stronger sanctions for those who engaged in violence against women, particularly those who were violent toward their wives: He stated, "The wifebeater...is inadequately punished by imprisonment, for imprisonment may often mean nothing to him, while it may cause hunger and want to the wife and children who have been the victims of his brutality. Probably some form of corporal punishment would be the most adequate way of meeting this crime."
1920	Women's Suffrage Movement culminates in the right to vote for women in the United States.
1962	Dr. C. Henry Kempe's study, 'The Battered Child Syndrome,' is published in the <i>Journal of the American Medical Association</i> .
1968	The <i>New York Times Magazine</i> reports on an innovative program in which some New York City police officers were trained to use psychology to handle family crisis calls.
1970	The National Institute of Law Enforcement & Criminal Justice (now The National Institute of Justice) recommends training police to: (1) separate the parties; (2) listen to the concerns of each disputant, attempting to address the immediate problem underlying the current dispute; and (3) provide the victim with phone numbers for a variety of social services.
1972	Women's advocates in St. Paul, Minnesota start first hotline and shelters.
1976	The Pennsylvania Protection from Abuse Act is one of the first statutes in the country to provide for civil legal relief for victims of domestic violence.
1977	Women's advocates in Austin, TX saw a need to support women who had experienced domestic violence and sexual assault. In 1974, the Austin Rape Crisis Center opened. Shortly after, in 1977, the Center for Battered Women (known later as SafePlace and now, The SAFE Alliance) opened in Austin, followed by the opening of The Houston Area Women's Center in Houston, TX.
1978	Six women meet in Austin, TX to form the Texas Council on Family Violence (TCFV). The purpose was to represent the six battered women's shelters in Texas and fight for state funding and protective order legislation.

- 1979 The Texas Legislature passes the first bill-establishing pilot funding for battered women's shelters and providing \$200,000 to support programs at six Texas shelters.
- 1980 In 1980, the effectiveness of non-punitive, therapeutic, law enforcement approaches were being questioned. A study by the National Police Foundation, called the Minneapolis Domestic Violence Experiment (MDVE) [funded by the National Institute of Justice (NIJ)], tested three police approaches to calls where simple assault had occurred: (1) arrest the suspect; (2) order one party out of the residence; or (3) advise the couple on how to solve their problems at the scene (see results in year 1984).
- 1981 The Texas Legislature creates the Family Violence Program (FVP), allocating \$1 million per year for the 30 state-contracting shelters and statewide program administration, technical assistance, training, and public education.
- 1983 The Texas Association Against Sexual Assault is incorporated.
- 1984 An analysis of the MDVE data listed above found that the most effective approach was to arrest the suspect. Arrest was shown to be the most effective approach for restoring order and deterring further abuse. The MDVE study concluded that when the abuser was arrested, there was nearly a 50% reduction in subsequent offending.
- 1985 *Tracy Thurman v. Torrington*, CT is the first federal court case in which a battered woman sues a city for police failure to protect her from her husband's violence and she wins \$2 million judgment. The case was based, in part, on the fact that her constitutional right to equal protection was violated by the nonperformance or malperformance of official duties by the defendant police officers.
- 1985 U. S. Surgeon General issues a report identifying domestic violence as a major health problem and the 69th Texas Legislature passes the Family Violence Prevention Act and allocates \$2.3 million per year for the FVP. The Legislature also made the following legislative statement and placed it into the Code of Criminal Procedure 5.01.
- (a) Family violence is a serious danger and threat to society and its members. Victims of family violence are entitled to the maximum protection from harm or abuse or the threat of harm or abuse as is permitted by law.
 - (b) In any law enforcement, prosecutorial, or judicial response to allegations of family violence, the responding law enforcement or judicial officers shall protect the victim, without regard to the relationship between the alleged offender and victim.
- 1987 The National Coalition Against Domestic Violence (NCADV) establishes the first national toll-free domestic violence hotline.

- 1987 Dallas Police Department is the first major police department in Texas to have a unit specifically to deal with family violence crimes. It is formed as part of a settlement in a civil litigation suit filed by formerly battered women (*Yvette Lewis, et al. v. City of Dallas PD*, Civil Action No. CA3-85-1572-T).
- 1987 The Texas Legislature passes measures clarifying use of protective orders and the partial exemption law recognized spousal rape as aggravated sexual assault.
- 1989 The Texas Legislature passes 10 bills related to family violence, increases the FVP's budget to \$5.47 million, and creates the Battering Intervention and Prevention Program (BIPP). The BIPP allocated \$400,000 per year for 15 local programs to work with abusive men.
- 1991 The Houston Police Department's Family Violence Unit begins operations. The first year averaged 12,000 written offense reports. Seven years later, the unit was receiving 36,000 written offense reports annually.
- 1993 Marital rape exemptions were removed from the statutes of all 50 states.
- 1994 Violence Against Women Act (VAWA) is passed by the federal government providing relief in all areas of domestic violence prevention. VAWA was created to improve the response of law enforcement, prosecutors, and judges to crimes against women. It also provides funding for prevention at the local, state, and federal levels.
- 1994 The Violent Crime Control and Law Enforcement Act of 1994 is passed, making stalking a federal offense if the offender crosses state lines in the course of the criminal conduct.
- 1994 Amendments to the Gun Control Act of 1968 added legislation prohibiting individuals who are subjects of final protection orders from purchasing, receiving, and possessing firearms and ammunition.
- 1995 The STOP Formula Grant Program provided funding for the restructuring of state and Indian Tribe criminal justice response to crimes of violence against women. These grants were intended for the restructuring of the criminal justice systems through a collaborative response from law enforcement, prosecution, and victim services.
- 1995 Individuals reporting a sexual assault were no longer required to take a polygraph test as a condition of investigating their *claim*.
- 1996 TCFV opens the National Domestic Violence Hotline [(800) 799-SAFE] and the hotline averages 8,000 calls per month.

- 1996 The Lautenberg Amendment to the Gun Control Act and the Brady Act both prohibit firearms ownership and possession by anyone convicted of misdemeanor crimes of domestic violence. This amendment applies to everyone regardless of what they do for a living, in addition to all government employees. Because it is retroactive and applies to convictions prior to the passage of the amendment, it is very controversial.
- 1997 Statute of limitations for child sexual assault increased to 10 years from the victim's 18th birthday.
- 1997 State certification of sexual assault programs and sexual assault nurse examiners and Texas' anti-stalking law became effective.
- 1998 TCFV is one of 10 state coalitions to participate in the National Health Initiative on Domestic Violence, a project designed to train health care providers to help victims of domestic violence.
- 1999 The Civil Commitment Bill allowed for certain sex offenders to be confined after their release from prison.
- 2000 Violence Against Women Act (VAWA II) is re-authorized by U.S. Congress. Highlights included more protection for immigrants experiencing domestic violence, dating violence, sexual assault, or stalking, by establishing U and T visas and focusing on human trafficking.
- 2001 Statute of limitations for sexual assault extends to 10 years, instead of five. If DNA evidence is collected, there is no statute of limitations.
- 2001 There are numerous changes in Texas family violence laws including: adding dating violence to the definition of family violence in the Texas Family Code, prohibiting firearm possession for respondents in protective orders and those convicted of family violence-related assaults, making interference with an emergency telephone call a criminal offense, and requiring law enforcement officers to have training on avoiding a dual arrest at a family violence call.
- 2002 TCFV conducts statewide survey on prevalence and attitudes toward domestic violence. Results showed that 3 out of 4 Texans have either been in an abusive relationship or know somebody who has.
- 2003 Texas becomes the first state to pass legislation criminalizing human trafficking.
- 2003 Legislation passed requiring law enforcement officers to provide information in writing about local sexual assault services.

2003	The sexual assault protective order statute passes, allowing for victims of sexual assault to obtain protective orders regardless of relationship between the victim and the perpetrator.
2003	The National Domestic Violence Hotline receives its one millionth call.
2005	Violence Against Women Act (VAWA III) is re-authorized by U.S. Congress. A few highlights include: new provisions regarding sexual assault services, legal system response to violence against women, and the availability of low-income victims to contact law enforcement without fear of losing their subsidized housing.
2005	Legislation passes requiring law enforcement agencies immediately request a forensic exam for sexual assault victims who report an assault within 96 hours of the occurrence.
2005	Victims of family violence who have protective orders may terminate their rental leases without financial penalty if they need to move in order to be safe.
2006	Texas has 95 emergency family violence shelters and non-residential programs, with 75% of the programs providing dual services for family violence and sexual assault survivors.
2007	The Hotline, originally known as “loveisrespect.org, National Teen Dating Abuse Helpline,” is launched.
2009	The Texas Legislature increases the potential penalties and fines against those convicted of committing intimate partner strangulation and suffocation to a felony offense.
2009	The Human Trafficking Prevention Task Force is established to create awareness and communication among multiple state agencies charged with dealing with the complex issues surrounding human trafficking.
2010	Statute allowing victims of family violence to terminate their leases without penalty now extends lease termination rights to sexual assault survivors.
2011	Creation of a timeline and structure for the collection and testing of sexual assault evidence and requires Texas agencies to keep a list of active sexual assault cases in the testing pipeline. Police departments are required to submit a rape kit to a crime lab within 30 days of determining a sexual assault has occurred and run DNA analysis within 90 days of a sexual assault being reported.
2012	Attorney General Holder announces that the Uniform Crime Report’s (UCR) definition of rape will be revised to provide a comprehensive statistical reporting of rape in America. The new definition expands the old definition by

taking out the requirement of a “forcible” assault and the restriction that the attack must be toward a woman. “Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.”

- 2017 SafePlace expanded over the years, adding a 24-hour hotline, shelter and counseling services, and other various programs, and eventually partnered with the Austin’s Children Shelter (ASC) through The SAFE Alliance. In late 2016, the boards of The SAFE Alliance, ACS, and SafePlace voted to fully merge into Stop Abuse for Everyone (SAFE)—effective January 1st, 2017.
- 2019 Texas Senate Bill 971 goes into effect, relating to peace officer training on recognizing and recording circumstances indicating strangulation. Additionally, Texas Senate Bill 629, also known as Monica’s Law, goes into effect, aimed at protecting victims of domestic violence.
- 2019 The Office of the Governor’s Sexual Assault Survivors’ Task Force (SASTF) is established.
- 2020 The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) is enacted, providing \$45 million for the Family Violence Prevention and Services Program, \$2 million for the National Domestic Violence Hotline, and a moratorium on evictions covered under VAWA.

Some of the above information was adopted by the following:

- “History of Sexual Violence” available at: www.interactivetheatre.org/resc/history.html.
- Minnesota Coalition Against Sexual Assault (MnCASA), St. Paul, MN. <http://www.mncasa.org>.
- Texas Association Against Sexual Assault (TAASA), Austin, TX. (512) 474-7190. www.taasa.org.
- Texas Council on Family Violence (TCFV), Austin, TX. (512) 525-1978. www.tcfv.org.
- The SAFE Alliance, a merger of Austin’s Children Shelter and SafePlace, Austin, TX. (512) 267-7233. www.safeaustin.org.

CHAPTER FOUR: DYNAMICS OF FAMILY VIOLENCE

LEARNING OBJECTIVES: UNDERSTANDING DYNAMICS OF FAMILY VIOLENCE

By the end of this chapter, the student will be able to identify and discuss the following terms, concepts, and practices as they relate to the dynamics of family violence:

- A. Three Characteristics a Batterer Will Assign to the Victim
- B. Four Common Defense Mechanisms for Violent Behavior
- C. Power and Control Wheel
 - 1. Power and Control Tactics
 - 2. Power and Control Tactics Used by a Batterer to Maintain the Abusive Relationship
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Family Violence Overview

According to a 2017 report from the Centers for Disease Control and Prevention, about half of women and girls who die by homicide are killed by a current or former male intimate partner.¹ In 2018, 174 women (more than 3 women per week) were murdered in the state of Texas by their intimate male partners; 24 of the victims' family, friends, and/or bystanders were killed during the same incidents; 290 children lost a parent—and a firearm was used as the weapon in 59% of the femicides in 2018.² Although adults believe that they have protected their children from exposure to domestic violence, most children could give detailed descriptions of violence experienced in their families.³

Family violence issues usually compose a large part of Texas peace officers' day-to-day duties. Unfortunately, the amount of training that peace officers receive on investigating these crimes

¹ Smith, S.G., Chen, J., Basile, K.C., Gilbert, L.K., Merrick, M.T., Patel, N., Walling, M., & Jain, A. *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010-2012 State Report*. Atlanta, GA, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 2017.

² Texas Council on Family Violence. *Honoring Texas Victims: Family Violence Fatalities in 2018*.

³ Ross, L. E. *The War Against Domestic Violence*. Boca Raton, FL, CRC Press, 2010.

is disproportionately lacking for the number of times officers are called to handle these incidents. Family violence calls frequently cause feelings of frustration among law enforcement professionals. An officer's inability to solve family violence situations because of perceived inaction on behalf of the victim and/or suspect has reinforced many negative attitudes regarding family violence investigations.

Good investigative skills, along with a shrewd understanding of the dynamics of family violence, will allow an officer to more effectively decipher the situation. Not every family violence incident presents enough evidence that allows the peace officer to settle the situation by an arrest; law enforcement officers may need other means to effectively resolve the situation. Successful resolutions will also serve to protect the victim, any children, and pets that may be members of the family. Understanding some of the universal patterns of family violence will help officers be more effective when contacting abusers, victims, and their families. This section describes the basic dynamics associated with family violence and the way these dynamics affect family relationships.

THREE CHARACTERISTICS A BATTERER WILL ASSIGN TO THE VICTIM

When dealing with the dynamics of family violence, it is important to understand the root cause. Family violence is about using a variety of methods to exercise power and control. Batterers do not abuse because they are "sick" or "evil." Extensive research regarding the perpetrators of family violence shows that the behavior is a *learned* response used by the batterers to control situations or events. In fact, very little assaultive behavior is the result of a physical or chemical defect. Batterers use psychological and physical violence to control because they can get away with it and it works for them. The law enforcement officer's response is essential in treating family violence incidents as a crime.

Most commonly, batterers learned the controlling behaviors at home. It is a recognized fact that most batterers come from violent or abusive homes. As a child grows up, they watch their parents, older siblings, and relatives to learn how to interact with others. They are also watching and learning how to get what they want. In addition to being very impressionable, children often see the behavior reinforced when the batterer succeeds and does not face consequences. The responsibility for the failure to hold a batterer accountable rests on many shoulders, including family members, friends, the victim, and law enforcement. To the children who are learning how to behave, the inability or failure to hold the offender accountable is easily misconstrued as condoning the behavior. In addition to the home life, our society seems to condone violence as an appropriate response when things are tough or not going one's way. As children grow, the violence is reinforced by continued success and often condoned by peers. The bottom line is that any behavior that is successful, ignored, condoned or rewarded will be repeated. This fact emphasizes the need for consistent and effective law enforcement intervention.

One of the most common misconceptions is that alcohol and/or drugs cause the violence. Any seasoned officer has responded to multiple disturbance calls that involved one or both parties intoxicated with drugs or alcohol. Alcohol and drugs often lower inhibitions and may be used by the batterer and/or the victim. Furthermore, alcohol or drugs could be used to reduce the

anxiety of other external events. This means lower inhibitions are combined with high levels of stress. The batterer or victim may blame the use of alcohol and drugs for the abusive behavior. Yet removing the substances, such as in the case of a recovering alcoholic, often does not stop the battering behaviors.

Batterers will have a myriad of excuses to justify why they batter, but there are three common characteristics a batterer will likely assign to the victim. A peace officer is likely to hear these and it should put the officer on alert to investigate further:

1. **The victim is a slut.** She is sleeping around and that is why he lost his temper.
2. **The victim is on drugs and/or alcohol.** He had to control her behavior because she was intoxicated. He lost his temper because he was tired of the drug and/or alcohol use.
3. **The victim is mentally ill.** The batterer may justify the behavior by telling the officer that the victim is *crazy* or mentally ill, necessitating the violent behavior.

FOUR COMMON DEFENSE MECHANISMS FOR VIOLENT BEHAVIOR

Officers will also see both batterers *and* victims using the defense mechanisms of **denying, minimizing, blaming, or justifying** the behaviors. There may be denial of any use of violence. If unable to deny the violence, then the severity of the violence may be greatly minimized. The batterer (or victim) may blame an outside source as the reason for the violence having occurred, or he will attempt to justify why the violence was necessary.

The batterer will say things such as:

- “I didn’t hit her at all.” (*denying*)
- “Yes, I hit her, but not that hard. She bruises easily.” (*minimizing*)
- “I hit her, but it is her fault for not having dinner ready on time.” (*blaming*)
- “Yeah, I hit her, but she was trying to grab the phone out of my hand.” (*justifying*)

The victim will use the same tactics to shift blame away from the batterer in order to keep the batterer from getting into trouble:

- “He didn’t hit me.” (*denying*)
- “He didn’t hit me that hard. I’m not hurt.” (*minimizing*)
- “Yes, he hits me now and again, but it is because he lost his job.” (*blaming*)
- “If I hadn’t got up in his face, he wouldn’t have had to hit me.” (*justifying*)

A batterer may say he “lost control,” when just the opposite is true; the batterer chooses who he will abuse, when he will abuse, where it will happen, and even the level of violence he deems “appropriate” for what he wants to accomplish. The batterer may blame stress for his behavior. Think about it—if that were truly the case, wouldn’t the batterer be assaulting his boss, coworkers, or neighbors? Why is it that the batterer only assaults his intimate partner? Most people are under stress, but they do not go home and beat their partner(s). How is it that the batterer can stop his abusive behavior when the police knock at the door? It demonstrates that the batterer *can* control his behavior when he wants to. He did not “lose control.”

No More Cycle of Violence

Developed in the late 1970s and once a popular theory to explain what happens in an abusive home (tension building, violence/battering, and honeymoon phase/calm stage), the *Cycle of Violence* is now rarely used by domestic violence professionals. This model is ineffective at capturing what is going on in a victim-batterer relationship. The *Power and Control Wheel*, developed by the Domestic Violence Intervention Programs in Duluth, Minnesota, is much more reflective of victims' experiences.

POWER AND CONTROL WHEEL

Power and control in relationships is maintained in a variety of ways. The *Power and Control Wheel* is a tool that can be used to help law enforcement officers understand the myriad of ways power and control are sustained by the batterer. It can also be shown to a victim to help explain the violent relationship. Victims who look at this chart often will remark, "This is my life."

Not all power-and-control relationships are physically violent. Some may stop short of physical violence but have an overabundance of psychological abuse. Psychological abuse, even though damaging to the victim's psyche, is not yet a criminal violation. Every physically violent relationship, however, is *always* preceded by a history of psychological abuse. Knowing this can help a law enforcement officer when interviewing the victim.



POWER AND CONTROL TACTICS

Coercion and Threats

The batterer will threaten to kill the victim if she leaves. He may control her behavior by harming or threatening to harm her pet. The batterer may destroy property, but it tends to be her property, not his. He may use minor physical force to coerce behaviors, such as grabbing her arm tight enough to cause bruises, twisting her fingers back, or pinching her. These behaviors are usually not severely violent enough to urge the victim to call police, but these behaviors do go a long way in controlling the victim.

Intimidation

The batterer may use his size to block a doorway or shove a victim down when she tries to get away from him. He may not strike her but hold his fist up as if to strike. He controls her with facial expressions that warn her of his impending anger.

Emotional Abuse

The batterer will call the victim “stupid,” tell her she is lucky to have him, and tell her that no other man would want her. He may tell her she is fat, ugly, a bad mother, an awful housekeeper, and a lousy wife, when she is none of these things. If she makes eye contact with a stranger who happens to be a male, he will accuse her of having an affair with the stranger. He may drive recklessly with her in the car to scare her. He may keep her up all night by yelling and screaming, not letting her sleep. The batterer may threaten to commit suicide and tell his victim that she will be responsible for his death. He may even hand the victim a weapon and tell her to kill him because he is so bad. The batterer will use sexual violence as one of the ultimate tools to control his victim, or to “mend fences” with his partner once he has beaten her. She may not feel like having sexual relations with her batterer but will be afraid not to submit as any refusal may cause the beatings to begin again. Unless asked, the victim will seldom tell the law enforcement officer about this behavior.

Isolation

The batterer will isolate his victim by controlling where she goes, who she talks to, how long she is gone, what she wears, and even what she eats. He does this insidiously and often over time. He may tell the victim he will call her, making her wait by the telephone for hours for the phone call. If she misses it, she will have to “pay” for not being there when he called. Before long, she is no longer going places or talking to people in order to keep him from getting upset. The victim will stop talking with her friends, and even family, so that the batterer won’t have any reason to be angry with her. Before long, the victim is not speaking or interacting with anyone other than her abuser. He can now control her perception of reality because there is no one to counteract his accusations and manipulations. Because he is creating her reality, she begins to believe everything he says, even though it may seem absurd to the outsider. This may go on for years. Officers should not be surprised at the difficulty of changing the victim’s perspective on her situation after years of this psychological terrorism.

Minimizing, Denying, and Blaming

The batterer will deny the abusive behavior, minimize the severity of the battering, or blame the victim, or some other factor, for the assaultive behavior.

Male Privilege

The batterer will use societal norms to tell his partner that the man is the head of the household and that the Bible says that she should submit to him. There are some households where this is the normal behavior, but there is no violence or abuse going on. The difference is that the batterer will use these ideas to reinforce his position as the one in control and making the decisions.

Using Children

The batterer will tell his partner, “If you leave me, I will take the children and you will never see them again.” He may be angry at one of the children, start yelling at the child, and his partner may step in to redirect the abuse towards herself to spare the child. The batterer may tell his child how stupid, fat, ugly, or worthless their mother is.

Economic Abuse

The batterer may control every penny that comes into the household. He may not allow his partner to have any money of her own. If she does the grocery shopping, she may have to give him the receipt for money spent so he can account for all the money she has spent. If he discovers she is stashing money away, he takes the money, and she will be fortunate that this does not lead to a beating. This type of behavior can occur even when the victim is the only person employed. She will hand her entire paycheck over to the batterer because he controls the household. The batterer will buy whatever he wants, but not allow the victim to have anything that he does not approve first.

POWER & CONTROL TACTICS USED BY A BATTERER TO MAINTAIN THE ABUSIVE RELATIONSHIP

As stated previously, the core issue of these behaviors is that of power and control. The batterer attempts to exercise total power and control over his partner using the tactics mentioned above. Some of the reasons for these controlling behaviors may be:

- Low self-esteem on the part of the batterer who feels that he must control his partner in order to hold onto her.
- Fear that his partner will leave him for another man. There are constant accusations to the victim of adultery and affairs. Many batterers are almost pathologically jealous. If the telephone rings and it is a hang-up call or wrong number, he will accuse the victim of having her other boyfriend checking on her. If the victim cuts off all ties to any male contacts, but refuses to give up her female friends, the batterer will claim she must be a lesbian. Sometimes the victim will marry the batterer, thinking this will convince him

that she is committed to him. The victim does not realize that the batterer's jealousy belongs to him and is something she cannot control by her actions.

- Anything the victim does that is contrary to what he expects. He considers this as a slight and a show of disrespect toward him by the victim. For instance, the batterer may tell the victim, "I'd like hamburgers for dinner tonight." The victim only has chicken, so she makes fried chicken instead; the batterer sees this as a lack of respect for his wishes, which, to him, is an affront and intolerable.
- The batterer desires to have total possession of his partner. She has difficulty keeping anything from him, as he will find a way to elicit any secrets she may have. Her very survival may be dependent on how perceptive she is to her abuser; the victim learns to become exceptionally in tune with the batterer and his moods. She (and often the children) can tell whether the night is going to be a good or bad night by how the batterer shuts the car door.
- Reinforced by the batterer's occupation where the abuser is in a position of power and control. Research has shown that power and control occupations have a higher percentage of batterers than the general population. Whether the occupation draws batterers or creates a battering situation is unknown. What is known is that some occupations increase the probability that there will be problems in the home. These are occupations in which: (1) a person is in charge and is used to telling others what to do; (2) the individual has expectations that a request will be completed; and/or (3) the individual has the ability to use physical force to get his way. Some power and control occupations are lawyers, judges, doctors, ministers, police officers, correctional officers, professional athletes, and military personnel. Research by the Centers for Disease Control and Prevention (CDC) in Atlanta, Georgia by Dr. E. Gandolf has shown that there are *no* decisive factors that determine a specific battering personality.

BARRIERS VICTIMS FACE IN LEAVING AN ABUSIVE RELATIONSHIP

Law enforcement officers often wonder why victims of family violence "just don't leave." There is a lack of understanding about the reason(s) someone remains in a violent relationship. Understanding the dynamics of a violent relationship is important because it helps the law enforcement officer provide advice and protection to the victim. Understanding that *the violence is just one facet of the relationship* and the violence doesn't necessarily occur every day can help the law enforcement officer provide better service to the victim. There is also the assumption that the victim knows her situation better than anyone else and is the most competent person to make the decision when to leave the violent relationship.

It is important that law enforcement officers realize that when they ask, "Why don't you just leave?" the statement is a judgement that may negatively impact the victim. There is important information to be obtained when asking a victim what keeps her in the violent relationship; however, it should be done in an atmosphere of trying to understand her situation in a non-judgmental way.

Once the power and control issues are understood, it is not difficult to see why a victim would not leave. When a victim leaves a violent relationship, the batterer begins to feel like he has

lost all power and control over the victim. It then becomes his obsession to get her back in order to reestablish the lost power and control. This is when the stalking often begins.

He may follow the victim around, show up at the victim's place of employment, and call and leave messages on the victim's phone. He may call the victim's place of employment up to hundreds of times in one day. His hope is that she will lose her job and must come back to him. He may try to run her off the road when she is driving. He may "steal" the children from her and refuse to give them back. If he manages to get her on the telephone or in person, he will keep her on the phone for hours begging her to come back, crying, and telling her she'd better come back or he will hurt her or himself. It is a message of "I love you. I need you. Please come back...or else!"

Many victims will return to their batterer in order to stop the all-consuming stalking and harassment. For some, it is easier to return to the batterer and put up with all the abuse than it is to deal with trying to stay gone. However, this is a temporary fix. The violence escalates over time and the abuse occurs more frequently, with greater severity. Battered women's shelters estimate that victims leave and return to the batterer an average of seven times before leaving permanently.⁴ It does not take much imagination to realize how bad the situation is by the time the victim leaves for the seventh time.

The potential for being killed exists for every victim. If a victim is going to be killed, she will typically be killed while leaving or trying to leave the violent relationship (separation violence/assault), not in remaining. When the victim abandons him, the batterer loses power and control. The batterer escalates his abusive behavior in order to recapture control of his partner. It is important the law enforcement officer knows that of the women killed due to family violence, up to 75% are killed attempting to leave or after they leave the relationship.⁵

This is not to say that a victim of family violence will not be killed staying in an abusive relationship. When a batterer kills the victim, it is the ultimate act of power and control. When an officer asks, "Why do you stay?" the officer should also be advising the victim that if she leaves, she needs to take precautions in order to stay safe because leaving does not stop the violence and often escalates it. The victim needs to be given information about social services and community resources in order to be able to leave—and stay gone. Officers should make arrests whenever they can legally do so. An arrest by law enforcement officers may be the first time that the batterer has realized any negative consequences for his behavior. It may also be the first time that the victim and the children watching the violence have seen negative consequences for the batterer's behavior. It sends a powerful message.

⁴ National Domestic Violence Hotline. *50 Obstacles to Leaving: 1-10*. 2013.

⁵ National Domestic Violence Hotline. *Silent Scars of Domestic Abuse*. 2018.

There are many barriers to victims leaving the violent relationship and being able to stay gone. Some of the reasons are as follows:

- Victim's own family may not help her. They have helped her in the past, only to see her return to abuser repeatedly. Her family may get to the point where they will no longer help her, feeling angry and frustrated over her seeming unwillingness to leave her abuser for good.
- She feels there is no point in trying to leave. He has told her that no matter where she goes, he will find her.
- He may have threatened that if she leaves him, he will kill her family, the pets, the children, and/or himself.
- There may share children, making it difficult for the victim to leave. Some batterers will interfere with birth control, keeping her pregnant as much as possible to make it virtually impossible for her to leave and make it on her own.
- She may feel guilty for taking the children away from living with their father.
- She won't be around to protect the children during visitation with their father. Family violence is one of the only crimes in which the perpetrator has ongoing access to the victim. If they have children together, there is almost always court ordered access.
- He has often promised that if she leaves, he will kidnap the children and she will never see them again.
- There may be conflicts with her religious and/or cultural upbringing about divorce or separation.
- The victim is afraid that once she leaves their residence, he will harm and destroy everything left.
- The victim feels responsible for the batterer's mental health, as he does not do well when she isn't there taking care of him. She fears she will be the cause of him committing suicide.
- The victim may have no monetary resources, either because she does not work or has no skills, or the batterer controls all the financial matters, even when the victim makes a decent salary. Because of the lack of financial resources, leaving the violent relationship often forces the victim and the children into a homeless situation.
- Domestic violence shelters are crowded, often turning victims away because of lack of space. Even if a victim can obtain safe shelter in a women's center, most shelters only allow a 30-day stay. It would be difficult for someone with resources to make life changes in 30 days, much less someone without resources and the additional problems of having a violent person in pursuit of her.
- Many victims are told by their batterers that they will lose their immigration status if they leave the relationship.
- Despite everything, the victim still loves her abuser; he is not violent *all* the time, and she desperately hopes that he will change.

(The previously stated barriers are generalizations. These barriers do not apply to every victim of family violence, and some victims have even more barriers to leaving than listed.)

IMPACT OF FAMILY VIOLENCE ON VICTIMS

No person sets out to be in an abusive relationship. Family violence victims do not enjoy being hit. Upon meeting his potential victim, the batterer, who is a master of manipulation, becomes what the victim wants him to be. He is very good at picking up on the victim's needs and wants. Within days of meeting her he may tell her, "I've never met anyone like you before in my life. I think I'm in love with you." The victim is flattered and may believe she has found her "Prince Charming". Because the batterer is putting up a facade, he cannot maintain the charade forever; therefore, he will often push the relationship into high gear in order to ensnare the victim in the relationship as quickly as possible. Whirlwind courtships are considered a warning sign of a possible battering relationship.

The victim may realize that she is in an abusive relationship too late. By this time, she may be married to the batterer, they may share the same residence, and they may have children. She may wonder, "How did I get here?" All of us can relate to finding ourselves in a situation where we wonder how it happened yet find it difficult to get ourselves out of the situation. The added factor of physical violence can make it more difficult for the victim to extricate herself from the relationship.

FIVE POSSIBLE OUTCOMES VICTIMS MAY EXPERIENCE IN VIOLENT RELATIONSHIPS

When someone finds him or herself as the victim in a violent relationship, there are five options available:

- 1. The victim can leave the relationship.** This is easier said than done. Leaving does *not* stop the violence and often serves to escalate the violence. Victims are *not* typically killed while remaining in an abusive relationship. It would not serve the batterer's needs to kill the victim who stays. If a victim is going to be killed, it will be in attempting to leave or in having left the batterer. Every veteran officer has heard a victim say, "He told me that if I left him, he would kill me."
- 2. The victim can kill the batterer.** In most cases, the victim doesn't want to kill her batterer. There was some redeeming part of the batterer that attracted the victim in the beginning. There are good parts of her abuser that the victim still loves. The victim may "split" the batterer into two persons—the good partner who loves her and the bad partner who punishes her, even though the batterer is *not* two people. The victim wants to believe the relationship can be "fixed." To have the expectation that the victim should or could kill the batterer is unrealistic and not an optimal choice.
- 3. The victim can commit suicide.** Research has shown a strong link between a history of battering and the suicide rate of women. Victims decide that there is no way out or that the easiest way out is to commit suicide. The victim may contemplate committing

murder before committing suicide. This often leaves many children without one or the other parent and many family members devastated.

4. **The victim can stay and become passive.** This type of battering situation is easy for the law enforcement officer to figure out. The victim, who has realized she can do little to change her situation, will become compliant and do everything she can to avoid a battering. When the physical violence becomes inevitable and unavoidable, the victim does what she can to minimize her injuries. She may be talkative if she thinks that will help or she will keep her mouth shut if she thinks that will help. When he starts to strike her, she will minimize her body size in order to avoid as much injury as possible. It may be the neighbors or the children who call the police. The victim does not want to do anything that may further inflame her partner. The law enforcement officer can easily determine who has obvious injuries and who does not.
5. **The victim can stay and become combative.** This is the woman who says, “He may hit me, but I am not going to let him get away with it. If he hits me, I’m going to hit him back. He may beat me up, but I am not going to make it easy for him.” This is the most difficult incident for the law enforcement officer to sort out because it looks like mutual combat. It is important for officers to remember that self-defense is not a crime. Officers must sort out whether the incident is mutual combat or self-defense. This challenges the law enforcement officer to use all his/her investigative skills to look beyond the surface value of the incident to the underlying causes and issues. Thorough interviews with both parties and examination of the crime scene are essential. Additional interviews of neighbors and/or other family members can be helpful in sorting out the situation. Dual arrests are nightmares for prosecutors and the courts. Charges are seldom filed. If they are, the charges are likely to be dismissed before any intervention can be implemented. Making no arrest or an arrest of both parties can have long-term repercussions. The victim may not call for police assistance again and decide she must rely on her own resources. The batterer may become more arrogant and feel that his actions have been justified. He may taunt the victim, telling her that no one believes her or will help her. The victim may become depressed or suicidal. She may feel she has to harm or kill the batterer during the next violent incident since there is no one else to help her. This increases the possibility of lethal consequences for the batterer in the future.

REASONS WHY IT MAY BE DIFFICULT FOR A VICTIM TO LEAVE & BENEFICIAL FOR A VICTIM TO STAY IN A VIOLENT RELATIONSHIP

It is human nature to do what is necessary to survive when living in any volatile situation, such as a dangerous war, on a street with gangs, or with a partner who batters. A law enforcement officer should be aware that if a victim remains in a violent relationship, she may feel safer than if she attempts to leave. The victim in a battering relationship learns to become *incredibly* attuned to her batterer’s moods and actions since such knowledge can help her to survive. While she remains in the relationship, she will be aware of the batterer’s moods, whereabouts, abuse of drugs and/or alcohol, and level of danger to her. When the problem of battering is looked at in its entirety, it is amazing to realize that any victim would leave with all the obstacles they must overcome. Yet, most domestic violence victims *will* eventually leave.

TEEN DATING VIOLENCE

{For Dating Violence Definitions and Statutes, Fam. Code §71.0021, see Chapter Five: Family Violence Laws on page 51.}

In 2018, 8 out of the 174 women murdered by their male intimate partners in the state of Texas were under the age of nineteen.⁶ In 2017, 136 women were murdered in Texas by their male intimate partner; 6 were under the age of nineteen.⁷

Teen dating violence is a pattern of controlling and abusive behavior. It can occur in both casual and serious dating situations and can escalate in severity over time.⁸ Teen dating violence often involves similar dynamics to domestic violence in adult relationships; however, there are unique differences that minors in violent relationships may face. Studies have shown that physically abused teens are 3 times more likely to experience violence in college and many carry on patterns of violence into their adult relationships.⁹ Although reaching out to teens can be challenging, understanding the dynamics gives law enforcement the opportunity to build trust with teen victims and help prevent future crimes.

*81% of parents surveyed either believe **teen dating violence is not an issue** or admit they don't know if it's an issue.¹⁰*

In recent years, the prevalence of teen dating violence has been heeded by lawmakers, law enforcement officers, advocates, and educators in response to the pervasiveness of this crime. Public cases, like the 2009 assault of singer Rihanna by hip-hop artist and then boyfriend, Chris Brown, have been highlighted by the media, pushing teen dating violence to the forefront of talked about youth issues. One major concern

surrounding this case was the reaction of young female fans. Even after seeing the bruised and bloodied photos of Rihanna, many young people believed she must have done something to provoke Brown's violent behavior. In response to this reaction, the Boston Public Health Commission surveyed 200 teenage respondents; 46% said Rihanna was responsible for the incident, while 52% said both were at fault.¹¹ While publicized cases have shined a spotlight on the need for youth prevention and training, teen dating violence is not a new problem.

STATISTICS AND DYNAMICS OF TEEN DATING VIOLENCE

At times, society may find it difficult to take teen relationships seriously. This perception can often lead adults to minimize any sort of violence present in teen or young adult relationships. The level of physical violence in teen relationships is typically lower than the level of physical

⁶ Texas Council on Family Violence. *Honoring Texas Victims*. 2018.

⁷ Texas Council on Family Violence. *Honoring Texas Victims*. 2017.

⁸ Bandyopadhyay, A., Deokar, A. M., and Omar, H. A. *Dating Violence in Adolescence*. Pediatrics Faculty Publications, 143. 2014.

⁹ Sitkans Against Family Violence. *Teen Dating Violence Resources*. Web. 2020.

¹⁰ The SAFE Alliance. *Yes. Teen Dating Violence Is An Issue For Your Teen*. Web. 2019.

¹¹ Jordan-Zachery, J. S. *Shadow Bodies: Black Women, Ideology, Representation, and Politics*. 2017.

violence in adult relationships; however, the level and severity of violence among intimate partners have been proven to increase if the pattern was established in adolescence.¹²

“At least 50 studies have found that the rate of violence between dating couples is two to three times greater than among married couples.”¹³

A survey conducted to explore the prevalence of teen dating violence found that 75% of young Texans (ages 16-24) have personally experienced dating violence or know someone who has; furthermore, 33% of young Texans have personally experienced physical and sexual violence in their dating relationship.¹⁴ Statistically, close to 1.5 million high school students nationwide will be physically abused by their partner in one year.¹⁵

Victim’s Response- Teen Dating Violence: Teens in violent dating relationships are more likely to abuse alcohol and other drugs, perform poorly in school, have low self-esteem, suffer from depression, have suicidal thoughts, and be at higher risk of developing an eating disorder compared to teens in non-violent relationships. Youth victims are also more likely to engage in risky sexual behavior, such as unprotected sex.¹⁶

{For a Teenage Guide to Safety, refer to Resources for Law Enforcement at www.safvic.org.}

Teenagers may sense something is not quite right, or that their relationship is unhealthy, but like adult victims, they do not always identify as being in an “abusive” relationship. Childhood experiences of violence may make the victim feel that their partner’s behavior is normal. Like adults, teen perpetrators (and victims) will sometimes minimize or excuse their behavior by saying they are “playing” or “teasing”; essentially justifying their (or their partner’s) abusive behavior. Teens may even romanticize these behaviors. You may hear, “He gets jealous because he loves me,” or “He said he would die without me.” Young women often feel that they have to be the “perfect girlfriend,” while young men may feel pressure to play the dominant role in the relationship.¹⁷ He may tell her what to wear, make her stop talking to male friends, or call and text her constantly to see what she is doing and who she is with.

Remember teens are new to romantic relationships and haven’t quite figured out who they are yet. Lack of communication and relationship experience can also lead to more frustration and aggression in a teen relationship.

{For the Teen Power and Control Wheel, refer to www.loveisrespect.org.}

¹² American Bar Association, 2006

¹³ Hamel, J., & Nicholls, T. L. *A Handbook of Gender-Inclusive Theory and Treatment: Family Interventions in Domestic Violence*. New York, NY: Springer Publishing Company, LLC. 2007.

¹⁴ Crisis Center of Comal County. *Teen Dating Violence*. Web. 2019.

¹⁵ loveisrespect. *Dating Abuse Statistics*. Web. 2017.

¹⁶ Hill, D. C., Stein, L. A. R., Rossi, J. S., Magill, M., and Clarke, J. G. *Intimate violence as it relates to risky sexual behavior among at-risk females*. *Psychological Trauma: Theory, Research, Practice, and Policy*. 2018; 10(6):619-627. doi:10.1037/tra0000316

¹⁷ Worell, Judith, and Carol D. Goodheart, eds. “Gendered Violence in Adolescence.” *Handbook of Girls’ and Women’s Psychological Health*. (New York: Oxford University Press, 2006). 85-87.

UNIQUE BARRIERS FOR TEEN VICTIMS

Dependence on Parents/Guardians

While teens are less likely to depend on their partner for financial stability, a teen's dependence on their parents/guardians for food, shelter, and clothing may affect the way a teen seeks help. Many teen victims want the "abuse to stop," but are not necessarily ready to break up with their abusive partner. Teens may be concerned about their parent's/guardian's reaction if they seek help or disclose the abuse. They may fear they will be forced to break up with or stop speaking to their partner. Some teens might even fear that their parents/guardians will kick them out of the house if they decide to stay in the relationship.

Distrust in Adults

Many adults think adolescent relationships are just "puppy love" and don't believe young people are capable of *really* being in love. This "puppy love" theory makes it difficult for adults to understand why victims of teen dating violence "don't just leave"; more importantly, it makes teens feel like an adult won't take them seriously and that they cannot turn to them for help.¹⁸ More than likely, teens who seek support find it easier to talk to a peer. This could be problematic if they disclose information to a person who is uneducated about teen dating violence, simply does not know what to do, or has an unhealthy view of relationships themselves. Teens will also search for advice on the internet or look to other media and entertainment outlets for help.

Fear of Increased Violence and/or Concern for their Abuser

Their boyfriend/girlfriend may have threatened to commit suicide or told the victim they would kill her/him if they leave. Many teens also worry about getting their partner in trouble if they report the abuse, even though it is their partner who is in the wrong. If the teen victim must see the perpetrator every day at school, they may feel like there is no getting out of the situation.

Peer Pressure and/or Desire for Confidentiality

Peer pressure is a common control tool used in abusive teen relationships. If both the victim and the perpetrator go to the same school, have classes together, and/or have mutual friends, leaving the relationship or confiding to someone may feel impossible. Perpetrators will often tell lies or threaten to spread rumors to the victim's friends; essentially, getting her support system on the perpetrator's side and isolating the victim. If there is something the perpetrator "has" on the victim, the victim may feel embarrassed or be unwilling to disclose the abuse for fear that the perpetrator will tell people or that they will be punished if they disclose it themselves. While personal image and reputation are important to people of all ages, teens are especially sensitive to how others perceive them. Teens might also worry about possible repercussions of telling an adult or anyone about their sexual history and/or illegal drug and

¹⁸ The National Dating Abuse Helpline. *Why do People Stay in Abusive Relationships?* Love is Respect. n.d. Web.

alcohol use; especially if the victim used illegal drugs and alcohol or was intimate with their abuser before the dating violence began. If the victim was forced to have sex or consented to intimacy with their dating partner, they might be ashamed, feel like it was their fault, or worry about what people or their parents will think if they find out.

Electronic Aggression and Technology Abuse

The ease of accessibility and the growing advances in technology (i.e. cell phones, internet, social networks, etc.) are significant factors contributing to teen technology abuse. A publication from 2019 highlighted areas in which perpetrators of teen dating violence exploit technology to verbally abuse, humiliate, blackmail, stalk, and control their victims. The publication also emphasized how the use of technology—or virtual media—has helped perpetrators monitor their partner and is a contributing factor in more violence.¹⁹ A 2007 study conducted by Liz Claiborne on teens (ages 13 to 18) regarding the role of technology in teen dating violence found that: 1 in 3 teens have been texted by their partner 10 to 30 times per hour about where they are, what they are doing, or who they're with; 1 in 5 teens have been asked via cell phone or internet to engage in unwanted sexual activity.²⁰

Confusing Regarding the Legal Process

A big issue with teens and reporting is general fear of the police or thinking that the police cannot help them. There is also a lack of education surrounding teen dating violence that contributes to common dating violence misconceptions. Some statistics suggest that only 33% of teens who have been in a dating violence situation have ever told anyone about the violence.²¹ This could be due in part to confusion regarding the legal process and a desire for confidentiality. Changes made during the Texas 82nd Legislative Session now allows minors who are victims of dating violence to petition for a protective order on their own behalf.

{For more information about protective orders and minors, see Chapter Five: Family Violence Laws on page 64-68.}

While this could be beneficial for some teens, this addition does not specifically identify a minimum age requirement for the minor petitioning or whether an adult will be notified. All these factors influence whether a teen will report abuse.

COLLEGE DATING VIOLENCE

College is a new, exciting time in many people's lives. For many students, college is their first taste of freedom and first time living without parental/guardian supervision. Many young adults begin to fully explore their identity and develop more serious romantic relationships in college. Students entering their first year of college are typically still teenagers, so many of the

¹⁹ Taquette, S. R., and Monteiro, D. L. M. "Causes and consequences of adolescent dating violence: a systematic review." *Journal of injury & violence research*. 2019; 11(2): 137-147. doi:10.5249/jivr.v11i2.1061

²⁰ Zweig, J. M., Dank, M., Lachman, P., and Yahner, J. *Technology, Teen Dating Violence and Abuse, and Bullying*. Washington, DC, Urban Institute Justice Policy Center, 2013.

²¹ National Coalition Against Domestic Violence. *Quick Guide: Teen Dating Violence*. Web. 2017.

dynamics and barriers of teen dating violence are applicable to college students in dating violence situations; yet, there are still differences that make college dating violence unique.

A study found that 43% of college women have experienced violent or abusive behaviors in their dating relationship, and 22% report actual physical and sexual violence, as well as threats of physical violence. Despite the large percentage of college students experiencing dating violence, 38% of respondents said they wouldn't know how to get help on campus if they found themselves in an abusive relationship.²²

Living on Campus

Living on the same campus as their perpetrator can make reporting even more difficult for college students in abusive relationships. Victims may have some of the same classes as their perpetrator or even live in the same dorm. The victim may feel trapped and isolated, making leaving the relationship feel impossible.²³ If the victim were to change their course schedule or living location, the threat of running into their perpetrator is still present.

Alcohol and Substance Abuse

College is a time that many young adults begin experimenting with alcohol and drugs. These substances can lower inhibitions and exacerbate a violent situation, but no substance causes an individual to be violent towards their partner.

{For A College Student's Guide to Safety Planning, refer to Resources for Law Enforcement at www.safvic.org.}

INTIMATE PARTNER VIOLENCE AND REPRODUCTIVE CONTROL

"...women who suffer from domestic violence are more likely to seek induced abortions."²⁴

Recent studies have found a rise in the reproductive control of women who have experienced intimate partner violence (IPV). Sexual coercion, birth control sabotage, and pregnancy coercion are all forms of reproductive control. Intimate partner violence (IPV) affects as many as 324,000 pregnant women per year.²⁵ In a Houston study of 150 women seeking protective orders, 68% described sexual and physical abuse, strangulation, and threats to children; all are risk factors in lethality assessment.²⁶

²² Knowledge Networks. Liz Claiborne Inc.'s *Love Is Not Abuse 2011 College Dating Violence and Abuse Poll*. Web. 2011.

²³ Break the Cycle. *Dating and Domestic Violence on Campus*. Obstacles Facing College Students. 2005. Web.

²⁴ Mundhra, R., et al. "Intimate Partner Violence: Associated Factors and Acceptability of Contraception Among the Women." *Indian journal of community medicine: Official publication of Indian Association of Preventive & Social Medicine*, 2016; 41(3): 203-207. doi:10.4103/0970-0218.183589

²⁵ Chen, P. H., et al. "Birth Outcomes in Relation to Intimate Partner Violence." *Journal of the National Medical Association*, 2017; 109(4): 238-245. doi:10.1016/j.jnma.2017.06.017

²⁶ McFarlane, J. & Malecha, A. (2005) "Sexual Assault Among Intimates: Frequency, Consequences and Treatments." *U.S. Department of Justice*. Web.

Important Definitions

Sexual Coercion: to obtain money, sexual services, or intimate visual material by threat or the promise to not commit a crime against someone

Pregnancy Coercion: threats or pressure to promote pregnancy; partner attempts to control pregnancy outcomes, interfering with health care (i.e. sabotaging doctor visits for women seeking an abortion or forcing their partner to have an abortion)

Birth Control Sabotage: discouraging or forbidding the use of hormonal methods, active interference with contraceptive methods (i.e. flushing pills; poking holes in condoms; refusing to wear condoms with the intention to manipulate or to impregnate their partner; failure to withdraw from intercourse)

Some other abusive control tactics include sabotaging the ability to receive health care, denying paternity of the child after the birth, and accusing their partner of having an abortion if they miscarry.²⁷

To fully assess a domestic violence situation in the instance of pregnancy, some helpful things to ask may be:

- Are you ever scared of your partner?
- Are you fearful for your safety or the safety of the baby?
- Were you ever forced to have sex when you did not want to?
- Were you ever forced to have unprotected sex or threatened if you did not agree to unprotected sex?
- Were you ever pressured or threatened to get pregnant?

Statistics on Reproductive Coercion and Intimate Partner Violence

- IPV perpetrators were 5.2 times more likely to report forcing sexual intercourse without a condom in the past year than non-IPV perpetrators.²⁸
- Women with high sexually transmitted infection knowledge were more likely to use condoms inconsistently when under high levels of fear for abuse compared to non-fearful women with low STI knowledge.²⁹
- More than 22% of women who experienced IPV reported becoming pregnant as a result of forced sex.³⁰

²⁷ Frohworth, L., Miller, E., & Moore, A. M. (2010). *Male Reproductive Control of Women Who Have Experienced Intimate Partner Violence in the United States*. The Guttmacher Institute. Web.

²⁸ Bergmann, J. N., and Stockman, J. K. "How does intimate partner violence affect condom and oral contraceptive use in the United States?: A systematic review of the literature." *Contraception*, 2015; 91(6):438-55. doi:10.1016/j.contraception.2015.02.009

²⁹ Raiford, J. L. et al. "Effects of fear of abuse and possible STI acquisition on the sexual behavior of young African American women." *American journal of public health*, 2009; 99(6):1067-71. doi:10.2105/AJPH.2007.131482

³⁰ Busch-Armendariz, Noel Bridget, Heffron Cook, Laurie, and Bohman, Tom. *Statewide Prevalence of Intimate Partner Violence in Texas*. Institute on Domestic Violence and Sexual Assault, Center for Social Work Research School of Social Work, the University of Texas at Austin (June 2011).

- Adolescent girls in physically abusive relationships were 3.5 times more likely to become pregnant than non-abused girls.³¹
- Girls who experienced physical dating violence were 2.8 times more likely to fear the perceived consequences of negotiating condom use than non-abused girls.³²
- Adolescent mothers who experienced physical abuse within three months after delivery were nearly twice as likely to have a repeat pregnancy within 24 months.³³
- More than one-third (38.8%) of adolescent girls tested for STI/HIV have experienced dating violence.³⁴
- Nearly 40% of pregnant adolescents reported violence during pregnancy.³⁵

BATTERERS IN POSITIONS OF POWER

Anyone can be a batterer. Family violence is committed by people of all professions and socioeconomic levels. Firefighters, judges, police officers, and emergency medical technicians are not exceptions. Every call needs to be handled with urgency, without regard to whether the people involved hold a position of authority within the community. Some of these batterers use their position of power to protect them from being held accountable for their violence.

The controlling behavior is reinforced by the batterer's occupation where the abuser is in a position of power and control. Research has shown that power-and-control occupations have a higher percentage of batterers than the general population. Whether the occupation draws batterers, or the occupation creates a battering situation is unknown. What is known is that some occupations increase the probability that there will be problems in the home. These are occupations in which: (1) a person is in charge and is used to telling others what to do; (2) the individual has expectations that a request will be completed; and/or (3) the individual has the ability to use physical force to get his way. Some power-and-control occupations include lawyers, judges, doctors, ministers, police officers, correctional officers, professional athletes, and military personnel. Research by the Centers for Disease Control and Prevention in Atlanta by Dr. E. Gandolf has shown that there are no decisive factors that determine a specific battering personality.

One of the most difficult calls officers may handle is that of an officer who may be a batterer.

³¹ Roberts, T. A., Auinger, P., and Klein, J. D. "Intimate partner abuse and the reproductive health of sexually active female adolescents." *Journal of Adolescent Health*, 2005; 36(5):380-385. doi:10.1016/j.jadohealth.2004.06.005

³² Wingood, G. M. et al. "Dating violence and the sexual health of black adolescent females." *Official Journal of the American Academy of Pediatrics*, 2001; 107(5). doi:10.1542/peds.107.5.e72

³³ Raneri L. G., and Wiemann, C. M. "Social ecological predictors of repeat adolescent pregnancy." *Perspectives on Sexual and Reproductive Health*, 2007; 39(1):39-47. doi:10.1363/3903907

³⁴ Decker, M. R., Silverman, J. G., and Raj, A. "Dating Violence and Sexually Transmitted Disease/HIV Testing and Diagnosis Among Adolescent Females." *Official Journal of the American Academy of Pediatrics*, 2015; 116(2):272-276. doi:10.1542/peds.2005-0194

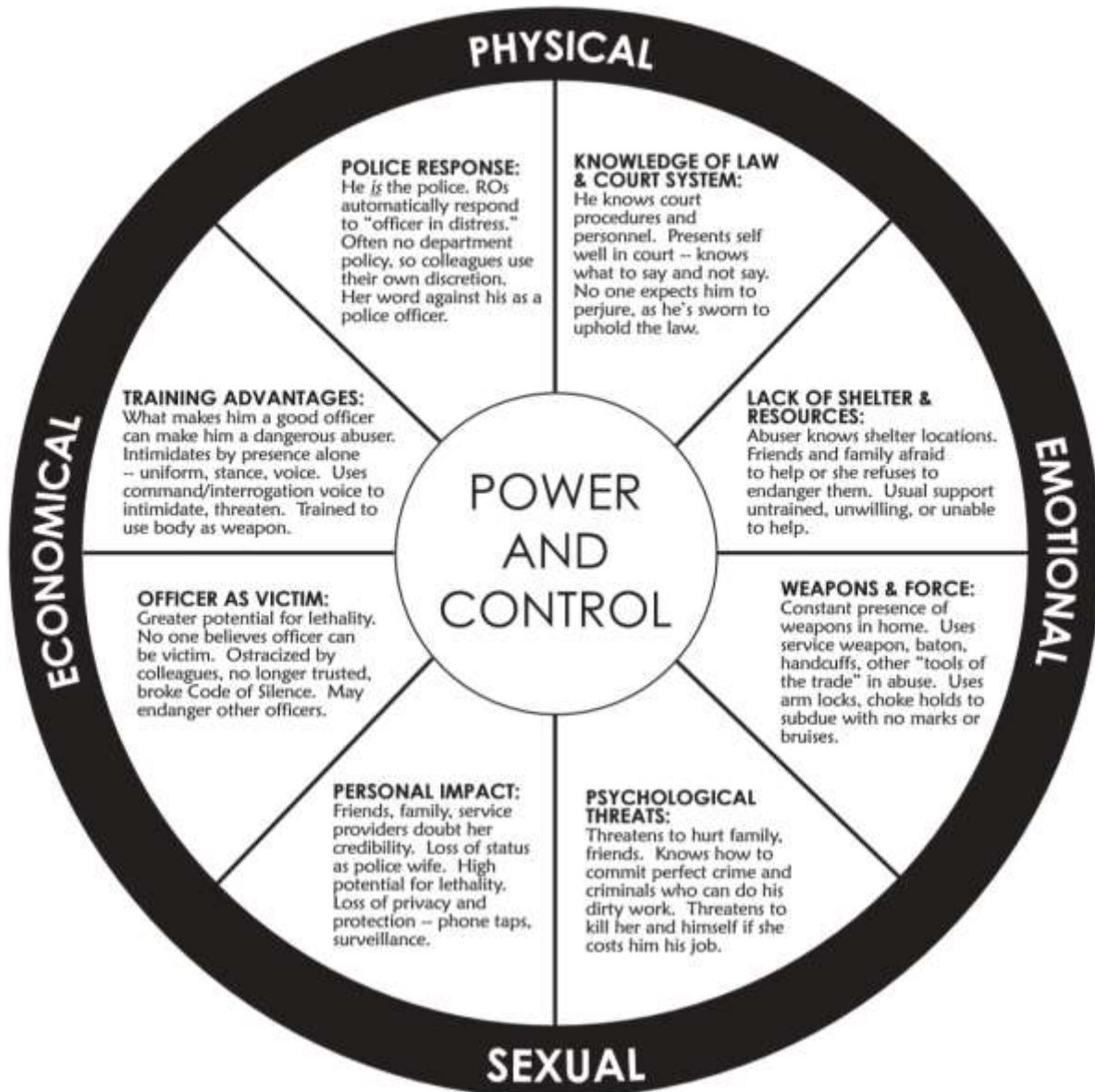
³⁵ Thomas, J. L., Lewis, J. B., Martinez, I. et al. "Associations between intimate partner violence profiles and mental health among low-income, urban pregnant adolescents." *BMC Pregnancy Childbirth*, 2019; 19(120). doi: 10.1186/s12884-019-2256-0

Additional factors contribute to the difficulties when a law enforcement officer is the batterer:

- Police training adds to the law enforcement officer's/batterer's finesse and ability to control a victim using chokeholds, arm locks, and pressure points. These skills allow for managing suspects without leaving marks. A peace officer learns how to use an authoritative presence to control a person which may be used as a technique to intimidate their intimate partner. There is also the presence of firearms, handcuffs, a baton, a taser, and other "tools of the trade," including their radio and take-home squad car which they can use to hear and see all radio traffic concerning any 911 call that may have been made from their residence. All of these learned skills make a better law enforcement officer but make an even better manipulator of the investigation before and after the arrival of other law enforcement officers on the scene.
- Law enforcement officers are trained to always maintain control over the situation. Whether it is a traffic stop or a disturbance, the officer must be in command of any situation, managing what others do and having the power to force compliance on anyone who might resist. Some officers carry this controlling demeanor over into their home lives. The officer may have a low tolerance for anyone who goes against his wishes or disrespects his position of authority. He may believe that he has the right to punish those who disobey his command, including his partner and/or family members.
- Officers know the criminal justice system. An officer knows what to say, what not to say, and how to manipulate a situation to his advantage. He may appeal to the responding officers by emphasizing their camaraderie as fellow officers. The police officer/batterer knows court procedures and what to expect. He knows how to testify and often is on first name basis with courtroom personnel.
- The victim may be terrified because if her police officer/batterer loses his job, she believes he *will* kill her. She knows that his job *is* his identity and life. She may be so frightened that she will minimize the violence, only share irrelevant information, or refuse to disclose any information.
- If the police officer's/batterer's behavior is not overtly criminal, it may be extremely difficult to get enough information and evidence to proceed forward.

With all the barriers victims face, those whose partners are law enforcement officers are very reluctant to call 911. One thing to consider when a victim calls 911, and her partner is a law enforcement officer, is that she is gravely afraid and desperately seeking help and protection. It is imperative that the officer not show favoritism toward the officer, act astounded by the allegation, or place blame on the victim during the conversation. Remember that statistically it is unlikely that the victim is calling about the first act of violence within the home. On the contrary, the violence has probably increased in severity or lethality prompting the victim or a family member to dial 911. If the victim is contemplating ending the relationship, she is in great danger and every effort should be made to provide her service.

POLICE PERPETRATED DOMESTIC VIOLENCE



Police Power and Control Wheel– Tactics of Power and Control in Police Perpetrated Domestic Violence

Knowledge of Law and Court System

He knows court procedures and personnel. He will present himself well in court and knows what to say and not to say. His profession confers credibility. Only what can be proven matters.

Lack of Shelter and Resources

Service providers are untrained or unwilling to help. Abuser knows shelter locations and has access to information to track victim if she runs. Order of Protection is difficult to get or keep. Remedies depend on police enforcement.

Weapons and Force

He has a gun, badge, brotherhood on his side, judicial bias, access to information, and equipment (i.e. phone taps, surveillance, tracking devices on car). Control through intimidation; mere presence, stance, voice, uniform, badge, gun. Knows continuum of force: body as weapon, arm locks, choke holds, handcuffs, other “tools of the trade.” Weapons are available and he’s trained to use them.

Psychological Threats

He keeps her under his control without physical abuse. She’s afraid he’ll hurt her and anyone who helps her. Afraid he’ll use the system against her: arrest, jail. He knows how to commit the perfect crime. No one will believe her word against the “word of an officer.”

Personal Impact

The abuser may make the victim believe that she is not protected from law enforcement. Family and friends may no longer believe her or listen to her because she keeps “going back” and doesn’t “just leave”—and the abuser makes sure that she *knows* he is the only one there for her.

Officer as Victim

On the other hand, when a perpetrator abuses their spouse (a police officer), many will not believe them because they are the *ultimate authority* and there’s no way they can be a victim, too.

Training Advantages

He is trained to use his body as weapon, arm locks, choke holds, handcuffs, other “tools of the trade.” He has investigative skills that enable him to get information about her or her friends.

Police Response

He is the police. She fears police will respond to “officer in distress” instead of her. Colleagues use their own discretion. The police report will reflect the abuser’s version of story. Police can intentionally fail to collect or preserve evidence.

This information was developed by Diane Wetendorf, Inc. © 1998, revised 2004. All rights reserved. DWetendorf@DWetendorf.com. Adapted from: Domestic Abuse Intervention Project, Duluth MN.

To make matters even more difficult, the police officer/batterer will not admit to committing any violent acts, therefore the impetus to come forward and report remains squarely on the victim. The victim may then recant after the situation has occurred and police have become involved. The police officer/batterer may be begging the victim to drop the charges, as he may face the possibility of losing his career. The batterer’s persuasion and charm may cloud the victim’s beliefs about how the violent event took place, and other officers may collude with the batterer. All law enforcement agencies should adopt policies and procedures that must be trained on and enforced, regardless of the officer’s rank or title.

THE IMPACT OF INAPPROPRIATE AND APPROPRIATE LAW ENFORCEMENT RESPONSE TO FAMILY VIOLENCE

Law enforcement plays a crucial role in protecting victims *and* holding offenders accountable. Studies have shown that victims stay in abusive relationships for many reasons. A police officer does not have to know or understand the reasons in order to consistently enforce the laws and protect the victims. An officer’s attitude should *not* be, “I can’t help you if you stay with him,” or “She deserves it because she keeps going back to him.” Despite an officer’s feeling of frustration dealing with the same victims repeatedly, it is *essential* for the officer to continue to support the victim regardless of the victim’s decisions. A police officer’s attitude of support may be what the victim needs to feel worthwhile and attempt to make changes in her life. Keep in mind that most victims of family violence are not perfect. They may have criminal histories, drug/alcohol abuse issues, and/or mental health problems.

Some victims of family violence can be nice or angry, while others can be thankful and others not. A law enforcement officer is doing a disservice to the victim and the batterer if he/she fails to respond to an incident of family violence in the best manner possible. The batterer, who must rationalize and justify the abusive behaviors, looks at the poor response or inaction by police as an endorsement of his behaviors. The victim recognizes that the police are not going to help her and realizes she must take matters in her own hands. The children who witness the violence continue to be traumatized and learn that living in a violent home is “normal.”

A constant and persistent response is also important in providing protection and sending the proper message that the violence is unacceptable. Officers must realize that batterers are masters of manipulation and can position the victim in such a way that no one follows up and resources are not provided, thus enhancing the victim’s isolation from any supportive

services. Officers should look at each interaction as an opportunity to protect the victim(s), hold the offender accountable, and demonstrate the negative consequences of the batterer's behavior to the children or anyone who may be watching.

Conclusion

Peace officers can best help family violence victims and those observing the violence by simply doing their job well. That means asking the appropriate questions, observing and documenting behaviors of both parties, looking for injuries that are obvious or hidden, making a well-written, thorough offense report, providing the victim with notification of the rights of family violence victims, taking photographs, and doing an in-depth investigation. Referrals to community and social services for the victim and family may be essential for the family to begin recovery.

Helpful things to say to victims of family violence:

- I'm afraid for your safety.
- I'm afraid for the safety of your children.
- I/We are here for you when you are ready to talk.
- You do not deserve to be abused.

If a peace officer fails to handle a family violence situation properly, the repercussions can be detrimental. The victim may not call the police for help again, especially if the responding officer passes judgment about her *deserving the abuse* or threatens *sending somebody to jail if another call is received from the household*. The victim may become more despondent over the situation which could lead to a variety of actions, including suicide by the victim or the victim killing the batterer.

Involvement in a family violence situation by a peace officer can send the clear message that the violence will not be tolerated. The impact of a law enforcement officer's skillful intervention in a family violence situation can be powerful for both the victim and offender.

CHAPTER FIVE: FAMILY VIOLENCE LAWS

LEARNING OBJECTIVE: UNDERSTANDING FAMILY VIOLENCE LAWS

By the end of this chapter, the student will be able to identify and discuss the following terms, concepts and practices as they relate to family violence laws:

- A. Definitions and Statutes – Texas Family Code
- B. Definitions and Statutes – Texas Penal Code
- C. Officer Duties in Family Violence Cases
- D. Officer Duties Regarding Protective Orders
- E. Protective Orders
 - 1. Magistrate's Order for Emergency Protection (MOEP)
 - 2. Temporary Ex Parte Protective Order (TPO)
 - 3. Final Protective Order
 - 4. Safety Planning with Protective Orders
 - 5. Conditions for Defendant Charged with Offense Involving Family Violence
 - 6. Requirements of Order Applying to Person Who Committed Family Violence
 - 7. Out of State Protective Orders
 - 8. Immunity
 - 9. Violation of Protection Order
 - 10. Protective Order vs. Restraining Orders
 - 11. Cases
- F. Officer and Agency Civil Liability in Family Violence Cases
- G. Family Violence Cases Decided by the U.S. Supreme Court
 - 1. *Crawford v. Washington*
 - 2. *Davis v. Washington*
 - 3. *Hammon v. Indiana*
 - 4. *Giles v California*
 - 5. *Michigan v. Bryant*

All Texas Codes can be viewed online at <https://statutes.capitol.texas.gov/Index.aspx>.

DEFINITIONS AND STATUTES – FAMILY CODE

FAMILY

FAM. CODE § 71.003

“Family” includes individuals related by consanguinity or affinity, as determined under Section 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.

FAMILY VIOLENCE
FAM. CODE § 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), (G), (H), (I), (J), (K), and (M), by a member of a family or household toward a child of the family or household;
or
- 3) **Dating violence**, as defined in § 71.0021.

ABUSE
FAM. CODE § 261.001(1)

- (1) “Abuse” includes the following acts or omissions by a person:
 - (A) mental or emotional injury to a child that results in an observable and material impairment in the child’s growth, development, or psychological functioning;
 - (B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child’s growth, development, or psychological functioning;
 - (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;
 - (D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;
 - (E) sexual conduct harmful to a child’s mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of young child or children under Section 21.02, Penal Code, indecency with a child under Section 21.11, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;
 - (F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;
 - (G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code, including compelling or encouraging the child in a manner that constitutes an offense of trafficking of persons under Section 20A.02 (a)(7) or (8), Penal Code, prostitution under Section 43.02(b), Penal Code, or compelling prostitution under Section 43.05(a)(2), Penal Code;
 - (H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21, Penal Code, or pornographic;

- (I) the current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;
 - (J) causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code;
 - (K) causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code;
 - (L) knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Section 20A.02(a)(5), (6), (7), or (8), Penal Code, or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections; or
 - (M) forcing or coercing a child to enter into a marriage.
- (2) “Department” means the Department of Family and Protective Services.
- (3) “Exploitation” means the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy.

HOUSEHOLD FAM. CODE § 71.005

“Household” means a unit composed of persons living together in the same dwelling, whether or not they are related to each other.

MEMBER OF A HOUSEHOLD FAM. CODE § 71.006

“Member of a Household” includes a person who previously lived in a household.

DATING VIOLENCE FAM. CODE § 71.0021

- (a) “Dating violence” means an act, other than a defensive measure to protect oneself, by an actor that:
- (1) is committed against a victim or applicant for a protective order:
 - (A) with whom the actor has or has had a dating relationship; or
 - (B) because of the victim's or applicant's marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and
 - (2) is intended to result in physical harm, bodily injury, assault, or sexual assault, or that is a threat that reasonably places the victim or applicant in fear of imminent physical harm, 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.

DEFINITIONS AND STATUTES – TEXAS PENAL CODE

SENTENCES FOR OFFENSES ARISING OUT OF THE SAME CRIMINAL EPISODE PC § 3.03

▲ 86th Legislative Change: *The 86th Legislative Session amended subdivision (b)(5) to permit stacking of a sentence under 20A.03 (Continuous Trafficking of Persons) in conjunction with other sentences for that offense, 20A.02 (Trafficking of persons), or 43.05 (Compelling Prostitution).*

- (a) When the accused is found guilty of more than one offense arising out of the same criminal episode prosecuted in a single criminal action, a sentence for each offense for which he has been found guilty shall be pronounced. Except as provided by Subsection (b), the sentences shall run concurrently.
- (b) If the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences may run concurrently or consecutively if each sentence is for a conviction of:
 - (1) an offense:
 - (A) under Section 49.07 or 49.08, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections; or
 - (B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of both sections;
 - (2) an offense:
 - (A) under Section 33.021 or an offense under Section 21.02, 21.11, 22.011, 22.021, 25.02, or 43.25 committed against a victim younger than 17 years of age at the time of the commission of the offense regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section; or
 - (B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A) committed against a victim younger than 17 years of age at the time of the commission of the offense regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of more than one section;
 - (3) an offense:
 - (A) under Section 21.15 or 43.26, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections; or
 - (B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A),

- regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of both sections;
- (4) an offense for which the judgment in the case contains an affirmative finding under Article 42.0197, Code of Criminal Procedure;
- (5) an offense:
 - (A) under Section 20A.02, 20A.03, or 43.05, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section; or
 - (B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations more than one section; or
- (6) an offense:
 - (A) under Section 22.04(a)(1) or (2) or Section 22.04(a-1)(1) or (2) that is punishable as a felony of the first degree, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section; or
 - (B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A) and punishable as described by that paragraph, regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of more than one section.

ASSAULT

PC § 22.01

Class A, B, or C misdemeanor or 2nd or 3rd Degree Felony depending on elements

▲ 86th Legislative Change: HB902 added provisions concerning forcing victims who are pregnant to have an abortion. Also increasing the penalty from a Class A misdemeanor to a 3rd Degree Felony.

- (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;

- (2) a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Fam. Code, if:
 - (A) it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this chapter, Chapter 19, or Section 20.03, 20.04, 21.11, or 25.11 against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Fam. Code; or
 - (B) the offense is committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth.
- (3) a person who contracts with government to perform a service in a facility as defined by Section 1.07(a)(14), PC, or Section 51.02(13) or (14), Fam. Code, or an employee of that person:
 - (A) while the person or employee is engaged in performing a service within the scope of the contract, if the actor knows the person or employee is authorized by government to provide the service; or
 - (B) in retaliation for or on account of the person's or employee's performance of a service within the scope of the contract;
- (4) a person the actor knows is a security officer while the officer is performing a duty as a security officer; or
- (5) a person the actor knows is emergency services personnel while the person is providing emergency services.
- (6) a pregnant individual to force the individual to have an abortion.
- (7) A person the actor knows is pregnant at the time of the offense
- (b-1) Notwithstanding Subsection (b)(2), an offense under Subsection (a)(1) is a felony of the 2nd degree if:
 - (1) the offense is committed against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Fam. Code;
 - (2) it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this chapter, Chapter 19, or Section 20.03, 20.04, or 21.11 against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Fam. Code; and
 - (3) the offense is committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth.
- (c) An offense under Subsection (a)(2) or (3) is a Class C misdemeanor, except that the offense is:
 - (1) a Class A misdemeanor if the offense is committed under Subsection (a)(3) against an elderly individual or disabled individual, as those terms are defined by Section 22.04; or
 - (2) a Class B misdemeanor if the offense is committed by a person who is not a sports participant against a person the actor knows is a sports participant

either:

- (A) while the participant is performing duties or responsibilities in the participant's capacity as a sports participant; or
- (B) in retaliation for or on account of the participant's performance of a duty or responsibility within the participant's capacity as a sports participant or
- (3) a Class A misdemeanor if the offense is committed against a pregnant individual to force the individual to have an abortion.
- (d) For purposes of Subsection (b), the actor is presumed to have known the person assaulted was a public servant, a security officer, or emergency services personnel if the person was wearing a distinctive uniform or badge indicating the person's employment as a public servant or status as a security officer or emergency services personnel.

TERRORISTIC THREAT

PC § 22.07

Class A or B misdemeanor, State Jail Felony, or 3rd Degree Felony depending on the elements

- (a) A person commits an offense if he threatens to commit any offense involving violence to any person or property with intent to:
 - (1) cause a reaction of any type to his threat by an official or volunteer agency organized to deal with emergencies;
 - (2) place any person in fear of imminent serious bodily injury;
 - (3) prevent or interrupt the occupation or use of a building, room, place of assembly, place to which the public has access, place of employment or occupation, aircraft, automobile, or other form of conveyance, or other public place;
 - (4) cause impairment or interruption of public communications, public transportation, public water, gas, or power supply or other public service;
 - (5) place the public or a substantial group of the public in fear of serious bodily injury; or
 - (6) influence the conduct or activities of a branch or agency of the federal government, the state, or a political subdivision of the state.
- (b) An offense under Subsection (a)(1) is a Class B misdemeanor.
- (c) An offense under Subsection (a)(2) is a Class B misdemeanor, except that the offense is a Class A misdemeanor if the offense:
 - (1) is committed against a member of the person's family or household or otherwise constitutes family violence; or
 - (2) is committed against a public servant.
- (d) An offense under Subsection (a)(3) is a Class A misdemeanor, unless the actor causes pecuniary loss of \$1,500 or more to the owner of the building, room, place, or conveyance, in which event the offense is a state jail felony.
- (e) An offense under Subsection (a)(4), (a)(5), or (a)(6) is a felony of the third degree.

CONTINUOUS VIOLENCE AGAINST THE FAMILY

PC § 25.11

3rd Degree Felony

▲ 86th Legislative Change: HB 1661, also known as “Rachel’s Law,” amends subsection (b) to clarify that jurors are not required to unanimously agree in which county each underlying incident of family violence occurred. Also see Code of Criminal Procedure Article 13.072, Continuous Violence Against the Family Committed in More Than One County.

- (a) A person commits an offense if, during a period that is 12 months or less in duration, the person two or more times engages in conduct that constitutes an offense under Section 22.01(a)(1) against another person or persons whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Fam. Code.
- (b) If the jury is the trier of fact, members of the jury are not required to agree unanimously on the specific conduct in which the defendant engaged that constituted an offense under Section 22.01(a)(1) against the person or persons described by Subsection (a) the exact date when that conduct occurred, or the county in which each instance of the conduct occurred. The jury must agree unanimously that the defendant, during a period that is 12 months or less in duration, two or more times engaged in conduct that constituted an offense under Section 22.01(a)(1) against the person or persons described by Subsection (a).
- (c) A defendant may not be convicted in the same criminal action of another offense the victim of which is an alleged victim of the offense under Subsection (a) and an element of which is any conduct that is alleged as an element of the offense under Subsection (a) unless the other offense:
 - (1) is charged in the alternative;
 - (2) occurred outside the period in which the offense alleged under Subsection (a) was committed; or
 - (3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a).
- (d) A defendant may not be charged with more than one count under Subsection (a) if all of the specific conduct that is alleged to have been engaged in is alleged to have been committed against a single victim or members of the same household, as defined by Section 71.005, Fam. Code.
- (e) An offense under this section is a felony of the third degree.

ONLINE IMPERSONATION

PC § 33.07

{For Definitions and Statutes, see Chapter 9 (A): Stalking on page 238.}

TAMPERING WITH WITNESS

PC § 36.05

- (a) A person commits an offense if, with intent to influence the witness, he offers, confers, or agrees to confer any benefit on a witness or prospective witness in an official proceeding or coerces a witness or prospective witness in an official proceeding:

- (1) to testify falsely;
 - (2) to withhold any testimony, information, document, or thing;
 - (3) to elude legal process summoning him to testify or supply evidence;
 - (4) to absent himself from an official proceeding to which he has been legally summoned; or
 - (5) to abstain from, discontinue, or delay the prosecution of another.
- (b) A witness or prospective witness in an official proceeding commits an offense if he knowingly solicits, accepts, or agrees to accept any benefit on the representation or understanding that he will do any of the things specified in Subsection (a).
- (c) It is a defense to prosecution under Subsection (a)(5) that the benefit received was:
 - (1) reasonable restitution for damages suffered by the complaining witness as a result of the offense; and
 - (2) a result of an agreement negotiated with the assistance or acquiescence of an attorney for the state who represented the state in the case.
- (d) An offense under this section is a felony of the third degree, except that if the official proceeding is part of the prosecution of a criminal case, an offense under this section is the same category of offense as the most serious offense charged in that criminal case.
- (e) Notwithstanding Subsection (d), if the most serious offense charged is a capital felony, an offense under this section is a felony of the first degree.
- (e-1) Notwithstanding Subsection (d), if the underlying official proceeding involves family violence, as defined by Section 71.004, Family Code, an offense under this section is the greater of:
 - (1) a felony of the third degree; or
 - (2) the most serious offense charged in the criminal case.
- (e-2) Notwithstanding Subsections (d) and (e-1), if the underlying official proceeding involves family violence, as defined by Section 71.004, Family Code, and it is shown at the trial of the offense that the defendant has previously been convicted of an offense involving family violence under the laws of this state or another state, an offense under this section is the greater of:
 - (1) a felony of the second degree; or
 - (2) the most serious offense charged in the criminal case.
- (e-3) For purposes of Subsection (a), a person is considered to coerce a witness or prospective witness if the person commits an act of family violence as defined by Section 71.004, Family Code, that is perpetrated, in part, with the intent to cause the witness's or prospective witness's unavailability or failure to comply and the offense is punishable under Subsection (e-1) or (e-2), as applicable.
- (f) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Witness tampering can include:¹

- Pleas for forgiveness
- Bribery/gifts
- Threats
- New assaults
- Court manipulation
- Third party conspiracy (i.e. mother, new girlfriend, friend, etc.)
- Using children

OBSTRUCTION OR RETALIATION

PC § 36.06

2nd Degree or 3rd Degree Felony

- (a) A person commits an offense if he intentionally or knowingly harms or threatens to harm another by an unlawful act:
 - (1) in retaliation for or on account of the service or status of another as a:
 - (A) public servant, witness, prospective witness, or informant; or
 - (B) person who has reported or who the actor knows intends to report the occurrence of a crime; or
 - (2) to prevent or delay the service of another as a:
 - (A) public servant, witness, prospective witness, or informant; or
 - (B) person who has reported or who the actor knows intends to report the occurrence of a crime.
- (c) An offense under this section is a felony of the third degree unless the victim of the offense was harmed or threatened because of the victim's service or status as a juror, in which event the offense is a felony of the second degree.

INTERFERENCE WITH AN EMERGENCY REQUEST FOR ASSISTANCE

PC § 42.062

Class A misdemeanor or State Jail Felony

- (a) An individual commits an offense if the individual knowingly prevents or interferes with another individual's ability to place an emergency call or to request assistance, including a request for assistance using an electronic communications device, 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.
- (b) An individual commits an offense if the individual recklessly renders unusable an electronic communications device, including a telephone, that would otherwise be used by another individual to place an emergency call or 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.

¹ "Retaliation and Witness Tampering in Domestic Violence Cases" Sarah Buel, University of Texas Law School. Presented at the Conference on Crimes Against Women, February 11, 2008 in Dallas, Texas.

DISCLOSURE OF CONFIDENTIAL INFORMATION REGARDING FAMILY VIOLENCE OR VICTIMS OF
TRAFFICKING SHELTER CENTER
PC § 42.075
Class A Misdemeanor

▲ 86th Legislative Change: *HB 3091 creates a new Class A misdemeanor offense applicable to the disclosure or publication of the location or physical layout of a family violence or trafficking victims' shelter center if made with the intent to threaten the safety of an inhabitant of the center. Also see Government Code 552.352 (Distribution or Misuse of Confidential Information), which is limited to disclosures by government officials and is a modified Class B misdemeanor. Also applicable is Government Code 552.138, which covers changes made to the Public Information Act under this same bill.*

- (a) In this section, “family violence shelter center” and “victims of trafficking shelter center” have the meanings assigned by Section 552.138, Government Code.
- (b) A person commits an offense if the person, with the intent to threaten the safety of any inhabitant of a family violence shelter center or victims of trafficking shelter center, discloses or publicizes the location or physical layout of the center.
- (c) An offense under this section is a Class A misdemeanor.
- (d) If conduct constituting an offense under this section also constitutes an offense under Section 552.352, Government Code, the actor may be prosecuted under either section.

EVIDENCE IN PROSECUTIONS OF CERTAIN OFFENSES INVOLVING FAMILY VIOLENCE
CCP ART. 38.371

- (a) This article applies to a proceeding in the prosecution of a defendant for an offense, or for an attempt or conspiracy to commit an offense, that is committed under:
 - (1) Section 22.01 or 22.02, or 22.04, Penal Code, against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code; or
 - (2) Section 25.07 or 25.072, Penal Code, if the offense is based on a violation of an order or a condition of bond in a case involving family violence.
- (b) In the prosecution of an offense described by Subsection (a), subject to the Texas Rules of Evidence or other applicable law, each party may offer testimony or other evidence of all relevant facts and circumstances that would assist the trier of fact in determining whether the actor committed the offense described by Subsection (a), including testimony or evidence regarding the nature of the relationship between the actor and the alleged victim.
- (c) This article does not permit the presentation of character evidence that would otherwise be inadmissible under the Texas Rules of Evidence or other applicable law.

HARASSMENT

PC § 42.07

Class B Misdemeanor, except that the offense is a Class A Misdemeanor if the actor has previously been convicted under this section.

SECTION 13. Section 42.07(b)(1), Penal Code, is amended to read as follows:

- (1) “Electronic communication” means a transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system. The term includes:
 - (A) a communication initiated through the use of electronic mail, instant message, network call, a cellular or other type of telephone, a computer, a camera, text message, a social media platform or application, an Internet website, any other Internet-based communication tool, or facsimile machine; and
 - (B) a communication made to a pager.

SECTION 14. Section 42.07(c), Penal Code, is amended to read as follows:

- (c) An offense under this section is a Class B misdemeanor, except that the offense is a Class A misdemeanor if:
 - (1) the actor has previously been convicted under this section; or
 - (2) the offense was committed under Subsection (a)(7) and:
 - (A) the offense was committed against a child under 18 years of age with the intent that the child:
 - (i) commit suicide; or
 - (ii) engage in conduct causing serious bodily injury to the child; or
 - (B) the actor has previously violated a temporary restraining order or injunction issued under Chapter 129A, Civil Practice and Remedies Code.

{For Definitions and Full Statutes, see Chapter 9 (A): Stalking on page 239.}

STALKING

PC § 42.072

{For Definitions and Statute, see Chapter 9 (A): Stalking on page 240.}

OFFICER DUTIES IN FAMILY VIOLENCE CASES

The primary duties of a peace officer responding to a disturbance call that may involve family violence are to:

- **Protect** any potential **victims** of family violence;
- **Enforce the laws** of this state;
- **Enforce a protective order** from another jurisdiction as provided by Fam. Code Chapter 88;
- **Make lawful arrests** of violators [CCP Art. 5.04(a)]; and
- **Provide** free copies of **reports** to victims (CCP Art. 2.30 and 5.05)

A peace officer must make a report for the offenses of assault, aggravated assault, sexual assault, aggravated sexual assault, and terroristic threat. On the request of the victim of such an offense, the peace officer's agencies must provide the victim with a copy of the offense report. The report must include the names of the suspect(s) and complainant, and the dates, time and location of the offense. The agency may redact any information exempt from disclosure under the Chapter 552 of the Government Code (Open Records Act).

A peace officer who investigates a family violence allegation 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 shelters or other community services for family violence victims [CCP Art. 5.04(b)].

The **REQUIRED WRITTEN NOTICE** is sufficient if it is in substantially the following form with the required information in **English and in Spanish** inserted in the notice: [CCP Art. 5.04(c)].

"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."

NOTICE TO ADULT VICTIMS OF FAMILY VIOLENCE:

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. the abuser 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 provision 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: _____.

- **Report whether suspect is a member of the armed forces** (CCP Art. 5.05). A peace officer shall make a written report of whether the suspect is a member of the state military forces or is serving in the armed forces of the United States in an active-duty status.

- **Report family violence in licensed foster homes** (CCP Arts. 5.04, 5.05). Officers responding to family violence calls are required to check the address of the call and the address of the persons involved in the incident against the list of licensed foster homes. If the officer discovers that a person who lives at a foster home was involved in a family violence disturbance, the officer has 24 hours to report the circumstances of the disturbance to CPS.

An officer may report such a disturbance by calling the toll-free number or through the Internet (when CPS has this available). The report must include the following information:

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

To facilitate this new requirement, CPS will make the addresses of all licensed foster homes available to DPS and DPS will add them to the Texas Law Enforcement Telecommunication System (TLETS).

- **Notify perpetrators about unlawful handgun possession** (CCP Art. 14.06). Include an admonishment providing that it may be unlawful for the person to possess or purchase certain handguns and ammunition if the person is convicted of a misdemeanor offense involving violence where the person was or is the spouse, intimate partner, parent, or guardian of or is in another similar relationship with the victim (other than public intoxication). The bill requires a court to give such an admonishment to a defendant charged with a misdemeanor involving family violence before accepting a plea of guilty or nolo contendere, authorizes the admonishment to be provided orally or in writing, and provides that the citation admonishment may serve as the court admonishment if the defendant is charged with a misdemeanor punishable by fine only.

“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 PC § 46.04(b). If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.”

- **Notify victims or witnesses of release, escape, or transfer of defendant** (CCP Arts. 56.11, 56.12). In an offense that is a felony, subject to child safety zone under Texas Govt. Code § 508.187(a), family violence, stalking, and violation of protective or magistrates order.

The Texas Department of Criminal Justice or the sheriff shall make reasonable attempt to make notice no later than the 30th day before the date of the defendant’s release or

make notice immediately if the defendant escapes or is transferred.

The Texas Department of Criminal Justice will notify a witness who testified against a defendant (or if the witness is deceased, a close relative or guardian) when the defendant escapes or is transferred from custody of an institutional division to the custody of a peace officer under a writ of attachment or a bench warrant.

- **Computerized database of defendant release information** (CCP Art. 56.15). The Texas Department of Criminal Justice will create and maintain a computerized database containing the release information and release date of defendants under CCP Art. 56.11 and will allow a victim or witness under Articles 56.11 and 56.12 to access the database via the Internet.
- **Keep addresses confidential** (CCP Art. 56.82, 57D.01-57D.03). The Office of the Attorney General of Texas established an *Address Confidentiality Program (ACP)* for victims of family violence, sexual assault, stalking, and trafficking of persons.

{See Chapter 10: Community Response & Victim Resources on page 341 for additional information}.

- **Keep victim identity confidential** (CCP Arts. 57A.01, 57.02, 57B.02, and 57D.01). Victims of sexual offenses, family violence, stalking, and trafficking of persons can request a *Pseudonym Form for Crime Victims* from the Crime Victim Services Division (CVSD) of the Office of the Attorney General of Texas to protect their identity.

{See Chapter 10: Community Response & Victim Resources on page 342 for additional information.}

OFFICER DUTIES REGARDING PROTECTIVE ORDERS

- To ensure that officers have the information they need to protect abuse victims, Texas law requires that every law enforcement agency must establish **procedures to provide officers with the names of each person to be protected by an order and against whom the order is directed** [Fam. Code § 86.001(a)].
- **OFFICERS HAVE A DUTY TO PROVIDE INFORMATION TO FIREARMS DEALERS** indicating the existence of an ACTIVE PROTECTIVE ORDER for a person attempting to purchase a firearm [Fam. Code § 86.002 (a)].
- If the department's law enforcement information system indicates the existence of an active protective order directed to the prospective buyer, the chief law enforcement officer shall immediately advise the firearms dealer that the transfer is prohibited [Fam. Code § 86.002 (b)].
- **Duty to Enter Information into Statewide Law Enforcement Information System.** On receipt of an original or modified protective order from the clerk of the issuing court, a law enforcement agency shall immediately, but not later than the third business day after the date the order is received, enter the information required by Section 411.042(b)(6), Government Code, into the statewide law enforcement information system maintained by the Department of Public Safety. In this section, "business day" means a day other

than a Saturday, Sunday, or state or national holiday (Fam. Code § 86.0011).

If a Temporary EX PARTE PROTECTIVE ORDER excludes respondent from the residence, the court can order a peace officer to assist a protective order applicant 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 (Fam. Code § 86.003).

If a FINAL PROTECTIVE ORDER excludes respondent from the residence, the court can order a peace officer to assist a protective order applicant 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) **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** (Fam. Code § 86.004).

PROTECTIVE ORDERS

MAGISTRATE'S ORDER OF EMERGENCY PROTECTION (MOEP)

CCP Art. 17.292

1. A MOEP may be issued if the person is arrested for an offense involving **family violence, human trafficking, sexual assault, indecent assault, or stalking**.
2. MOEPs are **criminally enforceable**, meaning that if an officer has probable cause to believe an Emergency Protective Order (EPO) has been violated, an arrest should occur.
3. The Magistrate will decide whether to issue the order **based on the peace officer's probable cause statement**.
4. The victim does not need to be present; the order can be based on the request of:
 - A **peace officer**;
 - A prosecutor;
 - The Magistrate's own motion;
 - The victim; or
 - The victim's guardian.
5. If the victim is not present, the Magistrate **shall order a peace officer to notify the victim within 24 hours** via phone at residence and place of employment.
6. As soon as possible but not later than the next business day the magistrate shall send a copy of the order to the chief of police or sheriff based on the where the family or household or individual resides.

7. The court shall send a copy of the order to the victims' last known address not later than the next business day.
8. May be issued for **no less than 31 days, but not more than 91 days** against family violence and stalking perpetrators.
9. Magistrates **must** issue a MOEP if the arrest is for a family violence offense that involved serious bodily injury to the victim or the use or exhibition of a deadly weapon.
10. Magistrate's Order for Emergency Protection is lengthened to **61 to 91 days if the use or exhibition of a deadly weapon occurs during the commission of an assault.**
11. **Written warnings** on the MOEP must state that:
 - Violation of the MOEP is punishable as a Class A misdemeanor;
 - Violations involving an assault or stalking are punishable as a 3rd degree felony; and
 - **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 are in PC§ 25.07).
12. An order for emergency protection issued under this article is effective on issuance and the defendant shall be served a copy of the order by the magistrate or the magistrate's designee in person or electronically. The magistrate shall make a separate record of the service in written or electronic format.
13. **Conflict Between Emergency Orders & Other Court Orders:**
 - **A MOEP supersedes a temporary ex parte protective order, regardless of which order was issued first**, unless the judge specifically states that the temporary ex parte provisions will prevail.
 - In orders relating to divorce and custody, the most recent order controls. For example, if you have an EPO and then there are subsequent/later orders, the subsequent orders control. If you have a prior/earlier order, and then an EPO, the EPO controls.
14. Further Detention of the Perpetrator. In addition to issuing a MOEP, a magistrate can order that the jail hold the offender up to 48 hours if there is probable cause to believe the violence will continue if the perpetrator is released [CCP Art. 17.291(b)].
15. Law Enforcement Agency has three business days after the date of receipt of a copy of the MOEP to enter required information into the statewide law enforcement information system maintained by the Department of Public Safety. **This is to ensure that an officer responding to a family violence call is aware of the existence and terms of MOEPs.**

CONFIDENTIALITY OF CERTAIN INFORMATION IN ORDER FOR EMERGENCY PROTECTION CCP Art. 17.294

▲ **86th Legislative Change:** The Texas Legislature enacted this section to allow a magistrate to safeguard the mailing address of a person protected by an MOEP in a manner that still allows access to it by law enforcement agencies that may need it to enforce the order.

A court issuing an order may:

- Require the victim to disclose to the court her address or designee's address for the purposes of receiving court notices and documents;

- Require the court clerk to strike the victim's mailing address from public record but maintain a confidential record for use by the court or a law enforcement agency;
- Prohibit release of the information to the defendant.

TEMPORARY EX PARTE ORDER (TPO)

1. A TPO may be issued by a court finding that either:
 - Family violence occurred [Fam. Code § 83.001(a)]; or
 - Sexual assault or sexual abuse has occurred (CCP Art. 7A.02);
 - Indecent assault (PC § 22.012); and
 - Violence is likely to occur again in the future; or
 - Stalking or trafficking has occurred and is likely to occur again in the future (CCP Art. 7A.02).
2. A TPO can last up to 20 days [Fam. Code § 83.002(a)] but can be extended for additional 20-day periods at the applicant's request or on the court's own initiative [Fam. Code § 83.002(b)].
3. In order to **exclude the batterer from the residence with a temporary** protective order:
 - The applicant must have lived in the residence within **30 days** of applying for the protective order [Fam. Code § 83.006(b)(1)];
 - The respondent must have **committed family violence within 30 days** of the application date [Fam. Code § 83.006(b)(2)]; and
 - The court must find that a clear and present danger exists that the respondent will commit family violence against a household member [Fam. Code § 83.006(b)(3)].
4. TPOs are criminally enforceable once served.

FINAL PROTECTIVE ORDER

How long does the protective order last?

- For victims of trafficking, stalking, indecent assault, or sexual assault: (CCP Art. 7A.07)
 - May be effective for the duration of the lives of the offender and victim, or for any shorter period
 - If the period is not stated in the order, until the 2nd anniversary of the date the order was issued
- For victims of family violence: (Fam. Code § 85.025)
 - The period stated in the order not to exceed 2 years
 - If the period is not stated in the order, until the 2nd anniversary of the date the order was issued
 - **However**, the protective order can last more than 2 years if:
 - The respondent inflicted serious bodily injury to the applicant or a member of the applicant's family or household; or
 - The respondent was the subject of two or more previous protective orders rendered to protect the person on whose behalf the protective order is sought, and after finding by the court that the subject

- committed family violence and is likely to commit family in the future.
- If a person who is the subject of a protective order is confined or imprisoned on the date the protective order would expire under Subsection (a) or (a-1), or if the protective order would expire not later than the first anniversary of the date the person is released from confinement or imprisonment, 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, if the person was sentenced to confinement or imprisonment for more than five years; or
 - The second anniversary of the date the person is released from confinement or imprisonment, if the person was sentenced to confinement or imprisonment for five years or less.

Who can get a protective order?

- **Those related by blood or marriage:** includes parents, siblings, in-laws and former spouses (Fam. Code § 71.003 and § 82.002).
- **Those who currently live together or have in the past:** there is no statutory definition of what constitutes 'living together,' but judges can consider numerous factors in deciding this (Fam. Code § 71.005, § 71.006 and § 82.002).
- **Those who have a child together** (Fam. Code § 71.003 and § 82.002).
- **Foster Parents for Children:** regardless of whether they live together (Fam. Code § 71.003 and § 82.002).
- **Dating partners of any age:** (Fam. Code § 71.0021, Fam. Code § 82.002.)
- **Victim of Sexual Assault:** regardless of his or her relationship (if any) to the offender (CCP Ch. 7A).
- **Victim of Indecent Assault** (PC § 22.012)
- **Victim of Stalking:** Required finding that probable cause exists to believe that stalking occurred and is likely to occur in the future (CCP Arts. 6.09, 7A.01).
- **Victim of Trafficking, Continuous Trafficking of Persons, or Compelling Prostitution** (CCP Art. 7A.01).

Who can file for a protective order?

Victims of Sexual Assault or Abuse, Indecent Assault, Stalking, or Trafficking (CCP Art. 7A.01):

- Victims of the following crimes can file an application for a protective order, regardless of his or her relationship to the offender:
 - Continuous Sexual Abuse of Young Child or Children
 - Indecency with a Child
 - Sexual Assault
 - Indecent Assault
 - Aggravated Sexual Assault
 - Trafficking of Persons
 - Compelling Prostitution
 - Stalking
- Parent or guardian acting on behalf of a person younger than 17 years who is

- a victim of offenses listed above.
- A prosecuting attorney acting on behalf of a person who is a victim of offenses listed above.
- Parent or guardian acting on behalf of a person younger than 18 years of age who is the victim of an offense of trafficking or compelling prostitution.

Victims of Family Violence (Fam. Code § 82.002):

- **Family Violence:**
 - Adult member of the dating relationship
 - Adult victim of the marriage
- **Dating Violence:**
 - Dating Partners (of any age)
 - Adult for a child
 - Prosecuting Attorney
 - Department of Family and Protective Services

Renewal of Protective Order

1. Based on **Previous Violation** (Fam. Code § 82.008)
2. Based on **Threatened Harm That Places Applicant in Fear** (Fam. Code § 82.008 and § 82.0085)

Where must protective orders be filed?

1. In the Texas County **where the applicant resides; or**
2. In the Texas County **where the respondent resides** (Fam. Code § 82.003).
3. **Any county in which an element of the alleged offense occurred.**

There is **NO RESIDENCY REQUIREMENT** as to how long the applicant must have lived in the county or state in order to get a protective order. Additionally, **THE COURT CANNOT CHARGE ANY FEES TO A PROTECTIVE ORDER APPLICANT** (Fam. Code § 81.002).

SAFETY PLANNING WITH PROTECTIVE ORDERS

- Some batterers become especially violent when served with the protective order, placing the victims in great danger and in need of vigilant police protection.
- Some law enforcement officers encourage survivors to stay in a shelter at this time, given the heightened risk of harm between the temporary ex parte and final protective order hearings.
- All victims should be given a **safety plan brochure**, helping them identify community resources and ways to increase protection.

CONDITIONS FOR DEFENDANT CHARGED WITH OFFENSE INVOLVING FAMILY VIOLENCE CCP Art 17.49

(a) In this article:

- (1) “Family violence” has the meaning assigned by Section 71.004, Fam. Code.
- (2) “Global positioning monitoring system” means a system that electronically

determines and reports the location of an individual using a transmitter or similar device carried or worn by the individual that transmits latitude and longitude data to a monitoring entity through global positioning satellite technology. The term does not include a system that contains or operates global positioning system technology, radio frequency identification technology, or any other similar technology that is implanted in or otherwise invades or violates the individual's body.

- (b) A magistrate may require as a condition of release on bond that a defendant charged with an offense involving family violence:
 - (1) refrain from going to or near a residence, school, place of employment, or other location, as specifically described in the bond, frequented by an alleged victim of the offense;
 - (2) carry or wear a global positioning monitoring system device and, except as provided by Subsection (h), pay the costs associated with operating that system in relation to the defendant; or
 - (3) except as provided by Subsection (h), if the alleged victim of the offense consents after receiving the information described by Subsection (d), pay the costs associated with providing the victim with an electronic receptor device that:
 - (A) is capable of receiving the global positioning monitoring system information from the device carried or worn by the defendant; and
 - (B) notifies the victim if the defendant is at or near a location that the defendant has been ordered to refrain from going to or near under Subdivision (1).
- (c) Before imposing a condition described by Subsection (b)(1), a magistrate must afford an alleged victim an opportunity to provide the magistrate with a list of areas from which the victim would like the defendant excluded and shall consider the victim's request, if any, in determining the locations the defendant will be ordered to refrain from going to or near. If the magistrate imposes a condition described by Subsection (b)(1), the magistrate shall specifically describe the locations that the defendant has been ordered to refrain from going to or near and the minimum distances, if any, that the defendant must maintain from those locations.
- (d) Before imposing a condition described by Subsection (b)(3), a magistrate must provide to an alleged victim information regarding:
 - (1) the victim's right to participate in a global positioning monitoring system or to refuse to participate in that system and the procedure for requesting that the magistrate terminate the victim's participation;
 - (2) the manner in which the global positioning monitoring system technology functions and the risks and limitations of that technology, and the extent to which the system will track and record the victim's location and movements;
 - (3) any locations that the defendant is ordered to refrain from going to or near and the minimum distances, if any, that the defendant must maintain from those locations;
 - (4) any sanctions that the court may impose on the defendant for violating a condition of bond imposed under this article;
 - (5) the procedure that the victim is to follow, and support services available to assist the victim, if the defendant violates a condition of bond or if the global

- positioning monitoring system equipment fails;
 - (6) community services available to assist the victim in obtaining shelter, counseling, education, childcare, legal representation, and other assistance available to address the consequences of family violence; and
 - (7) the fact that the victim's communications with the court concerning the global positioning monitoring system and any restrictions to be imposed on the defendant's movements are not confidential.
- (e) In addition to the information described by Subsection (d), a magistrate shall provide to an alleged victim who participates in a global positioning monitoring system under this article the name and telephone number of an appropriate person employed by a local law enforcement agency whom the victim may call to request immediate assistance if the defendant violates a condition of bond imposed under this article.
 - (f) In determining whether to order a defendant's participation in a global positioning monitoring system under this article, the magistrate shall consider the likelihood that the defendant's participation will deter the defendant from seeking to kill, physically injure, stalk, or otherwise threaten the alleged victim before trial.
 - (g) An alleged victim may request that the magistrate terminate the victim's participation in a global positioning monitoring system at any time. The magistrate may not impose sanctions on the victim for requesting termination of the victim's participation in or refusing to participate in a global positioning monitoring system under this article.
 - (h) If the magistrate determines that a defendant is indigent, the magistrate may, based on a sliding scale established by local rule, require the defendant to pay costs under Subsection (b)(2) or (3) in an amount that is less than the full amount of the costs associated with operating the global positioning monitoring system in relation to the defendant or providing the victim with an electronic receptor device.
 - (i) If an indigent defendant pays to an entity that operates a global positioning monitoring system the partial amount ordered by a magistrate under Subsection (h), the entity shall accept the partial amount as payment in full. The county in which the magistrate who enters an order under Subsection (h) is located is not responsible for payment of any costs associated with operating the global positioning monitoring system in relation to an indigent defendant.
 - (j) A magistrate that imposes a condition described by Subsection (b)(1) or (2) shall order the entity that operates the global positioning monitoring system to notify the court and the appropriate local law enforcement agency if a defendant violates a condition of bond imposed under this article.
 - (k) A magistrate that imposes a condition described by Subsection (b) may only allow or require the defendant to execute or be released under a type of bond that is authorized by this chapter.
 - (l) This article does not limit the authority of a magistrate to impose any other reasonable conditions of bond or enter any orders of protection under other applicable statutes.

REQUIREMENTS OF ORDER APPLYING TO PERSON WHO COMMITTED FAMILY VIOLENCE

Fam. Code § 85.022

- (a) In a protective order, the **COURT MAY ORDER** the person found to have committed family violence to:
 - (1) complete a batterer's intervention program (BIPP);

- (2) if a BIPP is not available, complete a program or counsel with a provider that has begun the accreditation process; or
 - (3) if options 1 and 2 are not available, counsel with a social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor who has completed family violence intervention training.
- (b) In a protective order, the **COURT MAY PROHIBIT** the person found to have committed family violence from:
 - (1) **committing family violence;**
 - (2) **communicating:**
 - (A) **directly with a person protected by an order** or a member of the family or household of a person protected by an order, in a threatening or harassing manner;
 - (B) **a threat through any person to a person** protected by an order or a member of the family or household of a person protected by an order; and
 - (C) **in any manner** with a person protected by an order or a member of the family or household of a person protected by an order, **except through the party's attorney** or a person appointed by the court;
 - (3) **going to or near the residence or place of employment or business** of a person protected by an order or a member of the family or household of a person protected by an order;
 - (4) **going to or near the residence, childcare facility, or school of a child protected under the order** normally attends or in which the child normally resides;
 - (5) **engaging in conduct directed specifically toward a person** who is a person protected by an order or a member of the family or household of a person protected by an order, including following the person, **that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the person; and**
 - (6) **possessing a firearm**, unless the person is a peace officer, as defined by Penal Code § 1.07, actively engaged in paid employment as a sworn, full-time employee of a state agency or political subdivision.
 - (7) harming, threatening, or interfering with the care, custody, or control of a pet, companion animal, or assistance animal, as defined by Section 121.002, Human Resources Code, that is possessed by or is in the actual or constructive care of a person protected by an order or by a member of the family or household of a person protected by an order.
- (c) In an order under Subsection (b)(3) or (4), the **court shall specifically describe each prohibited location and the minimum distances from the location.**
- (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.

OUT OF STATE PROTECTIVE ORDERS

(ALSO REFERRED TO AS *OUT OF JURISDICTION PROTECTIVE ORDERS*)

Fam. Code Chapters 86 & 88

1. Each law enforcement agency **must provide officers with information** regarding

persons protected by orders from another jurisdiction and against whom the order is issued (Fam. Code § 86.005).

2. A **“FOREIGN PROTECTIVE ORDER”** means an injunction or other order, issued by another state or tribal court, to prevent a person from engaging in violent or threatening acts or harassing, contacting, or being in physical proximity to a protected individual (Fam. Code § 88.002).
3. **NONJUDICIAL ENFORCEMENT OF ORDER—Fam. Code § 88.004**
 - (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 court 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) For the purposes of this section, 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.

IMMUNITY

Fam. Code § 88.006

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.

VIOLATION OF PROTECTIVE ORDER

Arrest: Officers should arrest a respondent if they believe he or she has committed one of the “criminally enforceable acts” listed in Fam. Code § 85.022(b):

- **Committing family violence;**

- **Communicating:**
 - **directly with a person protected by an order** or a member of the family or household of a person protected by an order, in a threatening or harassing manner;
 - **a threat through any person to a person** protected by an order or a member of the family or household; OR
 - **in any manner** with a person protected by an order or a member of the family or household of a person protected by an order, **except through the party's attorney** or a person appointed by the court;
- **Going to or near the residence or place of employment or business** of a person protected by an order or a member of the family or household of a person protected by an order;
- **Going to or near the residence, childcare facility, or school a child protected under the order** normally attends or in which the child normally resides;
- **Stalking** a member of the family or household; or
- **Possessing a firearm**, unless the person is a peace officer (as defined by PC § 1.07) actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision [Fam. Code § 85.022(6) and PC § 46.04(c)].
- Harming, threatening, or interfering with the care, custody or control of a pet, companion animal, or assistance animal.

VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN A FAMILY VIOLENCE, CHILD ABUSE OR NEGLECT, SEXUAL ASSAULT OR ABUSE, INDECENT ASSAULT, STALKING, OR TRAFFICKING CASE

PC § 25.07

Class A Misdemeanor, State Jail Felony, or 3rd Degree Felony for repeated violation

▲ 86th Legislative Change: *amends subsection (g) to provide a State Jail Felony enhancement for violating the automatic order issued under the Code of Criminal Procedure Article 7A.01(a-1) HB 1343. SB 194 amends the section's heading to apply to violations of bond conditions in an Indecent Assault case (see PC 22.012).*

- (a) A person commits an offense if, in violation of a condition of bond set in a family violence, sexual assault or abuse, indecent assault, stalking, or trafficking case and related to the safety of a victim or the safety of the community, an order issued under Chapter 7A, Code of Criminal Procedure, an order issued under Article 17.292, Code of Criminal Procedure, an order issued under Section 6.504, Family Code, Chapter 83, Family Code, if the temporary ex parte order has been served on the person, or Chapter 85, Family Code, or an order issued 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 20A.02, 22.011, 22.012, 22.021, or 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; or
 - (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 violation is of an order described by this subsection and the order prohibits any communication with a protected individual or a member of the family or household;
- (3) goes to or near any of the following places as specifically described in the order or condition of bond:
 - (A) the residence or place of employment or business of a protected individual or a member of the family or household; or
 - (B) any childcare facility, residence, or school where a child protected by the order or condition of bond normally resides or attends;
- (4) possesses a firearm;
- (5) harms, threatens, or interferes with the care, custody, or control of a pet, companion animal, or assistance animal that is possessed by a person protected by the order or condition of bond; or
- (6) removes, attempts to remove, or otherwise tampers with the normal functioning of a global positioning monitoring system.
- (a-1) For purposes of Subsection (a)(5), possession of a pet, companion animal, or assistance animal by a person means:
 - (1) actual care, custody, control, or management of a pet, companion animal, or assistance animal by the person; or
 - (2) constructive possession of a pet, companion animal, or assistance animal owned by the person or for which the person has been the primary caregiver.

REPEATED VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN A FAMILY VIOLENCE, CHILD ABUSE OR NEGLECT, SEXUAL ASSAULT OR ABUSE, INDECENT ASSAULT, STALKING, OR TRAFFICKING CASE

PC § 25.072

3rd Degree Felony

▲ 86th Legislative Change: *amends the section's heading and text to apply to repeated violations of bond conditions in an indecent assault case (see new statute PC 22.012 Indecent Assault).*

- (a) A person commits an offense if, during a period that is 12 months or less in duration, the person two or more times engages in conduct that constitutes an offense under Section 25.07.
- (b) If the jury is the trier of fact, members of the jury must agree unanimously that the defendant, during a period that is 12 months or less in duration, two or more times engaged in conduct that constituted an offense under Section 25.07.
- (c) A defendant may not be convicted in the same criminal action of another offense an element of which is any conduct that is alleged as an element of the offense under Subsection (a) unless the other offense:
 - (1) is charged in the alternative;
 - (2) occurred outside the period in which the offense alleged under Subsection (a) was committed; or
 - (3) is considered by the trier of fact to be a lesser included offense of the offense

- alleged under Subsection (a).
- (d) A defendant may not be charged with more than one count under Subsection (a) if all of the specific conduct that is alleged to have been engaged in is alleged to have been committed in violation of a single court order or single setting of bond.
 - (e) An offense under this section is a felony of the third degree.

DENIAL OF BAIL FOR VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN A FAMILY VIOLENCE CASE
CCP Art. 17.152

- (a) In this article, “family violence” has the meaning assigned by Section 71.004, Fam. Code.
- (b) Except as otherwise provided by Subsection (d), a person who commits an offense under PC § 25.07, related to a violation of a condition of bond set in a family violence case and whose bail in the case under PC §25.07, or in the family violence case is revoked or forfeited for a violation of a condition of bond may be taken into custody and, pending trial or other court proceedings, denied release on bail if following a hearing a judge or magistrate determines by a preponderance of the evidence that the person violated a condition of bond related to:
 - (1) the safety of the victim of the offense under PC § 25.07, or the family violence case, as applicable; or
 - (2) the safety of the community.
- (c) Except as otherwise provided by Subsection (d), a person who commits an offense under PC § 25.07, other than an offense related to a violation of a condition of bond set in a family violence case, may be taken into custody and, pending trial or other court proceedings, denied release on bail if following a hearing a judge or magistrate determines by a preponderance of the evidence that the person committed the offense.
- (d) A person who commits an offense under PC § 25.07(a)(3), may be held without bail under Subsection (b) or (c), as applicable, only if following a hearing the judge or magistrate determines by a preponderance of the evidence that the person went to or near the place described in the order or condition of bond with the intent to commit or threaten to commit:
 - (1) family violence; or
 - (2) an act in furtherance of an offense under PC § 42.072.
- (e) In determining whether to deny release on bail under this article, the judge or magistrate may consider:
 - (1) the order or condition of bond;
 - (2) the nature and circumstances of the alleged offense;
 - (3) the relationship between the accused and the victim, including the history of that relationship;
 - (4) any criminal history of the accused; and
 - (5) any other facts or circumstances relevant to a determination of whether the accused poses an imminent threat of future family violence.
- (f) A person arrested for committing an offense under PC § 25.07, shall without unnecessary delay and after reasonable notice is given to the attorney representing the state, but not later than 48 hours after the person is arrested, be taken before a

magistrate in accordance with Article 15.17. At that time, the magistrate shall conduct the hearing and make the determination required by this article.

PROTECTIVE ORDER VS. RESTRAINING ORDERS

A **temporary restraining order (TRO)** prohibits certain behavior pending a final hearing of the motion. Its purpose is to preserve the status quo. It is generally used in business and family law cases to prevent parties from disposing of property or other assets.

A **permanent restraining order**, or injunction, is the controlling provision of a final judgment. Because contempt of court is the only remedy for violation, it is NOT recommended for domestic violence cases. However, the court can issue a restraining order prohibiting a defendant from physically harming a plaintiff, usually done only in non-domestic violence cases.

Protective orders are designed specifically to provide added safety for family violence victims. For this reason, officers are to presume **arrest** is the appropriate response when the provisions of a protective order are violated.

OFFICER AND AGENCY CIVIL LIABILITY IN FAMILY VIOLENCE CASES

Immunity: Law enforcement officers are protected by immunity if they act in **good faith** in carrying out their duties, meaning they follow state law and department guidelines for handling family violence cases. However, officers acting in **bad faith** are liable for the harm they cause in addition to damages.

Liability: Officers and their agencies may face liability for their ACTIONS and INACTIONS. To avoid liability, officers should follow Texas law and department procedures regarding:

Arrest when probable cause indicates that a crime has occurred; it is NOT relevant whether:

- the victim and offender have an intimate relationship;
- the victim has not followed through with prosecution in the past; and
- the victim is drunk.

Thurman v. Torrington, 595 F.Supp. 1521 (D. Conn. 1984)

Facts: A battered woman, Tracey Thurman, repeatedly asked the Torrington Police Department (TPD) to protect her from her violent ex-husband, Charles Thurman, who had beaten, stalked, harassed, threatened, and tormented her for years. Tracey advised the city repeatedly, through the police officers, over an eight-month period that her husband had threatened to kill her. On June 10th, 1983, Tracey called TPD again requesting protection from her screaming husband who was in violation of his probation. The police officer(s) ignored the reports until the husband stabbed Tracey in the chest, neck, and throat. About 25 minutes after Tracey's initial call to TPD, Officer Petrovits arrived and saw Charles holding a bloody knife. Charles ran into the home and brought three-year-old Charles, Jr. outside, dropping him on his wounded mother. Officers DeAngelo, Nukirk, and Columbia then arrived at the scene, but permitted Charles to walk through the crowd, continue to threaten Tracey and even kick her in the head in front of the officers. Only

when Charles again approached an immobile Tracey was he arrested. Tracey is still paralyzed from over half her body and suffers severe medical conditions as a result of the stabbing and assault.

Court Ruling: The federal court held that TPD showed an ongoing pattern of deliberate indifference because its officers *treated domestic violence cases far less seriously than those involving stranger assaults*. This is a violation of the U.S. Constitution's **14th Amendment requiring EQUAL PROTECTION OF THE LAWS**.

Town of Castle Rock v. Gonzales, 545 U.S. 748 (2005)

Facts: Jessica Gonzales called the Castle Rock Police Department (CRPD) after her estranged husband, Simon Gonzales, took their three daughters from her home, in violation of a protective order. Despite calling back at least three more times and going to the CRPD to file a report at midnight, the officers rebuffed her pleas for help. Shortly after 3AM, Simon pulled into CRPD and began shooting at officers, who returned fire and killed him. Inside his truck, police found the three young girls whom he had murdered.

Court Ruling: The Supreme Court ruled that protective orders do not give abuse victims a 14th Amendment due process property interest. As a result, victims may not sue a law enforcement agency for failing to enforce protective orders under a due process theory. However, liability for federal equal protection violations still may apply (see *Thurman* above), and abuse victims are still free to file claims in state court (e.g., see *Moore v. Green* below).

Moore v. Green, 355 Ill. App. 3d 81. (2006)

Facts: On May 3, 2002 at 11:40PM, Ronyale White called 911 to request police assistance as her husband, Louis Drexel, had entered her home in violation of a protective order and he owned a gun. Dispatch notified Chicago police officers Christopher Green and Donald Cornelius of Ms. White's situation and address, to which one of the officers responded "10-4." That call was closed at 11:43PM. Witnesses saw the officers arrive at Ms. White's home, wait briefly in their patrol car, and then leave without assisting her. Five minutes later, Drexel shot and killed Ms. White. Melissa Moore, executor of Ms. White's estate, filed suit against Officers Green and Cornelius and the City of Chicago alleging that Ms. White was a protected person under the Illinois Domestic Violence Act, and that the **officers had a duty under the statute to use all reasonable means to prevent further abuse by transporting White away from Drexel or arresting him. Moore charged that the officers' willful and wanton conduct in failing to investigate and assist Ms. White breached this duty and proximately caused her death.**

Court Ruling:

- Officers are **immune from liability when acting in good faith, but not if their actions constitute willful or wanton misconduct.**
- Illinois' Domestic Violence Act specifies that officers "shall immediately use all reasonable means to prevent further abuse" when responding to a domestic violence victim, including, (1) arresting the party committing the abuse [citing 750 ILCS 60/304(a) (West 2002)].

- The court further cites the **legislative intent** of the Illinois law as including recognition “that domestic violence is a serious crime and...that the legal system has failed to protect and assist domestic violence victims...” and, of particular significance, the Act’s purpose is to help victims of domestic violence to avoid further abuse by having law enforcement promptly entering and **diligently enforcing orders of protection**.
- Furthermore, “in enacting the Domestic Violence Act, the General Assembly sought to encourage active intervention on the part of law enforcement officials in cases of intrafamily abuse.”
- For the above reasons, the Illinois Supreme Court, on April 20, 2006, held the police officers and City of Chicago liable for willful and wanton misconduct in failing to assist Ms. White, a victim of domestic violence.

FAMILY VIOLENCE CASES DECIDED BY THE U.S. SUPREME COURT

Crawford v. Washington, 541 U.S. 36 (2004)

In the 2004 case of *Crawford v. Washington*, the U.S. Supreme Court ruled that the Constitution’s Sixth Amendment requires an opportunity for a defendant to confront an unavailable declarant when her testimonial statements are offered into evidence. Since the Court had not defined which statements are considered testimonial, conflicting opinions were issued in many states—including Texas.

In the past, hearsay exceptions, such as excited utterances, were often used in domestic violence cases where the victim did not testify. Batterers often engage in unlawful witness tampering to make sure victims do not testify against them at trial. *Crawford* affirmed the **Doctrine of Forfeiture by Wrongdoing** in which the defendant relinquishes his right to demand cross-examination if he has caused the witness’s unavailability.

On June 19, 2006, the U.S. Supreme Court decided two family violence cases clarifying which hearsay statements are testimonial and thus subject to cross-examination and unavailability requirements of the Sixth Amendment’s confrontation clause as interpreted in *Crawford*.

Davis v. Washington, 547 U.S. 813 (2006)

In *Davis v. Washington*, the Court held that statements are “nontestimonial” when circumstances objectively indicate that the primary purpose of interrogation was to “**enable police assistance to meet an ongoing emergency**.” In this case a battered woman made excited statements to a 911 operator, describing events as they were happening and expressing fear that her boyfriend who had just assaulted her would return at any moment to further harm her and her sister.

- The victim did not testify at the batterer’s trial for felony violation of a no-contact order, but the court admitted the 911 recording under the **excited utterance** exception to the hearsay rule.
- The court said that responses to 911 operator questions, at least the initial interrogation, generally will not be testimonial because they are not designed primarily to prove a past fact relevant to future prosecution.

- Instead, the 911 operator's initial questions were **necessary for police to assess the immediate emergency**.

Hammon v. Indiana, 547 U. S. 813 (2006)

In ***Hammon v. Indiana***, the Court ruled that statements are considered “testimonial” when circumstances objectively indicate that there was **no ongoing emergency** and that the **primary purpose of interrogation was to establish past events potentially relevant to later criminal prosecution**. In this case, police responded to a domestic violence crime scene at the home of Amy and Hershel Hammon.

- Although it was a cold day in February, the victim, Amy Hammon, was waiting for police on her front porch and assured them everything was fine. But once inside the home, officers saw flames coming out of the partial glass front of a gas heating stove, with shards of glass on the floor, smashed lamps, and a phone torn off the wall.
- One officer testified that Hershel “became angry when I insisted that [he] stay separated from Mrs. Hammon so that we can investigate what had happened” and repeatedly tried to interfere with the officer’s questioning of Amy Hammon.
- Amy reported that Hershel was on probation, and after hearing her account, the officer had her fill out an affidavit in which she wrote that Hershel had “broke our furnace and shoved me down on the floor into the broken glass. Hit me in the chest and threw me down. Broke our lamps and phone. Tore up my van where I couldn’t leave the house. Attacked my daughter.”
- Amy did not testify at trial, but her statements to the officer were admitted as excited utterances, while her written affidavit was ruled as testimonial.
- The U.S. Supreme Court ruled that here the emergency had ended, and the police questioning was only to gather evidence for future prosecution.

Primary Purpose Test: *Davis* and *Hammon* focus on the **officer’s intent** in questioning a crime victim to determine if the victim’s statements will be admissible at trial as nontestimonial.

- If the officer or 911 operator is gathering information regarding **current danger or to secure their own or the victim’s safety**, the victim’s statements will likely be considered **nontestimonial**.
- If the officer or 911 operator is gathering information regarding **past events** to be used in future prosecution, the victim’s statements will likely be considered **testimonial**.
- The Supreme Court did say that its decision did not mean “that no questions at the scene will yield nontestimonial answers.” An officer’s initial inquiries responding to exigent circumstances will often yield nontestimonial responses under the **primary-purpose test**.
- The Supreme Court also cautioned that interrogations that start out with cries for help can “evolve into testimonial statements.”

Possible responses to *DAVIS/HAMMON* requirements include collecting and using the following:

1. **Photos are not testimonial.** It is essential that officers take photos of the victims, traumatized children and the crime scene.
2. **EMT and Medical Records are most often not testimonial** if the information is given to make a MEDICAL DIAGNOSIS. Since officers may be involved in training EMTs and healthcare professionals, it is important to teach them to provide a FULL description of all injuries and victim statements.
3. **Business Records, such as Lab Reports and phone bills.**
4. **Public Records, such as jail incident reports and parole warrants.**

Giles v. California, 554 U.S. 353 (2008)

In the 2008 case of *Giles v. California*, the Court held that in order to use the doctrine of forfeiture by wrongdoing as an exception to the Sixth Amendment's confrontation clause, the prosecution must prove that the defendant intended to keep the witness from testifying. In this case, Giles, the defendant, was on trial for murdering his ex-girlfriend, Avie.

- The California Supreme Court allowed testimony of a police officer responding to a domestic violence call involving Giles and Avie that occurred weeks before the murder. The officer testified that Avie had previously told him of Giles's threats to murder her.
- This statement would not have been admissible by the police officer if Avie had still been alive, but the California Supreme Court allowed the police officer to testify based on the doctrine of forfeiture by wrongdoing—Avie's murder was justification for this exception to Giles's right to confront and cross-examine her in court.
- The Supreme Court of the United States disagreed with California and ruled that this hearsay (the second-hand testimony from the police officer) was inadmissible.
- The new rule promulgated by the Supreme Court requires the prosecution to prove that the defendant murdered the victim with the intent to keep the victim's testimony out of court in order to have the victim's testimony allowed is based on the doctrine of forfeiture by wrongdoing.

Michigan v. Bryant, 131 S. Ct. 1143 (2011)

In 2011, in *Michigan v. Bryant*, the U.S. Supreme Court further explained the primary purpose test under *Davis* and *Hammon*. In *Bryant*, police found a mortally wounded man in a gas station parking lot. Before the man died, he told the officers he had been shot by the defendant outside the defendant's house, and he had driven himself to the lot to escape an ongoing threat. From the victim's statements, the officers did not know whether the threat was limited to the victim or whether the general public and the officers were also at risk. The questioning was also informal, not focusing the victim on the possible future prosecutorial use of his statements.

- If the primary purpose of police questioning and the resulting statements is to meet an ongoing emergency, then the resulting statements are nontestimonial and not subject to Sixth Amendment Confrontation Clause requirements.
- The *Bryant* Court explained that in order to determine the primary purpose of a

statement, courts should look to all the relevant circumstances.

- It is irrelevant to the primary purpose determination whether police later learn that there was no emergency. Courts should focus on what a reasonable officer's purpose would be, and a reasonable witness's purpose would be, given the actual parties' perceptions at the time of the statements.
- Other circumstances are also relevant: Does the degree of formality lead a reasonable witness to believe her statements are being made for future prosecutorial use? Does the officer's tone and manner suggest a formal interview, or an urgent gathering of information to meet an ongoing emergency? Courts should weigh all circumstances.
- The nature of questioning can also evolve. Statements made at the beginning of questioning might be made to meet an ongoing emergency, but if police then learn there is no emergency, the rest of a witness's statement during questioning could be testimonial (and therefore subject to Confrontation requirements).

HELD: The deceased victim's statements were not testimonial, because (1) the police did not know whether there was ongoing threat to the public; (2) the officers' questioning was very informal; and (3) the questioning focused on meeting a perceived ongoing emergency. Therefore, the statements could be admitted in the murder trial.

CHAPTER SIX: DYNAMICS OF SEXUAL ASSAULT

Learning Objective: Dynamics of Sexual Assault

By the end of this chapter, the student will be able to identify and discuss the following terms, concepts and practices as they relate to sexual assault:

- A. Myths and Facts about Sexual Assault
- B. Types of Sexual Assault
 - 1. Non-Stranger (Acquaintance) Rape & Brief Encounter Rape
 - 2. Spousal or Partner Rape
 - 3. Male Rape
 - 4. Sexual Assault of Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, and Other (LGBTQ+) Victims
 - 5. Human Trafficking
 - 6. Child Sexual Abuse
 - 7. Sexual Abuse of Older or Disabled Adults
 - 8. Gang Rape
 - 9. Prison Rape
 - 10. Sexual Harassment and Nonviolent Coercion
 - 11. Sexual Assault on College Campuses
- C. Why Do Rapists Rape?
- D. Types of Forcible Rapists and Offender's Characteristics
 - 1. Opportunistic Rapist
 - 2. Power Rapist
 - 3. Anger Rapist
 - 4. Sadistic Rapist
 - 5. Homicidal Sex Offenders
 - 6. Approaches Used by Rapists
- E. Sexual Paraphilias
- F. Pedophiles and Child Molesters
- G. Effects on the Victim of a Sexual Assault
- H. Reasons for the Poor Reporting Ratio for Sexual Assault

Sexual assault is an act of violence, in which a person is caused to participate in sexual activity through coercion or force.

Sexual assault is a violent crime based on control and humiliation. It is a devastating crime that goes mostly unreported. It is estimated that 6.3 million Texans have experienced some form of sexual assault in their lifetime.¹ Sexual assault has devastating effects not only on the victim, but on society. Since most sexual assault cases go unreported, the perpetrator

¹ Busch-Armendariz, N. B., Olaya, D., Kerwick, M., Wachter, K. & Sulley, C. (2015). Health and Well-Being: Texas Statewide Sexual Assault Prevalence. The University of Texas at Austin, Institute on Domestic Violence & Sexual Assault: Austin, Texas.

remains undetected, resulting in eventual numerous victims. Dismal reporting rates of sexual assault are alarming. Fear of reprisal, embarrassment, the justice system, or family and friends knowing, or the belief that the police would not do anything to help are just some reasons individuals choose not to report their victimization to the police.² Sexual assault perpetrators may continuously offend until he/she is detained, prosecuted, or incarcerated. Sexual assault is an all-pervading and serious problem in our society. These findings underscore the need for law enforcement agencies and victim service providers to expand their services to rape victims. Law enforcement has an opportunity to share information and resources with victims on the benefits of reporting.

Sexual assault includes:

- Penile and vaginal intercourse
- Contact between the genitals and mouth
- Contact between an anus and a penis
- Penetration of the vagina or anus with a foreign object, including a finger

Sexual assault occurs when one of the following conditions exist:

- Force—even if there is no bruise or injury
- Fear—even if the victim didn't fight back
- A person is disabled and cannot give consent
- A person is severely intoxicated or unconscious as a result of drugs or alcohol
- If the individual is under the age of 17 (children under age 17 do not have the legal ability to give consent)

Facts About Sexual Assault

- Nearly 80% of rape victims know their perpetrator.
- Over 90% of sexual assault victims do not report to law enforcement.
- The widely accepted “stranger rape” (i.e. man jumps from behind bushes) accounts for less than 20% of all rape.³
- Almost 70% of rape victims were not physically injured.⁴
- Due partially to low reporting rates, only 9% of all rapists get prosecuted. Only 5% of cases lead to a felony conviction. Only 3% of rapists will spend a day in prison. The other 97% walk free.⁵

² D.Kilpatrick et al. “Drug-facilitated, Incapacitated, and Forcible Rape: A National Study,” “2007; U.S. Bureau of Justice Statistics, M. Planty and L .Langton, “Female Victims of Sexual Violence,” 1994-2013; Wolitzky-Taylor et al, “Is Reporting of Rape on the Rise? A Comparison of Women with Reported Versus Unreported Rape Experiences in the National Women’s Study-Replication,” 2010.

³ Extent, Nature, and Consequences of Rape Victimization: Findings from the National Violence Against Women Survey. National Institute of Justice, Centers for Disease Control (January 2006).

⁴ Ibid

⁵ Probability Statistics Calculated By the Rape Abuse and Incest National Network, “Reporting Rates,” 2013.

Community Responses

Most sexual assault crimes are committed by someone the victim knows. In Texas almost 80% of female sexual assault victims knew their perpetrator.⁶ However, many law enforcement officers, medical personnel, telecommunication professionals, and other members of the community, including juries, are still looking for the stereotypical “surprise attack” sexual assault.

Surprise attack:

- No prior contact with the suspect
- Ski mask and/or weapon
- Immediate report to authorities
- Injury requiring medical attention
- Victim resists attack

Victim blaming is a community response that plagues our society. Questions regarding the whereabouts, dress, or actions of the victim perpetuate this phenomenon. Questioning the victim’s role in an attack undermines the nature of the crime and detracts from the criminal element and intent of the perpetrator. Victim blaming in our community discourages reporting, investigations, and convictions, allowing criminals to remain in our society undetected.

#MeToo Movement

The #MeToo or “Me Too” Movement was originally founded by Tarana Burke in 2006, who used the phrase to help survivors of sexual violence, particularly young women of color. The phrase was later made famous by Alyssa Milano in 2017, and was used as a way for victims to publicly bring awareness to the prevalence of sexual harassment and sexual assault in our society. In 2017, high-profile women began speaking about their experiences with high-profile men, including Harvey Weinstein, a famous American Film Producer. #MeToo has significantly affected our awareness concerning sexual harassment and sexual assault in media, Hollywood, churches, educational communities, financing industry, as well as the government.

In spite of a primary goal of fostering healing and awareness, dissenters accused the movement of vilifying men without a trial, ruining careers, and rejecting due process.⁷ Victim blaming, unfortunately, has continued.

⁶ Busch-Armendariz, N.B., Olaya, D., Kerwick, M., Wachter, K. & Sulley, C. (2015). Health and Well-Being: Texas Statewide Sexual Assault Prevalence. The University of Texas at Austin, Institute on Domestic Violence & Sexual Assault: Austin, Texas.

⁷ Jubilee Media, 2020

MYTHS AND FACTS ABOUT SEXUAL ASSAULT⁸

Myth: A woman who truly resists can't be raped. If she didn't fight, she must have wanted it.

FACT: Most women are victims of acquaintance rape. Most victims are not able to mobilize themselves to fight their assailant forcefully and quickly enough to stop the attack, and those who *do* fight back are more likely to end up severely injured or killed. Whatever the victim does to survive is the correct response. Cooperating with a perpetrator is not consent.

Myth: The victim provoked the sexual assault.

FACT: The way someone acts or dresses does not mean they are “asking for it”. In fact, studies demonstrate that most sexual assaults are planned, making the survivor's demeanor or apparel irrelevant in a sexual assault case. It is absurd to believe someone would ask for, or enjoy, a physical attack that includes risks of venereal disease, pregnancy, injury, and even death.

Myth: She went to his room after the party. That is her consenting.

FACT: Consenting to go to a man's room is *not* a code that translates into consent to have sex. Both partners must communicate verbally and agree to have consensual sex. Both partners have the right to withdraw consent at any time, even during intercourse.

Myth: If they agree to some act of sexual intimacy, they want to have intercourse.

FACT: If someone agrees to an act of sexual intimacy—short of sexual intercourse—that is the only sexual act they have agreed to.

Myth: If it's happened before, maybe she enjoys it or is provoking it.

FACT: This accusation is particularly relevant in cases of sexual assault that are complicated by a history of domestic violence or childhood sexual abuse. Some victims who have been repeatedly submitted to violence may have undergone physiological and psychological changes that render them less able to perceive vulnerable situations or to problem-solve about how to escape. They may “freeze” when resubmitted to trauma instead of resisting or attempting to flee.

Myth: If the victim was not a virgin, it's not a big deal.

FACT: Any sexual assault can be a devastating experience, leaving the survivor with memories that can impede interpersonal and intimate relationships forever. The victim's consensual sexual history is not relevant.

Myth: She wasn't hurt, so she'll get over it.

FACT: The degree of physical trauma is often not the best way to evaluate injury in sexual assault cases. A lower degree of physical injury often occurs when there is a higher degree of intimidation.

⁷ Some excerpts taken from Texas Commission on Law Enforcement, “Sexual Assault” Chapter 1: Definitions, Myths, and Facts.

Myth: Husbands can't rape their wives.

FACT: Husbands *can* rape their wives. The marital relationship does not include the right to rape one's partner. Sex without consent is rape. Some abusive husbands use sexual assault as one form of domination and control. Marital rape is a crime in all fifty states.

Myth: Prostitutes can't be raped.

FACT: Nobody is an exception of being a rape victim. Prostitutes are frequently raped, but seldom report the crime because they believe they will not be supported or taken seriously by police. It may be difficult for law enforcement officers to be sympathetic to prostitutes because they seemingly choose to expose themselves over and over to hazardous (and illegal) situations that may result in rape. No one wants or deserves to be raped. The victim's consensual sexual history is not relevant.

Myth: Men can't be raped, especially by a woman. If the man does not have an erection, it can't happen; and if he does have one, he probably enjoyed it.

FACT: Women sometimes sexually assault men. Women who assault men frequently rely on intimidation and threat of violence or retaliation rather than physical force. Any woman in a position of power, such as a supervisor, teacher, or therapist, can use coercion to elicit sex from a male. Penile erection can occur in response to extreme emotional states, such as anger and terror, as well as from sexual arousal. A physiological response can occur in reaction to a stimulus, but that does not mean consent or pleasure was present. No one wants or deserves to be raped.

Myth: Women consent to sex and later change their minds and "cry rape."

FACT: According to a recent research analysis, the prevalence of false sexual assault reporting is believed to be somewhere between 2% to 8%.⁹ Although the rate of false sexual assault reports is similar to the rate of false reports for any other violent crime, there is a widely-held societal misconception that a large percentage of sexual assault reports are fabricated. Skewed statistics based on unclear classifications and inconsistent definitions of what constitutes a "false allegation" contribute to this misconception. For example, some studies classified a report as "false" if the victim recanted their statement, was intoxicated at the time of the incident, or if the case lacked enough evidence to prove the crime occurred. It is far more common for victims of sexual assault to not report the crime to anyone than for a person to make a false report of rape, especially given societal attitudes which tend to blame the victim.

Myth: The best way for survivors to "get over" a sexual assault is to act like it didn't happen, put it behind them, and get on with their lives.

FACT: Speaking out about sexual assault can be an essential part of the recovery process for survivors (although survivors should never be forced to speak out before they are ready). The process of recovery may continue for years after an assault.

⁹ Venema, R. M. "Police Officers' Rape Myth Acceptance: Examining the Role of Officer Characteristics, Estimates of False Reporting, and Social Desirability Bias." *Violence and Victims*, 2018; (33)1:176-200. doi: 10.1891/0886-6708.33.1.176

Myth: Sexual assault is an impulsive act.

FACT: In 71% of sexual assaults, the offender made plans to sexually assault a person. The offender often takes advantage of a person in a vulnerable situation.

Myth: The primary motive for sexual assault is sexual. People who commit sexual assault do not have any other outlet for their sexual needs.

FACT: The major motive for sexual assault is power—to overpower and control another person. Rape is not about sex. It is sexualized violence, or aggression, not violent sex. Three out of five offenders are also in consenting sexual relationships. The myth serves to shift blame for sexual assault from the offender to the victim.

Myth: Offenders are “perverts.”

FACT: This myth assumes only “sick” or “insane” people are offenders and that obtaining sex is the primary motive for sexual assault. Believing this myth may cause us to expect the offender to be a marked person with particular characteristics. If the accused appears and acts normal, it is very hard to believe he/she could have committed the crime.

Myth: Rape is to be expected in prisons. Some convicts even deserve to be raped as punishment for the crime(s) they have committed.

FACT: Prison rape is a human rights violation, a crime, and a violation of constitutional rights. The Prison Rape Elimination Act of 2003, discussed later in this chapter, delves into the serious nature of this crime. Nobody deserves to be raped.

Myth: A victim who says she was impregnated by her rapist is probably lying because women who are raped rarely get pregnant.

FACT: It is possible for any female of the reproductive age to become pregnant as the result of a rape. In fact, over 32,000 females become pregnant annually from a sexual assault perpetrated against them.¹⁰ There are many historical myths about pregnancy and rape, but this myth is rooted in medieval medical history. Although modern medical science has supported this myth as false, the ideas presented in medieval theories of conception are still perpetuated by some groups in modern-day society.

{For 15 Myths that Enable Sex Offenders, refer to Resources for Law Enforcement at www.safvic.org.}

TYPES OF SEXUAL ASSAULT

Sexual violence can include several kinds of crimes: rape, incest, sexual harassment, child molestation, marital rape, exposure, and voyeurism. Offenders have other means at their disposal to intimidate. These include the use or threat of force, trickery, coercion, or bribery.

¹⁰ Beck, C. J., Alshami, L., De la Luz, M. M., Camacho de Anda, A. N., Kendall, H. J., Rosati, E. S., & Rowe, M. C. “Children conceived from rape: Legislation, parental rights and outcomes for victims.” *Journal of Child Custody*, 2018; 15(3):193-205. doi: 10.1080/15379418.2018.1531275

Generally, the offender takes advantage of some power imbalance, such as age, size, status, strength, development, and knowledge, to humiliate, violate, and control the victim.¹¹

Types of Sexual Assault include:¹²

1. Non-stranger (acquaintance) rape & brief encounter rape
2. Spouse or partner rape
3. Male rape
4. Sexual assault of an LGBTQ+ individual
5. Human trafficking
6. Child sexual abuse
7. Sexual assault against people with disabilities, deaf individuals, and/or adults later in life
8. Gang rape
9. Prison rape
10. Sexual harassment and nonviolent coercion
11. Sexual assault on college campuses
12. Drug-facilitated sexual assault

NON-STRANGER (ACQUAINTANCE) & BRIEF ENCOUNTER RAPE

Non-stranger (acquaintance) & brief encounter rape is any sexual act in which a non-stranger forces the other person to participate without that person's consent.

Officers may be more familiar with the term “date rape,” however, the term “brief encounter rape,” usually occurring within 24 hours after the perpetrator and victim meet, encompasses more types of non-romantic relationships. Brief encounter rape usually revolves around the issue of consent. The common myth of “she didn’t really mean *no*” often describes the offender’s response. It is a violent crime and it *is* about violence, *not* a desire for sex. Many brief encounter rapists have forced sex before and gotten away with it. The non-stranger rape is still an act of force through intimidation, coercion, or physical control, and it is a devastating violation of the body and will of the other person.

- Estimates vary from 75% to 80% of sexual assaults are committed by non-strangers:
 - Offenders prefer to know their victims because they have greater opportunity to place victims in a vulnerable position without alarming them.
 - Non-stranger rape often has even more devastating effects on its victims than rape by strangers because it destroys victims’ fundamental faith and trust in human relationships.
- Perpetrators of this type of rape usually look for victims who have little self-confidence.
- Victims of most (but not all) non-stranger rapes are young women under the age of 25, and many victims, both male and female, are under the age of 16.

¹¹ Sexual Assault Advocate Training Manual. Revised 2004. Texas Association Against Sexual Assault, Texas Office of the Attorney General.

¹² Adapted from the Texas Commission on Law Enforcement, Sexual Assault Course.

- Many rapists are males who are at least one to two years older than their victims.
 - Many incidents of non-stranger rape occur at colleges and universities where the offender may take advantage of a victim's vulnerabilities.
- 98% of non-stranger rapes do not involve a weapon.
- The use of alcohol and drugs during non-stranger rape and brief encounter rape is very common.
 - Offenders may drug potential victims to take advantage of them.
 - Offenders now have access to drugs that are designed to reduce inhibitions, render a victim incapable of resistance, or completely unconscious.
 - Many of these drugs induce memory loss, making it difficult for officers to obtain necessary suspect information.
- One of the reasons for the societal stereotype that all rapes are violent and should have signs of resistance is the reluctance of victims to report non-stranger rape.
 - Alongside the emotional, psychological, and physical damage suffered by the victims, they must also deal with disbelieving family, friends, and other acquaintances.
 - These issues are especially problematic when the victim and offender live close together and circulate with the same friends, or if the offender is close to the family, or in a position of respect and authority.
- Non-stranger and brief encounter rape victims are even more likely than other victims to be blamed and have their entire past sexual histories scrutinized so that they feel re-victimized.
- Officers should allow victims to feel in control and inform victims that it is the officer's duty to help recover the evidence needed in case there is a criminal prosecution. This could be the current case or of subsequent assaults by the same offender.
- Victims of non-stranger rape experience a high degree of inner struggle, shame, and self-blame.

Officers should restore confidence for the victim by reassuring the victim they believe a sexual assault has been committed against them and reassure the victim the sexual assault was not their fault.

SPOUSAL OR PARTNER RAPE

Spousal or partner rape is any sexual act in which a spouse, former spouse, domestic partner, or former domestic partner forces the other person to participate without that person's consent.

- It is crucial for officers to remember that a marital or partner relationship does not provide automatic consent or rights.
- Spousal or partner rape is an act used by abusers to maintain control and dominance. These types of rapes are not based on sexual desires, nor do they result

from the withholding of sex by the victim. Some abusers will tell their victims that it is a form of punishment for perceived problems.

- Abusers in marital relationships have many means for accomplishing marital rape. Rapists may use force, or threats of force to the victim or to a third person, such as a child. Conditioning, which is the implication that force will occur if the victim resists based on previous assaultive reactions, may play a role in the coercion.
- Victims of spousal or partner rape are more likely than other victims to be raped multiple times and, like other victims of non-stranger rape, suffer long-lasting psychological effects because of the violation of their bodies and trust by a loved, trusted person.
 - Officers should consider spousal or partner rape as a form of non-stranger rape. These cases are significantly underreported or reported much later. They are difficult to investigate due to the unwillingness to cooperate or the confusion of the victims.
 - Because partners in an intimate relationship normally have consensual sex, proving a rape becomes even more difficult. They may have had consensual sex in the days or week prior to the rape. This further complicates the investigation and any subsequent prosecution. The suspect will claim the rape was consensual. Careful, thorough questions can go a long way to establish enough information and evidence for the crime.
- Spousal or partner rape is a crime in all fifty states.

MALE RAPE

Male rape is any sexual act in which a male is forced to participate without that person's consent.

- Many studies estimate that thousands of males are victims of sexual assault annually, regardless of their race, class, age, religion, sexual orientation, size, appearance, or strength. However, many of these assaults go unreported.
- Studies estimate the rate of report for male victims is considerably less than that of female victims. However, statistics about the number of male victims are hard to measure because the crime is so underreported.
- The Centers for Disease Control and Prevention (CDC) estimates that 1 out of every 38 men (around 2.8 million) in the U.S. have experienced a rape at some point in their lifetime.¹³
- Sexual assaults involving male victims are more likely to involve weapons, physical injury, force, and multiple sexual acts.
- There are many reasons for the low reporting:
 - Embarrassment and humiliation
 - Male survivors are likely to be disbelieved, discounted, blamed, and humiliated
 - Heterosexual male victims of male rapists' fear being labeled as gay

¹³ Smith, S. G., et al. (2018). *The National Intimate Partner and Sexual Violence Survey (NISVS): 2015 Data Brief – Updated Release*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.

- The FBI's annual *Uniform Crime Report* did not include **male** victims in the definition of "forcible rape" until 2012
- Male offenders who rape males are *not* always homosexual.
- Tactics used by assailants include intimidation by threats or weapons, brute strength, sudden attack, entrapment using drugs or alcohol, and use of authority or power.
- Male victims of sexual assault experience the same confusion and concern as female victims; they often blame themselves.
- Experiencing an erection or ejaculation during a sexual assault perpetrated by a male may further confuse the male victim. This is a normal physiological response and in no way indicates that the victim welcomed or enjoyed the attack.
- As discussed earlier, women can rape men, although these crimes are seldom reported. A woman in a position of power (i.e. teacher, boss, therapist, etc.), or who in any other way has power over a man, can coerce him into sex against his will. She will feel confident that the man will not report it; and if he does, she knows he will face ridicule, disbelief, blame, and emasculation.

SEXUAL ASSAULT OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER/QUESTIONING, AND OTHER (LGBTQ+) VICTIMS

Sexual assault of individuals in the LGBTQ+ community includes any sexual act in which a lesbian, gay, bisexual, transgender, queer/questioning, or other person is forced to participate without that person's consent.

Transgendered individuals are often categorized in the same social sexual identification group as lesbian, gay, and bisexual individuals. While the LGBTQ+ communities have similar social hurdles that they face regarding sexual identity and sexual violence, it is important to note the differences that separate these subgroups. Homosexuality and bisexuality are about an individual's romantic and sexual preference. A transgendered individual self-identifies as the opposite biological sex of which they were born. Being transgender is about an individual's gender identity, not an individual's sexual orientation. An individual who self-identifies as transgender does not necessarily self-identify as gay, lesbian, or bisexual.

- LGBTQ+ individuals are at an increased risk to the same sexual and physical violence that heterosexual/cisgender individuals face.¹⁴
- Situations of sexual assault that involve LGBTQ+ individuals are very similar to those that heterosexuals experience. However, there are concerns and factors that are unique in the experiences of LGBTQ+ people who are victims of sexual assault.
- It is common for perpetrators to use sexual violence to punish and humiliate someone for being LGBTQ+. An example of this is when a perpetrator specifically targets their victim based on their gender identity or sexual orientation because they believe they can *convert* their sexual preference.

¹⁴ Messinger, A. M., Koon-Magnin, S. (2019). "Sexual Violence in LGBTQ Communities." In: O'Donohue, W., and Schewe, P. (eds). *Handbook of Sexual Assault and Sexual Assault Prevention*. Springer, Cham.

- Victims who are not “out” (or have yet to self-disclose that they’re an LGBTQ+ individual) may find sharing and/or reporting the sexual assault difficult or impossible.¹⁵
- Common fears among LGBTQ+ victims of sexual assault are:
 - Fear of being re-victimized due to their sexual orientation or gender identity.
 - Feel they are betraying their LGBTQ+ community, which is already under attack, by ‘accusing’ another LGBTQ+ person of sexual assault.
 - Fear of hostile responses from the police, courts, service providers, and therapists because of homophobia and anti-LGBTQ+ bias.
- Inexperienced, insensitive, or homophobic hospital workers, doctors, or police officers can make a sexual assault an even more brutal experience. Law enforcement officers need to be aware of these realities when dealing with gay or lesbian victims of sexual assault.
- If someone is a victim of same sex sexual violence, it does not mean they are lesbian, gay, or bisexual. An individual’s sexual preference does not change because they were sexually assaulted.

Homophobia in our culture puts LGBTQ+ individuals at greater risk for sexual assault by strangers. Law enforcement officers need to confront their own interpretations and beliefs regarding the LGBTQ+ community before working with these individuals. It is not fair to the victim to re-victimize them due to your personal beliefs and prejudices.¹⁶

HUMAN TRAFFICKING

Human trafficking is a form of modern-day slavery where people profit by exploiting others by forced labor, sexual exploitation, and/or prostitution.

The term *human trafficking*, or *trafficking in persons*, is used to describe the exploitation of millions of people around the world and within the U.S. The two most common forms of human trafficking involve commercial sex and forced labor. The actual number of human trafficking victims is uncertain and may vary greatly due to the covert nature of the crime. The number of victims involved in human trafficking worldwide is estimated to be up to 25 million. Human trafficking is often underreported due to the obscure nature, various misconceptions, and lack of community awareness.

Human Trafficking Versus Human Smuggling

There is often confusion on the differences between human smuggling and human trafficking. Although the word trafficking implies movement, the actual definition of this crime does not necessarily require movement, but only control of another person. However, migrant smuggling may be part of a trafficking operation or turn into a trafficking situation.

¹⁵ Taken from the University of Minnesota, Morris (UMM) Violence Prevention Center’s LGBT Sexual Violence brochure.

¹⁶ Taken from the Office of the Sexual Assault Prevention and Response Harvard University: LGBT Sexual Violence brochure.

As trafficking victims are being moved through transit countries, they may not know that they will be forced into prostitution or labor when they arrive in the destination country. In other words, human smuggling can turn into human trafficking if a willing migrant is defrauded into believing that he/she will be free upon arrival, but then is forced into trafficking.

The differences between the two are illustrated in the following table:

SMUGGLING	TRAFFICKING
Smuggling is a crime of crossing an international border	Human Trafficking is a crime against a person's basic human right to freedom
No coercion (people are complicit in the crime and pay to cross borders)	Contains an element of coercion (one cannot consent to being enslaved)
Involves entry into the country only Upon arrival and payment, people are free to continue	Subsequent exploitation and / or forced labor
Persons seen as criminals	Persons seen as victims

Source: The Human Smuggling and Trafficking Center at the U.S. Department of State

Remember, it does not matter how the person entered the U.S. An individual can become a victim of human trafficking if they were deceived or coerced into compelled services or are being held against their will in some sort of debt bondage or peonage.

Types of Human Trafficking

Human traffickers exploit individuals for sex and/or labor services in a wide variety of forms and locations. Listed below are the most common forms of sex trafficking and labor trafficking.

Sex Trafficking:

- Forced prostitution, including prostitution within:
 - Brothels
 - Strip clubs
 - Massage parlors
 - Adult bookstores
 - Modeling studios or escort services
 - Online marketplace
- Child sex trafficking
 - Prostitution
 - Child pornography

Labor Trafficking:

- Debt bondage
 - Agricultural or field labor
 - Construction labor
 - Forced begging
 - Restaurants/food services
 - Sweatshops
- Domestic servitude
 - Maids
 - Servants
 - Housekeepers
 - Care givers
- Child labor

CHILD SEXUAL ABUSE

Child sexual abuse is any sexual act committed with a child under the age of 14, or with a teenager under the age of 17 if the offender is more than three years older.

- Children under the age of 17 do not have the ability to give consent.
- 15% of sexual assault and rape victims are under age 12; 29% are age 12 – 17.¹⁷
- Some 50-60% of all rapes occur before the victim is 18 years old; of these, one-third of the victims are under the age of 6. Some 29% of all forcible rapes occur when the victim is younger than eleven. In 90% of the rapes of children younger than age 12, the child knows the offender.¹⁸
- In a nationally representative survey, 60.4% of female and 69.2% of male victims were first sexually assaulted before age 18, and 34.9% were first sexually assaulted between the ages of 12-17. In the experience of female victims, 30.4% of perpetrators were reported to be intimate partners. In the experience of male victims, 15.9% of perpetrators were reported to be intimate partners.¹⁹
- The typical offender convicted of sexual assault of a child is a white, heterosexual male who is religious, married or formerly married, earning a middle income or above, and college-educated. However, there are also youthful offenders; many rapists commit their first sexual assault by age 14-16. The average convicted offender reports having molested anywhere from 30 to 60 children before being arrested for the first time.²⁰
- Children are incredibly vulnerable and can be convinced that complying with the sexual act is best for them.

¹⁷ U.S. Department of Justice. 2004 National Crime Victimization Survey. 2004.

¹⁸ Maguire, M., and Okada, D. (ed.). (2015). *Critical Issues in Crime and Justice: Thought, Policy, and Practice*. (2nd ed.). SAGE Publications, Inc.

¹⁹ Center for Disease Control and Prevention (2008). Sexual Violence: Facts at a Glance. *National Center for Injury Prevention and Control*.

²⁰ Adapted from the Texas Commission on Law Enforcement Officer Standards and Education, Sexual Assault Course.

- One prominent psychologist has referred to the effects of child sexual abuse as “soul murder: the purposeful and systematic deprivation of another human being’s will and capacity for pleasure and joy.”²¹
- Children who have been subjected to sexual assault may deny that any assault has taken place.

Even though these cases are particularly hard on law enforcement officers, officers should realize that they can demonstrate a caring, sensitive approach and improve the child’s chance of recovering. The effects of sexual abuse extend far beyond childhood. Sexual abuse robs children of their childhood and creates a loss of trust, feelings of guilt, and self-abusive behavior. It can also lead to difficulty with intimate relationships later in life.²²

SEXUAL ASSAULT AGAINST PEOPLE WITH DISABILITIES, DEAF INDIVIDUALS, AND/OR ADULTS LATER IN LIFE

Sexual assault of adults later in life, deaf individuals, or disabled adults is any sexual act committed without their consent. In some cases, severely mentally and physically disabled persons may not be capable of giving informed consent.

- Offenders involved in sexual assault of adults later in life or disabled adults often use force, trickery, and threats. The victims are usually systematically abused with the level of abuse increasing over time.
- These victims are often dependent on others for daily care, thus making them more susceptible to victimization. Family members, intimate partners, fellow residents, and care providers commit most of the assaults against adults later in life or disabled persons. Most victims are female, and most perpetrators are males.²³
- Victims may not be able to cry for help or relay the events to law enforcement.
- Officers are responsible for reporting abuse of adults later in life to the Texas Department of Family and Protective Services. Officers should make efforts to refer these victims to a crisis or counseling center because they may have little or no support from family or friends.

GANG RAPE

Gang rape is any sexual act in which three or more assailants force a person to participate without that person’s consent.

- Gang rape is more likely to involve weapons and severe physical injury.
- Most gang rapists are between the ages of 16 and 24, and their motivation is usually peer acceptance or status.

²¹ Leonard Shengold, 1989, *Soul Murder: The Effect of Childhood Abuse and Deprivation*.

²² Taken from the American Humane Association: Child Sexual Abuse Fact Sheet.

²³ Burgess, A., Ramsey-Klawnsnik, H., & Gregorian, S. “Comparing Routes of Reporting in Elder Sexual Abuse Cases.” *Journal of Elder Abuse & Neglect*, 20 (2008): 336 – 352.

- A gang rape is a systematic, premeditated assault executed by a group of individuals with a recognized leader.
- Gang rape often occurs in a public place where bystanders are either apathetic, supportive, or afraid to intervene.
- In most cases, the offenders blame the victim by saying that he/she consented to sex with all the individuals or did not express any objections.

Gang rapes are difficult to investigate and prosecute. Officers must realize the shock and horror the victims of gang rape experience and the subsequent fear of the group and public scrutiny. Officers should reassure victims that the assault was not their fault. Often, one or more of the participants were reluctant to be involved. Police should inquire about these individuals, as well as the potential leader. The odds of gang rape participants raping again are great. Law enforcement officers must adamantly pursue these cases.

PRISON RAPE

Prison rape is any sexual act in which a state or federal prisoner is forced to participate without that person's consent.

- An estimated 4.5% of U.S. prisoners report experiencing sexual violence, ranging from unwanted touching to nonconsensual sex committed by other inmates or prison staff.²⁴
- According to the report, between 9.3% and 15.7% of all prisoners in Texas prisons had reported being sexually assaulted within the previous twelve months.²⁵
- Five Texas prisons had rates of sexual victimization more than double the national average, including three facilities with the highest rates in the country.²⁶
- The Prison Rape Elimination Act (PREA) of 2003 addresses several issues concerning the seriousness of this problem:
 - Prison rape endangers the public safety by making brutalized inmates more likely to commit crimes when they are released.
 - The frequently interracial character of prison sexual assaults significantly exacerbates interracial tensions, both within prison and upon release of perpetrators and victims from prison, in the community at large.
 - Prison rape undermines the public health by contributing to the spread of diseases, often giving a potential death sentence to its victims.
 - The high incidence of prison rape increases the levels of violence directed at inmates and staff within prison.
 - Prison rape increases the cost of administering prisons, of health care and mental health care for inmates, and of health care and mental health care for victims released from prison and their victims outside of prison.

²⁴ Prison Justice League and the Texas Association Against Sexual Assault. "A Texas-Sized Failure: Sexual Assault in Texas Prisons." 2016.

²⁵ Ibid.

²⁶ Ibid.

SEXUAL HARASSMENT AND NONVIOLENT COERCION

Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal and physical conduct of a sexual nature when: (1) submission to such conduct explicitly or implicitly has economic, vocational, academic, or career consequences; or (2) such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work performance, or creating an intimidating, hostile, or offensive working or educational environment.

- Two types of sexual harassment:
 1. "Quid pro quo" harassment, in which the victim's job position, pay, or grade depends upon whether the victim submits to the sexual behavior; and
 2. Hostile environment harassment, in which sexual comments or behaviors create an objectionable or offensive environment for a worker or student.
- Sexual harassment is a form of nonviolent sexual coercion:
 - Nonviolent sexual coercion occurs any time an unwilling person is intimidated into sexual activity by a person in a position of power or dominance, and refusal by the victim to participate could have economic, vocational, or social consequences.
- Under Texas law, nonviolent sexual coercion is expressly illegal if it is perpetrated by persons in any of the following positions of power:
 - Public servants (including law enforcement);
 - Health care services providers upon whom a person is emotionally dependent;
 - Mental health care services providers upon whom a person is emotionally dependent; or
 - Members of the clergy upon whom a person is emotionally dependent.
- In the workplace, both quid pro quo harassment and hostile environment harassment are illegal under Title VII of the Civil Rights Act of 1964, which prohibits discrimination based on sex.
- Sexual harassment victims are not all women. In 1998, in the Supreme Court case *Oncale v. Sundowner*, the justices ruled that a male worker who was harassed by other men in an all-male work environment (an oil drilling rig) was protected under the law against discrimination based on sex.
- Victims of any type of sexual harassment suffer many negative personal effects; often both their trust and their sense of personal safety has been violated.
- Sexual harassment takes place not only in the workplace but also in schools, colleges, and universities.
 - Cases are prosecuted under Title IX of the Education Amendments Act of 1972, which prohibit sex bias by any educational program that receives federal financial assistance (which means all public schools and many private schools). In a Supreme Court ruling on a case from Lago Vista, Texas, Justice Sandra Day O'Connor wrote, "The number of reported cases involving sexual harassment of students in schools confirms that harassment unfortunately is an all too common aspect of the educational experience. No one questions that a student suffers extraordinary harm when subjected to sexual harassment and abuse by a

teacher, and that the teacher's conduct is reprehensible and undermines the basic purposes of the educational system."

{For more information on Title IX, see Chapter 7, Sexual Assault Laws on page 149.}

SEXUAL ASSAULT ON COLLEGE CAMPUSES

Sexual assault on college campuses includes any sexual act in which a college student is forced to participate without that person's consent. This section focuses on college students who live both on and off campus.

- Sexual assault is one of the most prevalent violent crimes committed on college campuses.²⁷
- It is estimated that 1 in 4 college women will be a victim of rape or attempted rape within a four-year college period.²⁸
- College students are more likely to be sexually assaulted by a casual/serious dating partner or someone they know versus a stranger.
- Both male and female college students can become victims of sexual assault, but the rate of male victimization is much lower.
- College students consume large amounts of alcohol annually. High levels of alcohol and substance abuse are associated with high risk behaviors and can decrease the risk assessment senses of a potential sexual assault victim. Alcohol is legal, socially accepted by peers, and the most commonly used drug to facilitate sexual assaults.
 - In college non-stranger rapes, 75% of the male students and 55% of the female students involved had been drinking or using drugs.²⁹
 - More than 70,000 students between the ages of 18-24 were victims of alcohol facilitated sexual assault by an acquaintance or dating partner; and 100,000 students were too intoxicated to know if they agreed to sexual intercourse.³⁰

{For information on sexual assault and reporting on college campuses, see Chapter 7: Sexual Assault Laws on page 146.}

²⁷ Potter, S. J. et. al. "Empowering Bystanders to Prevent Campus Violence Against Women." *Violence Against Women*, 15 (2009): 106.

²⁸ DeKeseredy, W. S., Rennison, C. M., and Hall-Sanchez, A. K. (2019) "The Routledge International Handbook of Violence Studies". New York City, NY: Routledge.

²⁹ The Red Flag Campaign. *Sexual and Dating Violence on Campuses: Research*. The Virginia Sexual and Domestic Violence Action Alliance. n.d. Web.

³⁰ Ham, Lindsay S., and Debra A. Hope. "College Students and Problematic Drinking: A Review of Literature." *Clinical Psychology Review* 23 (2003): 719-759. Web.

WHY DO RAPISTS RAPE?³¹

It is impossible to provide a comprehensive reason for sexual assaults. The common goals of offenders are power and domination. Because of the variety of offenders and types of offenses, researchers must look at the issue from a broader perspective.

- Some researchers believe that sexual assaults are more prevalent in societies that encourage highly segregated gender roles.³² These persons are taught definite patterns of behavior and one group is often given superior status over the other, engendering a lack of respect.
 - Some have speculated that this gender bias results in young men being taught they have certain privileges over women, which may account for the prevalence of sexual assault.
 - The numbers may also represent a society that is unwilling to deal with sexual assault and prevent recurrence.
- Pornography plays a major role in the lives of sex offenders. Studies show that 86% of convicted rapists admit that they used pornography regularly. It is hard to understand the true impact of pornography on sex offenders. Some argue that sexual predators are simply drawn to the medium and not created by it. Others site the dehumanizing effect of pornography and the exploitation of women. Fifty-seven percent of convicted rapists say they have imitated pornographic scenes during their attacks.
- Many sex offenders were victims of sexual abuse during their childhood. Sexual abuse of children is often committed by a loved one or close relative and gives the child a warped understanding of sex and healthy relationships.
- Most sexual predators did not start out as rapists. Researchers believe that rapists progress down a sexual aggression continuum.
- Many researchers have demonstrated that most rapists began by making suggestive comments, verbal harassment, peeping, obscene phone calls, exposure, etc.

Sexual Aggression Continuum								
Suggestive looks and conversation	Sexist comments and jokes	Verbal harassment	Obscene phone calls	Peeping	Exposure or Flashing	Rubbing/ touching	Rape	Murder

- Progression down the continuum may be the result of the offender not being punished for a lesser assault. The offender becomes emboldened by the lack of response from either the victim or the community (including law enforcement).

TYPES OF FORCIBLE RAPISTS AND OFFENDER'S CHARACTERISTICS

Characteristics of rape/sexual assault offenders as described by victims.

³¹ Excerpt from Texas Commission on Law Enforcement, "Sexual Assault Course" Chapter 2: Historical, Legal, and Cultural Background.

³² Sanday, P. R. "The Socio-Cultural Context of Rape: A Cross-Cultural Study." *Journal of Social Issues*, 37.4 (1981):5-27.

It is important to recognize the limitations of the following typology as it is based on research with incarcerated sex offenders; moreover, it is usually applied when investigating an unknown rapist. In addition, investigators must recognize that a sex offender may not fit neatly into one typology, but instead may exhibit characteristics from multiple typologies or none. These characteristics are a guideline, not a checklist.

{The following typologies were taken primarily from the work of Groth, Birnbaum, Knight, and Hobson.}

OPPORTUNISTIC RAPIST

- This is a crime of opportunity—rape was unplanned or not the intended crime
- Does not use force beyond what is needed to complete the rape
- His goal is to achieve immediate gratification with no regards to the victim

Style of Attack:

- Depends on the context/situation
 - Ex: Man finding a woman passed out at bar/party
- The rape itself is unplanned, but another (initial crime) may have been planned
 - Ex: Burglars sexually assaulting a woman during a robbery
- Does not use force beyond what is needed

Profile:

- Offender is impulsive
- Will likely have a history of antisocial actions and behaviors
- May have a record of burglary or nonviolent crimes

POWER RAPIST

- There are two types of Power Rapists, the *Power Reassurance Rapist* and the *Power Assertive Rapist*.
- These men are convinced of their sexual prowess.
- Power rapists show less aggression in both sexual and non-sexual situations than other kinds of rapists.
- They tend to believe their action had little to no effect(s).
- They do not use unnecessary force beyond what is necessary to achieve the rape.
- They exhibit anger only in response to victim resistance, but will use any amount of force necessary to accomplish their goal:
 - This may include verbal intimidation, use of a weapon, or actual physical force; and
 - They will sometimes run away if the victim screams or fights back.
- They do not want to harm the victim physically, but rather sexually assault her, only using violence as a method to achieve power and submission:

- In cases where such power rapists know their victims, they use the relationship to satisfy their immediate needs, without caring how this will affect the victim.

Additional characteristics of the two types of power rapists may include the following:

POWER REASSURANCE RAPIST (“GENTLEMAN” RAPIST)

Style of Attack:

- The assault is premeditated and preceded by persistent rape fantasies.
- His fantasy is that the victim wants him, and he may instruct her to tell him this during the assault.
- These suspects often give the victim information about them such as a pager or phone number to contact them to arrange for another “consensual” sexual encounter.
- They are the most common and least violent type of rapist.
- He does not intend to physically harm his victim.
- The offender’s language is instructional and inquisitive: giving orders, asking personal questions, and inquiring as to the victim’s response.
- The offender uses limited force/threats necessary to gain control and overcome resistance of the victim. The victim(s) may be unharmed, and any bodily injury would most likely be inadvertent rather than intentional.
- He will rely on the threat of a weapon, but often will not have one. Weapons are brought to the scene for the purpose of threat or intimidation more than causing injury.
- He will sometimes advise the victim he has an accomplice.
- He generally spends a short time with his victims due to lack of confidence or social skills to interact with a woman for any length of time.
- If the victim is “compliant,” he may spend a considerable amount of time during which he might act out his fantasies by attempting to engage the victim in “pillow talk” after the assault.
 - He might tell her his life story or caution her about locking her doors to prevent anyone from harming her after he leaves.
- Investigating officers need to be sensitive when interviewing victims of a suspect with this profile.
 - Victims may feel guilty about not “fighting” their “gentleman” attacker.
 - Investigators should use techniques to validate what a victim did to resist such as saying, “You survived the incident. You did the best you could do considering the circumstances.”
- He will be complimentary to the victim and attempt to sexually satisfy her.
- He will normally commit his crimes near where he lives or works.
- Victim selection is premeditated—normally through surveillance or peeping.
- Victim selection is determined by vulnerability (i.e. his age or younger).
- He will likely select many targets and if one is unsuccessful, he will move on to the next one on the list.

- This explains why you might have an attempted rape, followed by another attack in the same neighborhood.
- The victim will usually be alone or in the company of small children.
- The offender will usually have the victim undress herself and may have the victim undress him. Doing so fuels his fantasy of a consensual relationship.
- His method of rape is usually the same.
- His mood is one of anxiety. An insufficient erection and premature ejaculation are signs of performance anxiety.
- The offender may take a souvenir from the victim/scene to later relive his fantasy.
- He may keep records in the form of a diary, chart, or computer document.
- The offender may reconnect with his victim to relive the fantasy. For example, he may attempt to contact the victim to apologize, or to attempt a second assault.
- These offenses are repetitive and may show an increase in aggression over time.
- The offender's prior criminal record may include crimes such as theft, breaking and entering, robbery, and/or prior sex offenses.
- Possible history nuisance sexual offenses, like indecent exposure or peeping.

Profile:

- This offender has low self-esteem that permeates his life. He is probably seen as an underachiever.
- Employed in menial work
- Described by those who know him as gentle, quiet, and passive
- Non-athletic
- This offender is considered a loner. He has little or no social contact.
- This offender is usually single. If he is dating, he is usually involved with significantly younger girls. He lives alone or with a parent.
- He takes little pride in his personal appearance.
- His mood is one of anxiety. An insufficient erection and premature ejaculation are signs of performance anxiety.

POWER ASSERTIVE RAPIST

Style of Attack:

- This category of *Power Rapist* focuses his anger to prove his virility and power over women.
- The assault is more impulsive, spontaneous, and unplanned.
- He often meets his victim on the same evening as the assault at bars, clubs, parties, etc. Many offenders of acquaintance rape fall under this category.
- His language is abusive. He uses a lot of obscenities.
- Level of force is moderate.
- The offender feels no need to harm his victims, but he will use enough force to get what he wants. He will escalate his violence if the victim is resistant.
- He relies on his fists as a weapon.
- Because there is no pre-planning, he will not have a weapon unless he normally carries one.

- The assault is of relatively short duration.
- The offender will attack away from his work and residence since he has the confidence to leave his immediate area.
- The victim tends to be of the same age or older than the offender.
- The offender may commit multiple assaults during the same evening to prove his masculinity.
- The offenses are episodic.
- The offender's prior criminal record may include crimes of aggression such as reckless driving, assault and battery, and breach of peace.

Profile:

- This offender has a *macho* image and the most important thing to him is to have others see him as a "man."
- Mood is one of anger and depression. The most often experienced sexual dysfunction is delayed ejaculation due to hostility and anger.
- He is very self-centered and does not like to be under the control of others, even in the workplace.
- He dresses according to his *macho* image, drives a *macho* car, and has a *macho* job (e.g., heavy equipment operator, police officer, or construction worker).
- He drinks what he considers to be a "masculine drink," meaning no fruit drinks or umbrellas, and he hangs out at clubs, bars, and locations where he finds his victim.
- This offender is athletic with an athletic build (body builder). He exercises regularly and takes pride in his appearance.
- He may have been married more than once. It is very difficult for a woman to stay with him, but his ego dictates that he remarries.
- There is a history of conflict with women because of his selfish behavior.
- He frequents bars.

ANGER RAPIST

- Anger rapists may focus their anger exclusively at women or may be aggressive with men as well.
- This type of rapist is unpredictable.
- Anger rapist believes he has been wronged by a person or situation and uses the rape to dispel the anger.
- The rage displayed in these assaults range from verbal abuse to murder.
- The amount of force and violence used by anger rapists is excessive in cases where the victim does not resist.
- Should the victim resist, this will probably further intensify the level of aggression.
- Anger rapists often cause significant physical injury in addition to the rape itself.
- They typically think that women are dirty and cannot be trusted.
- Anger rapists can view sex itself as a dirty act and sex weapon to be used.
- There is no evidence with this type of rapist that their aggression is eroticized or that they are preoccupied with sadistic fantasies.
- In many cases, this type of rapist is displaying misplaced anger at a randomly chosen woman because another woman has, in his mind, wronged him. Often the rapist has

had a fight with his girlfriend or wife not long before, and this triggers the assault. The victim is symbolic of the real source of his anger.

- The offender's mood is one of anger. The most common experienced sexual dysfunction is delayed ejaculation due to anger.
- The anger rapist gets no satisfaction or gratification from the sex itself. The satisfaction comes from dispelling his anger.
- His purpose is to punish, and his motivation is revenge/retaliation.

Style of Attack:

- The attack is unplanned and there is no set timing. The attack is precipitated by events in the offender's life. He attacks spontaneously and out of anger.
- His language is abusive; he uses a lot of obscenities.
- The force used by this offender is excessive and will exceed that necessary to control the victim.
- Since the attack is spontaneous, the use of a weapon will depend on the offender's access and opportunity. If a weapon is employed, it is used to hurt and not to threaten the victim.
- His approach can be a "blitz" attack, or he can charm his way into gaining access to the victim then attacking.
- This offender attacks anytime—day or night.
- The victims chosen are often symbolic of an individual with whom the offender wants to get even.
- There tends to be plenty of evidence that an assault took place—the victim has bruising, cuts, torn clothing, etc.
- These offenses are episodic.
- The offender often drinks alcohol to release his inhibitions. He may use this as an excuse for the rape.
- The offender's prior criminal record may include crimes of aggression such as reckless driving, assault and battery, and breach of peace.

Profile:

- His personality is explosive. This may have resulted in prior arrests for assault.
- He acts impulsively.
- This offender has an action-oriented job allowing him to work off some of his aggression.
- Personal acquaintances often report a "dark side" to the offender's personality or lifestyle.
- The offender may be a high school drop-out.
- He is capable of socializing but prefers to be alone and is considered a lone wolf.
- He does not use pornography (no fantasy).
- His relationships are often superficial.
- He may have been married more than once.
- He has a possible history of physical conflicts with his wife, including emergency calls to the police reporting domestic violence.

SADISTIC RAPIST

- This rapist displays sexual aggression fueled by erotic, destructive fantasies.
- Sexuality and aggression are totally merged. Aggression itself becomes eroticized.
- The motive is to achieve sexual gratification through causing mental and physical suffering.
- They increase the violence to achieve further arousal.
- Sexual areas of the victim's body become a specific focus of injury and abuse.
- Object rape and anal rape are common with sadistic rapists, as are bizarre acts (e.g., giving victims an enema).
- Dismemberment, postmortem coitus, and other such acts occur in extreme cases.
- Victims tend to be similar—they reflect something the rapist wants to destroy.
- Offender wants to dominate, humiliate, and instill fear.
- The offender's behaviors are selfish.
- The offender's mood is usually one of intense excitement.

Style of Attack:

- The assault is calculated and preplanned.
- This is the most premeditated sexual crime, practiced over and over in his mind before it is attempted.
- The approach to the attack is confident; he uses a con.
- His voice is non-emotional and practiced.
- The victim suffers physical trauma to sexual areas of her body. In extreme cases, she is murdered and mutilated.
- His language is commanding and degrading, alternately reassuring and threatening.
- Weapons are generally employed to capture the victim.
- Instruments for restraint and/or torture may be used.
- The assault may be for an extended duration, in which the victim is abducted, held hostage, assaulted, and disposed of.
- Victim selections are determined by specific characteristics or symbolic representation.
- Victims are usually complete strangers.
- The age of the victim does not matter.
- The victim's clothing may be torn or cut off.
- The offense is ritualistic, typically involving bondage, torture, or bizarre acts and is interspersed with other non-sadistic acts.
- There is no pattern to the attacks. He attacks when he wants to.
- There is usually no prior criminal record, but if he has a criminal record it may include bizarre ritualistic or violent offenses.
- Symbolic destruction and elimination.
- May take souvenirs and/or document assault(s).

Profile:

- He is usually a well-liked, outgoing white male.
- Usually an above average IQ (at least some college education).

- Holds a white-collar job.
- No history of mental health care.
- Compulsive behavior.
- The offender may subscribe to bondage pornography, various detective publications, or other specific paraphilia pornography.
- He is an outdoorsman, a survivalist, and would do well in the military.
- This offender does not abuse drugs. He might use some drugs in moderation, but losing control is avoided.
- Tends to have an entirely separate life.
- He is often happily married. His wife will be firmly under his control and is often a victim herself.
- If the offender has a girlfriend she will not be under his total control and he will not act out against her.
- May own a family type vehicle (e.g., a SUV or Crossover).
- He may possibly have a history of childhood abuse.

HOMICIDAL SEX OFFENDERS

LUST MURDERERS

- While sadistic rapists find sexual gratification in causing the victim pain, a person committing a lust murder finds his sexual gratification by murdering the victim.
- Lust murders are motivated by obsessive fantasies of the offender. It is not enough for them just to kill their victims; they have a compulsive need to act out their fantasies with the victims' bodies.
- The lust murders involve stabling, cutting, or mutilation of the victims' sexual regions or sexual organs.
- It can also include:
 - Posing and propping of the body, insertion of objects into body cavities, cannibalism, and necrophilia³³.
 - Linking sexual gratification and murder.
 - Sadistic crime to an extreme.
 - The torture, suffering, and murder of victim are essential to the lust murderer's sexual gratification.
 - Victims are usually strangled or stabbed to death.
 - Fantasy is an essential element.

Lust murderers can be classified as "Organized" or "Disorganized" in nature:

ORGANIZED LUST MURDERER:

- High intelligence

³³ Purcell, C. E., and Arrigo, B. A. (2006). "The Psychology of Lust Murder: Paraphilia, Sexual Killing, and Serial Homicide. Elsevier.

- Socially adequate
- Sexually competent
- Lives with partner
- Comes from home with overly strict or abusive discipline
- Controlled mood during crime
- Geographically mobile (crime is usually committed outside of his area of residence or work)
- Occupationally mobile
- Follows media reports of crime
- Charming and charismatic
- Will take souvenir to relive event

Post-offense behavior of the Organized Lust Murderer:

- Returns to crime scene
- Volunteers information or to help out
- Police groupie
- May move body
- May dispose of body to “advertise” crime

DISORGANIZED LUST MURDERER:

- Below-average intelligence
- Socially inadequate
- Unskilled work
- Anxious mood during crime
- Acts impulsively under stress
- Uses a “blitz” style of attack, suddenly acting out fantasy
- Lives alone or with mother
- Will choose a victim from own geographic location
- Minimal interest in media
- High school dropout
- Usually does not date

Post-offense behavior of the Disorganized Lust Murderer:

- Returns to crime scene
- May attend funeral
- May keep a diary
- May change job
- May have a personality change

APPROACHES USED BY STRANGER RAPISTS

“The Con”

- Offers assistance
- Requests directions
 - Goal: to get victim close enough to gain control
- Some Cons
 - Pretends to be a police officer; picks up hitchhikers; picks up women in singles' bars

“The Blitz”

- Direct physical assault to subdue victim
- Physical injury to victim
- Injury may excite rapist

“Surprise Attack”

- Victim targeted
 - Unobserved surveillance to find out when she will be alone

SEXUAL PARAPHILIAS

What are paraphilias?

Paraphilia is a medical and behavioral science term for a sexual preference disorder (sometimes referred to as sexual deviations or perversions). According to the most recent *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-V), paraphilias are intense, recurring sexual fantasies, sexual urges, or behaviors.

Paraphilias include:

- Sexual urges or sexual fantasies with non-human objects
- Sexual behaviors with non-human objects
- Sexual behaviors involving humiliation or suffering of oneself or another person
- Adult sexual behavior that involves children or non-consenting adults

Exhibitionism:

- Over a period of at least 6 months, recurrent intense sexually arousing fantasies, sexual urges, or behaviors involving exposure of one's genitals to an unsuspecting stranger.
- Clinically significant distress or impairment in social, occupational, or other important areas of functioning caused by the fantasies, sexual urges, or behaviors.

Frotteurism:

- Over a period of at least 6 months, recurrent intense sexually arousing fantasies, sexual urges, or behaviors involving touching and rubbing against non-consenting persons.
- Clinically significant distress or impairment in social, occupational, or other important areas of functioning caused by the fantasies, sexual urges, or behaviors.

Pedophilia:

- Over period of at least 6 months, recurrent intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children (generally 13 years or younger).
- Clinically significant distress or impairment in social, occupational, or other important areas of functioning caused by the fantasies, sexual urges, or behaviors.
- Person with disorder is aged 16 years or older and at least 5 years older than the child or children in first criterion.

Voyeurism:

- Over period of at least 6 months, recurrent intense sexually arousing fantasies, sexual urges, or behaviors involving the act of observing an unsuspecting person who is naked, in the process of disrobing, or engaging in sexual activity.
- Clinically significant distress or impairment in social, occupational, or other important areas of functioning caused by the fantasies, sexual urges, or behaviors.

Fetishism:

- People with a fetish experience sexual urges and behavior which are associated with non-living objects. For example, the object of the fetish could be an article of female clothing, like female underwear.
- Usually the fetish begins in adolescence and tends to be quite chronic into adult life.

Masochism:

- Masochism is getting pleasure, often sexual, from being hurt or humiliated. Sometimes the masochistic acts are limited to verbal humiliation or blindfolding. However, masochistic behavior might include being bound or beaten.
- Masochism may become even more harmful, however, when a person permits another to use arm or leg restraints accompanied by acts of beating, whipping, or cutting.

CHILD MOLESTERS AND PEDOPHILES³⁴

The term “child molester” and “pedophile” are often used interchangeably to describe someone who has sexually abused a child. However, there are unique differences between a child molester and a pedophile that are important to point out.

A pedophile has the sexual disorder pedophilia, as defined by the DSM-V. The person will have recurring intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children that lasts over the period of at least 6 months. The sexual urges and fantasies cause clinically significant distress or impair the functioning of social, occupational, and other important areas of life. The person with the disorder is 16 years of age or older and at least 5 years older than the child or children. A person may have pedophilia but has not yet molested a child or committed any crime. However, research suggests that most pedophiles do eventually offend. The pedophilic disposition may not manifest until later in life, but often manifests in adolescence.

Some researchers go even further and break down pedophilia into subcategories: (1) hebephiles, or those who prefer pubescent children whose ages range anywhere from 11 to 16; and (2) pedophiles, or those who prefer prepubescent children who are typically 11 years of age and younger.

A child molester is anyone who has sexually molested a child. While most people who molest children are also pedophiles, some are situational or opportunistic (non-pedophilic) child molesters. Non-pedophilic child molesters are not truly attracted to children. This type chooses to molest children for a variety of dysfunctional reasons, such as accessibility, cognitive and/or anti-social disorders, or the inability to perform intimately with other adults. Non-pedophilic child molesters are less likely to re-offend, whereas pedophilic child molesters tend to chronically offend and have numerous victims.

A psychological profile of pedophilia escapes development because perpetrators appear to constitute a heterogeneous group. However, some common characteristics prevail among both pedophiles and child molesters:

- Although some offenders are female, a great majority are male.
- Preference for children as sex partners may not be exclusive and often pedophiles have no gender preference in prepubescent children. However, by a margin greater than two to one, most victims are girls.
- Moreover, the offender is usually a relative, friend, or neighbor of the child’s family.
- Alcohol is associated with almost 50% of molestation cases but is not necessarily correlated with pedophilia in general.
- Many pedophiles and child molesters claim to have been sexually abused in their own childhoods. However, not all pedophiles were sexually abused as children and most victims of child sexual abuse do not grow up to be sexual offenders.³⁵

³⁴ Murray, J. B. (2000). “Psychological Profile of Pedophiles and Child Molesters.” *The Journal of Psychology*, 134(2):211-224.

EFFECTS OF SEXUAL ASSAULT ON VICTIMS³⁶

Sexual assault survivors have experienced a fundamental violation of their personal rights and have undergone a traumatic stress. Many victims respond differently to their assaults, but trauma can manifest itself in complex physical, mental, and emotional responses including fear, anger, pain, misplaced guilt, shock, and cognitive shutdown.

The recovery process and the criminal justice system force the victim to relive the traumatic event repeatedly. Victims need support services to facilitate the recovery and act as a resource during the criminal justice process. Law enforcement officers must recognize the need for these services and cooperate with victim advocates to ensure the safety and recovery of the victim.

Common and long-term effects of sexual assault include:³⁷

- Alcohol and substance abuse/dependency
- Suicidal ideation and/or suicide attempts
- Fear and/or uncertainty about a potential pregnancy and/or STD(s)
- Depression
- Sleep disorders or chronic nightmares
- 82% of victims reported that the rape permanently changed them.³⁸
- An individual is more likely to develop PTSD if they suffered traumatic injuries at the hand of another person. In the National Comorbidity Survey, 65% of the male respondents and 46% of the female respondents who reported rape as their most upsetting trauma, developed PTSD.³⁹

THE POOR REPORTING RATIO⁴⁰

- Some studies have cited that two-thirds of sexual assault victims are afraid they will be blamed for the assault and many are afraid their names will be publicized.
- Some believe that sexual assault should be kept private to avoid shame and embarrassment.
- Some fear reprisal from the assailant, especially the victims of non-stranger rape.
- Research has also shown that child sexual abuse victims are less likely to report sexual assault. The victims may have been conditioned to accept the assaults or tried to report them in the past and have been dissatisfied or unsuccessful.

³⁵ Jespersen, A. F., et. al. "Sexual Abuse History Among Adult Sex Offenders and Non-Sex Offenders: A Meta-Analysis." *Child Abuse & Neglect The International Journal*, 33 (2009): 179-192.

³⁶ Excerpt from Texas Commission on Law Enforcement, "Sexual Assault" Chapter 1: Definitions, Myths, and Facts.

³⁷ Rape Abuse & Incest National Network (RAINN). "Effects of Sexual Assault." n.d. Web.

³⁸ Burgess, A. W., Regehr, C., and Roberts, A. R. (2012). "Victimology: Theories and Applications (2nd ed.)." Burlington, MA: Jones & Barlett Learning.

³⁹ Friedman, M. J., Keane, T. M., and Resick, P. A. (ed.). (2014). "Handbook of PTSD: Science and Practice (2nd ed.)." New York City, NY: The Guilford Press.

⁴⁰ Excerpt from Texas Commission on Law Enforcement, "Sexual Assault" Chapter 1: Definitions, Myths, and Facts.

CHAPTER SEVEN: SEXUAL ASSAULT LAWS

Learning Objectives: Understanding Sexual Assault Laws

By the end of this chapter, the student will be able to identify and discuss the following terms, concepts and practices as they relate to sexual assault laws:

- A. Sexual Assault
 - 1. Definitions
 - 2. Statutes
 - 3. Officer Duties in Sexual Assault Cases
 - 4. Relevant Case
 - 5. Trafficking of Persons
 - 6. Additional Sexual Assault Laws
- B. Reporting on College Campuses
 - 1. Title IX
 - 2. The Clery Act

All Texas Codes can be viewed online at <https://statutes.capitol.texas.gov/Index.aspx>.

SEXUAL ASSAULT

DEFINITIONS

Texas Penal Code § 21.01

Sexual Intercourse: any penetration of the female sex organ by the male sex organ.

Deviate Sexual Intercourse: any contact between the genitals of one person and the mouth of another, or the penetration of the genitals or the anus of another person with an object.

Sexual Contact: any touching of the anus, breast, or any part of the genitals of another with the intent to gratify or arouse any person; see also § 21.11 (Indecency with a Child) for an expanded definition applicable to only that offense.

STATUTES

CONTINUOUS SEXUAL ABUSE OF YOUNG CHILD OR CHILDREN

PC § 21.02

1st Degree Felony, punishable by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 25 years.

- (a) In this section, “child” has the meaning assigned by Section 22.011(c).
- (b) A person commits an offense if:
 - (1) during a period that is 30 or more days in duration, the person commits two or more acts of sexual abuse, regardless of whether the acts of sexual

- abuse are committed against one or more victims; and
- (2) at the time of the commission of each of the acts of sexual abuse, the actor is 17 years of age or older and the victim is a child younger than 14 years of age, regardless of whether the actor knows the age of the victim at the time of the offense.
- (c) For purposes of this section, “act of sexual abuse” means any act that is a violation of one or more of the following penal laws:
- (1) aggravated kidnapping under Section 20.04(a)(4), if the actor committed the offense with the intent to violate or abuse the victim sexually;
 - (2) indecency with a child under Section 21.11(a)(1), if the actor committed the offense in a manner other than by touching, including touching through clothing, the breast of a child;
 - (3) sexual assault under Section 22.011;
 - (4) aggravated sexual assault under Section 22.021;
 - (5) burglary under Section 30.02, if the offense is punishable under Subsection d) of that section and the actor committed the offense with the intent to commit an offense listed in Subdivisions (1)-(4); and
 - (6) sexual performance by a child under Section 43.25.
 - (7) trafficking of persons under Section 20A.02(a)(7) or (8); and (8) compelling prostitution under Section 43.05(a)(2).
- (d) If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific acts of sexual abuse were committed by the defendant or the exact date when those acts were committed. The jury must agree unanimously that the defendant, during a period that is 30 or more days in duration, committed two or more acts of sexual abuse.
- (e) A defendant may not be convicted in the same criminal action of an offense listed under Subsection (c) the victim of which is the same victim as a victim of the offense alleged under Subsection (b) unless the offense listed in Subsection (c):
- (1) is charged in the alternative;
 - (2) occurred outside the period in which the offense alleged under Subsection (b) was committed; or
 - (3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (b).
- (f) A defendant may not be charged with more than one count under Subsection (b) if all the specific acts of sexual abuse that are alleged to have been committed are alleged to have been committed against a single victim.
- (g) It is an affirmative defense to prosecution under this section that the actor:
- (1) was not more than five years older than:
 - (A) the victim of the offense, if the offense is alleged to have been committed against only one victim; or
 - (B) the youngest victim of the offense, if the offense is alleged to have been committed against more than one victim;
 - (2) did not use duress, force, or a threat against a victim at the time of the commission of any of the acts of sexual abuse alleged as an element of the offense; and
 - (3) at the time of the commission of any of the acts of sexual abuse alleged

as an element of the offense:

- (A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or
- (B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section or an act of sexual abuse as described by Subsection (c).

INDECENCY WITH A CHILD

PC § 21.11

2nd or 3rd Degree Felony

- (a) A person commits an offense if, with a child younger than 17 years and not the person's spouse, whether the child is of the same or opposite sex and regardless of whether the person knows the age of the child at the time of the offense, the person:
 - (1) engages in sexual contact with the child or causes the child to engage in sexual contact; or
 - (2) with intent to arouse or gratify the sexual desire of any person:
 - (A) exposes the person's anus or any part of the person's genitals, knowing the child is present; or
 - (B) causes the child to expose the child's anus or any part of the child's genitals.
- (b) It is an affirmative defense to prosecution under this section that the actor:
 - (1) was not more than three years older than the victim and of the opposite sex;
 - (2) did not use duress, force, or a threat against the victim at the time of the offense; and
 - (3) at the time of the offense:
 - (A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or
 - (B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section.
- (c) In this section, "sexual contact" means the following acts, if committed with the intent to arouse or gratify the sexual desire of any person:
 - (1) any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a child; or
 - (2) any touching of any part of the body of a child, including touching through clothing, with the anus, breast, or any part of the genitals of a person.
- (d) An offense under Subsection (a)(1) is a felony of the second degree and an offense under Subsection (a)(2) is a felony of the third degree.

IMPROPER RELATIONSHIP BETWEEN EDUCATOR AND STUDENT

PC § 21.12

2nd Degree Felony

- (a) An employee of a public or private primary or secondary school commits an

offense if the employee:

- (1) engages in sexual contact, sexual intercourse, or deviate sexual intercourse with a person who is enrolled in a public or private primary or secondary school at which the employee works;
 - (2) holds a position described by Section 21.003(a) or (b), Education Code, regardless of whether the employee holds the appropriate certificate, permit, license, or credential for the position, and engages in sexual contact, sexual intercourse, or deviate sexual intercourse with a person the employee knows is:
 - (A) enrolled in a public or private primary or secondary school other than a school described by Subdivision (1); or
 - (B) a student participant in an educational activity that is sponsored by a school district or a public or private primary or secondary school, if:
 - (i) students enrolled in a public or private primary or secondary school are the primary participants in the activity; and
 - (ii) the employee provides education services to those participants; or
 - (3) engages in conduct described by Section 33.021, with a person described by Subdivision (1), or a person the employee knows is a person described by Subdivision (2)(A) or (B), regardless of the age of that person.
- (b) An offense under this section is a felony of the second degree.
- (b-1) It is an affirmative defense to prosecution under this section that:
- (1) the actor was the spouse of the enrolled person at the time of the offense; or
 - (2) the actor was not more than three years older than the enrolled person and, at the time of the offense, the actor and the enrolled person were in a relationship that began before the actor's employment at a public or private primary or secondary school.
- (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 both sections.
- (d) The name of a person who is enrolled in a public or private primary or secondary school and involved in an improper relationship with an educator as provided by Subsection (a) may not be released to the public and is not public information under Chapter 552, Government Code.

INVASIVE VISUAL RECORDING

PC § 21.15

State Jail Felony

- (a) In this section:
- (1) "Female breast" means any portion of the female breast below the top of the areola
 - (2) "Intimate area" means the naked or clothed genitals, pubic area, anus, buttocks, or female breast of a person.

- (3) “Changing room” means a room or portioned area provided for or primarily used for the changing of clothing and includes dressing rooms, locker rooms, and swimwear changing areas.
- (4) “Promote” has the meaning assigned by Section 43.21.
- (b) A person commits an offense if, without the other person’s consent and with intent to invade the privacy of the other person, the person:
 - (1) photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of an intimate area of another person if the other person has a reasonable expectation that the intimate area is not subject to public view:
 - (2) photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of another in a bathroom or changing room or
 - (3) knowing the character and content of the photograph, recording, broadcast, or transmission, promotes a photograph, recording, broadcast, or transmission described by Subdivision (1) or (2).

UNLAWFUL DISCLOSURE OR PROMOTION OF INTIMATE VISUAL MATERIAL
PC § 21.16
State Jail Felony

▲ 86th Legislative Change: *HB 98 amends the section by requiring the defendant to have intended to cause harm to the person depicted and known or had reason to believe that the visual material was obtained or created with the depicted person’s reasonable expectation that the material would remain private.*

- (a) In this section:
 - (1) “Intimate parts” means the naked genitals, pubic area, anus, buttocks, or female nipple of a person.
 - (2) “Promote” means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do any of the above.
 - (3) “Sexual conduct” means sexual contact, actual or simulate sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse.
 - (4) “Simulated” means the explicit depiction of sexual conduct that creates the appearance of actual sexual conduct and during which a person engaging in the conduct exhibits any uncovered portion of the breasts, genitals, or buttocks.
 - (A) “Visual material” means: any film, photograph, videotape, negative, or slide or any photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or
 - (B) any disk, diskette, or other physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line,

cable, satellite transmission, or other method.

- (b) A person commits an offense if:
 - (1) without the effective consent of the depicted person and with the intent to harm that person, the person discloses visual material depicting another person with the person's intimate parts exposed or engaged in sexual conduct;
 - (2) at the time of the disclosure, the person knows or has reason to believe that the visual material was obtained by the person or created under circumstances in which the depicted person had a reasonable expectation that the visual material would remain private;
 - (3) the disclosure of the visual material causes harm to the depicted person; and
 - (4) the disclosure of the visual material reveals the identity of the depicted person in any manner, including through:
 - (A) any accompanying or subsequent information or material related to the visual material; or
 - (B) information or material provided by a third party in response to the disclosure of the visual material.
- (c) A person commits an offense if the person intentionally threatens to disclose, without the consent of the depicted person, visual material depicting another person with the person's intimate parts exposed or engaged in sexual conduct and the actor makes the threat to obtain a benefit:
 - (1) in return for not making the disclosure; or
 - (2) in connection with the threatened disclosure.
- (d) A person commits an offense if, knowing the character and content of the visual material, the person promotes visual material described by Subsection (b) on an Internet website or other forum for publication that is owned or operated by the person.
- (e) It is not a defense to prosecution under this section that the depicted person:
 - (1) created or consented to the creation of the visual material; or
 - (2) voluntarily transmitted the visual material to the actor.
- (f) It is an affirmative defense to prosecution under Subsection (b) or (d) that:
 - (1) the disclosure or promotion is made in the course of:
 - (A) lawful and common practices of law enforcement or medical treatment;
 - (B) reporting unlawful activity; or
 - (C) a legal proceeding, if the disclosure or promotion is permitted or required by law;
 - (2) the disclosure or promotion consists of visual material depicting in a public or commercial setting only a person's voluntary exposure of:
 - (A) the person's intimate parts; or
 - (B) the person engaging in sexual conduct; or
 - (3) the actor is an interactive computer service, as defined by 47 U.S.C. Section 230, and the disclosure or promotion consists of visual material provided by another person.
- (g) An offense under this section is a state jail felony.

- (h) If conduct that constitutes an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

VOYEURISM

PC § 21.17

Class C Misdemeanor

- (a) A person commits an offense if the person, with the intent to arouse or gratify the sexual desire of the actor, observes another person without the other person's consent while the other person is in a dwelling or structure in which the other person has a reasonable expectation of privacy.
- (b) Except as provided by Subsection (c) or (d), an offense under this section is a Class C misdemeanor.
- (c) An offense under this section is a Class B misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted two or more times of an offense under this section.
- (d) An offense under this section is a state jail felony if the victim was a child younger than 14 years of age at the time of the offense.
- (e) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

SEXUAL COERCION

PC § 21.18

State Jail Felony or 3rd Degree Felony

- (a) In this section:
 - (1) "Intimate visual material" means the visual material described by Section 21.16(b)(1) or (c).
 - (2) "Sexual conduct" has the meaning assigned by Section 43.25.
- (b) A person commits an offense if the person intentionally threatens, including by coercion or extortion, to commit an offense under Chapter 43 or Section 20A.02(a)(3), (4), (7), or (8), 21.02, 21.08, 21.11, 21.12, 21.15, 21.16, 21.17, 22.011, or 22.021 to obtain, in return for not committing the threatened offense or in connection with the threatened offense, any of the following benefits:
 - (1) intimate visual material;
 - (2) an act involving sexual conduct causing arousal or gratification; or
 - (3) a monetary benefit or other benefit of value.
- (c) A person commits an offense if the person intentionally threatens, including by coercion or extortion, to commit an offense under Chapter 19 or 20 or Section 20A.02(a)(1), (2), (5), or (6) to obtain, in return for not committing the threatened offense or in connection with the threatened offense, either of the following benefits:
 - (1) intimate visual material; or
 - (2) an act involving sexual conduct causing arousal or gratification.

- (d) This section applies to a threat regardless of how that threat is communicated, including a threat transmitted through e-mail or an Internet website, social media account, or chat room and a threat made by other electronic or technological means.
- (e) An offense under this section is a state jail felony, except that the offense is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted of an offense under this section.

UNLAWFUL ELECTRONIC TRANSMISSION OF SEXUALLY EXPLICIT VISUAL MATERIAL

PC § 21.19

Class C Misdemeanor

▲ 86th Legislative Change: *HB 2789 added this new offense that is described as non-consensual “sexting” of explicit images between adults.*

- (a) In this section, “intimate parts,” “sexual conduct,” and “visual material” have the meanings assigned by Section 21.16.
- (b) A person commits an offense if the person knowingly transmits by electronic means visual material that:
 - (1) Depicts:
 - (A) Any person engaging in sexual conduct or with the person’s intimate parts exposed; or
 - (B) Covered genitals of a male person that are in a discernibly turgid state; and
 - (2) Is not sent at the request of or with the express consent of the recipient.
- (c) An offense under this section is a Class C misdemeanor.
- (d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

SEXUAL ASSAULT

PC § 22.011

2nd Degree Felony

▲ 86th Legislative Change: *HB667, “Melissa’s Law,” adds a new subdivision (f)(2) to make sexual assault involving incest a 1st Degree Felony when the victim was a person with whom the actor was prohibited from having sex with under 25.02 (Prohibited Sexual Conduct). 1st Degree Felony. Another amendment was to the “Romeo and Juliet” affirmative defense by adding a subparagraph (e)(2)(B)(ii)(b) to exclude incestuous relationships from the exemption. SB1259 adds subsection (b)(12) which states: the actor is a health care services provider who, in the course of performing an assisted reproduction procedure on the other person, uses human reproductive material from a donor knowing that the other person has not expressly consented to the use of material from that donor. State Jail Felony.*

- (a) A person commits an offense:
 - (1) the person intentionally or knowingly:

- (A) causes the penetration of the anus or female sexual organ of another person by any means, without that person's consent;
 - (B) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or
 - (C) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or
- (2) regardless of whether the person knows the age of the child at the time of the offense, the person intentionally or knowingly:
 - (A) causes the penetration of the anus or sexual organ of a child by any means;
 - (B) causes the penetration of the mouth of a child by the sexual organ of the actor;
 - (C) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;
 - (D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor;
 - (E) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor.
- (b) A sexual assault under Subsection (a)(1) is **without the CONSENT** of the other person if:
 - (1) the actor compels the other person to submit or participate by the use of physical force, violence, or coercion;
 - (2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person or to cause harm to the other person, and the other person believes that the actor has the present ability to execute the threat;
 - (3) the other person has not consented, and the actor knows the other person is unconscious or physically unable to resist;
 - (4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;
 - (5) the other person has not consented, and the actor knows the other person is unaware that the sexual assault is occurring;
 - (6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge;
 - (7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;
 - (8) the actor is a public servant who coerces the other person to submit or participate;
 - (9) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's

- emotional dependency on the actor;
 - (10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual advisor; or
 - (11) the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other.
 - (12) the actor is a health care services provider who, in the course of performing an assisted reproduction procedure on the other person, uses human reproductive material from a donor knowing that the other person has not expressly consented to the use of material from that donor.
- (c) Definitions specific to Texas Penal Code § 22.011:
- (1) "Child" means a person younger than 17 years of age who is not the spouse of the actor.
 - (2) "Spouse" means a person who is legally married to another.
 - (3) "Health care services provider" means:
 - (A) A physician;
 - (B) A chiropractor;
 - (C) A physical therapist; or
 - (D) A registered nurse, a vocational nurse, or an advanced practice nurse;
 - (4) "Mental health services provider" means:
 - (A) licensed social worker;
 - (B) chemical dependency counselor;
 - (C) licensed professional counselor;
 - (D) licensed marriage and family therapist;
 - (E) member of the clergy;
 - (F) psychologist offering psychological services; or
 - (G) special officer for mental health assignment.
 - (5) "Employee of a facility" means a person who is an employee of a facility as defined by Texas Health and Safety Code § 250.001, or any other person who provides services for a facility for compensation, including a contract laborer.

Defense to Prosecution:

- (d) It is an affirmative defense to prosecution under § (a)(2) that the conduct consisted of medical care for the child and did not include any contact between the anus or sexual organ of the child and the mouth, anus, or sexual organ of the actor or third party.
- (e) It is an affirmative defense to prosecution under § (a)(2) that:
 - (1) the actor was not more than three years older than the victim and at the time of the offense:
 - (A) was not required to register for life as a sex offender; or
 - (B) was not a person who had a reportable conviction or adjudication for an offense under this section; and

- (2) the victim was 14 years of age or older.
- (f) An offense in this section is a felony of the second degree.

INDECENT ASSAULT
PC § 22.012
Class A Misdemeanor

▲ 86th Legislative Change: SB194 enacted this new offense to provide what is essentially an adult equivalent to PC 22.11(a)(1) *Indecency with a Child by Contact*.

- (a) A person commits an offense if, without the other person's consent and with the intent to arouse or gratify the sexual desire of any person, the person:
 - (1) touches the anus, breast, or any part of the genitals of another person;
 - (2) touches another person with the anus, breast, or any part of the genitals of any person;
 - (3) exposes or attempts to expose another person's genitals, pubic area, anus, buttocks, or female areola; or
 - (4) causes another person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of any person.
- (b) An offense under this section is a Class A misdemeanor.
- (c) If conduct that constitutes an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

AGGRAVATED SEXUAL ASSAULT
PC § 22.021

1st Degree Felony, Minimum term of imprisonment is increased to 25 years if the victim was younger than 6, or the victim is younger than 14 and the actor commits the offense in the manner described by (a)(2)(A).

- (a) A person commits an offense:
 - (1) if the person:
 - (A) intentionally or knowingly:
 - (i) causes the penetration of the anus or sexual organ of another person by any means, without the person's consent;
 - (ii) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or
 - (iii) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or
 - (B) regardless of whether the person knows the age of the child at the time of the offense intentionally or knowingly:
 - (i) causes the penetration of the anus or sexual organ of a child by any means;

- (ii) causes the penetration of the mouth of a child by the sexual organ of the actor;
- (iii) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;
- (iv) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or
- (v) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor;

(2) and

(A) the person:

- (i) causes serious bodily injury or attempts to cause the death of the victim or another person in the course of the same criminal episode;
- (ii) by acts or words places the victim in fear that any person will become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or that death, serious bodily injury, or kidnapping will be imminently inflicted on any person;
- (iii) by acts or words occurring in the presence of the victim threatens to cause any person to become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or to cause the death, serious bodily injury, or kidnapping of any person;
- (iv) uses or exhibits a deadly weapon in the course of the same criminal episode;
- (v) acts in concert with another who engages in conduct described by subdivision (1) directed toward the same victim and occurring during the course of the same criminal episode; or
- (vi) with the intent of facilitating the commission of the offense, administers or to the victim of the offense any substance capable of impairing the victim's ability to appraise the nature of the act or to resist the act;

(B) the victim is younger than 14 years old, regardless of whether the person knows the age of the child at the time of the offense; or

(C) the victim is an elderly individual or a disabled individual.

(b) In this section:

- (1) "Child" has the meaning assigned by Section 22.011(c).
- (2) "Elderly individual" has the meaning assigned by Section 22.04(c).
- (3) "Disabled individual" means a person older than 13 years of age who by reason of age or physical or mental disease, defect, or injury is substantially unable to protect the person's self from harm or to provide food, shelter, or medical care for the person's self.

(c) An aggravated sexual assault under this section is without the consent of the other person if the aggravated sexual assault occurs under the same

- circumstances listed in Section 22.011(b).
- (d) The defense provided by Section 22.011(d) applies to this section.
- (e) An offense under this section is a felony of the first degree.
- (f) The minimum term of imprisonment for an offense under this section is increased to 25 years if:
 - (1) the victim of the offense is younger than six years of age at the time the offense is committed; or
 - (2) the victim of the offense is younger than 14 years of age at the time the offense is committed, and the actor commits the offense in a manner described by Subsection (a)(2)(A).

LIMITATION CCP Art. 12.01

▲ 86th Legislative Change: The “Lavinia Masters Act,” **HB 8**, amends (1)(C)(i), which removes the statute of limitations for a sexual assault in which biological material is collected and tested but yields an unknown profile. It also removes the statute for sexual assault cases in which biological material is collected but not yet tested for DNA.

SB 1259 amends subsection (2)(E) to exempt “fertility fraud” cases from the 10-year statute of limitations for sexual assaults and adds subsection (7) to create a “delayed discover” statute of limitations for that crime. Going forward, the statute of limitations for those types of cases will be two years from the date of discover of the offense.

There is no statute of limitation if during the investigation of the offense biological matter is collected and subjected to forensic DNA testing and the testing results show that the matter does not match the victim or any other person whose identity is readily ascertained.

{A detailed chart listing additional Statutes of Limitation follows this chapter.}

PROHIBITED SEXUAL CONDUCT PC § 25.02

3rd Degree Felony or 2nd Degree Felony if ancestor or descendant

- (a) A person commits an offense if the person engages in sexual intercourse or deviate sexual intercourse with another person the actor knows to be, without regard to legitimacy:
 - (1) the actor’s ancestor or descendant by blood or adoption;
 - (2) the actor’s current or former stepchild or stepparent;
 - (3) the actor’s parent’s brother or sister of the whole or half-blood;
 - (4) the actor’s brother or sister of the whole or half blood or by adoption;
 - (5) the children of the actor’s brother or sister of the whole or half blood or by adoption; or
 - (6) the son or daughter of the actor’s aunt or uncle of the whole or half blood or by adoption.
- (b) For purposes of this section:

- (1) “Deviate sexual intercourse” means any contact between the genitals of one person and the mouth or anus of another person with intent to arouse or gratify the sexual desire of any person.
- (2) “Sexual intercourse” means any penetration of the female sex organ by the male sex organ.
- (c) An offense under this section is a felony of the third degree, unless the offense is committed under Subsection (a)(1), in which event the offense is a felony of the second degree.

VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN A FAMILY VIOLENCE, CHILD ABUSE OR NEGLECT, SEXUAL ASSAULT OR ABUSE, INDECENT ASSAULT, STALKING, OR TRAFFICKING CASE

PC § 25.07

Class A Misdemeanor, or 3rd Degree Felony for repeated violation

▲ 86th Legislative Change: *SB 194 created the new statute Indecent Assault and added that offense PC § 25.07.*

- (a) A person commits an offense if, in violation of a condition of bond set in a family violence, sexual assault or abuse, stalking, or trafficking case and related to the safety of a victim or the safety of the community, an order issued under Chapter 7A, Code of Criminal Procedure, an order issued under Article 17.292, Code of Criminal Procedure, an order issued under Section 6.504, Family Code, Chapter 83, Family Code, if the temporary ex parte order has been served on the person, or Chapter 85, Family Code, Subchapter F, Chapter 261, Family Code, or an order issued 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 20A.02, 22.011, 22.012, 22.021, or 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; or
 - (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 violation is of an order described by this subsection and the order prohibits any communication with a protected individual or a member of the family or household;
 - (3) goes to or near any of the following places as specifically described in the order or condition of bond:
 - (A) the residence or place of employment or business of a protected individual or a member of the family or household; or
 - (B) any childcare facility, residence, or school where a child protected by the order or condition of bond normally resides or attends;

- (4) possesses a firearm; or
 - (5) harms, threatens, or interferes with the care, custody, or control of a pet, companion animal, or assistance animal that is possessed by a person protected by the order or condition of bond.
- (a-1) For purposes of Subsection (a)(5), possession of a pet, companion animal, or assistance animal by a person means:
 - (1) actual care, custody, control, or management of a pet, companion animal, or assistance animal by the person; or
 - (2) constructive possession of a pet, companion, animal, or assistance animal owned by the person or for which the person has been the primary caregiver.
- (b) For the purposes of this section:
 - (1) “Family violence,” “family,” “household,” and “member of a household” have the meanings assigned by Chapter 71, Family Code.
 - (2) “Firearm” has the meaning assigned by Chapter 46.
 - (3) “Assistance animal” has the meaning assigned by Section 121.002, Human Resources Code.
 - (4) “Sexual abuse” means any act as described by Section 21.02 or 21.11.
 - (5) “Sexual assault” means any act as described by Section 22.011 or 22.021.
 - (6) “Stalking” means any conduct that constitutes an offense under Section 42.072.
 - (7) “Trafficking” means any conduct that constitutes an offense under Section 20A.02.
- (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, except the offense is a felony of the third degree if [unless] it is shown on the trial of the offense that the defendant:
 - (1) has previously been convicted two or more times of an offense under this section or two or more times of an offense under Section 25.072, or has previously been convicted of an offense under this section and an offense under Section 25.072; [two or more times] or
 - (2) has violated the order or condition of bond by committing an assault or the offense of stalking, in which event the offense is a third-degree felony.

ONLINE SOLICITATION OF A MINOR

PC § 33.021

Subsection (b) is a 3rd Degree Felony, except if the minor is younger than 14 years of age or is an individual whom the actor believes to be younger than 14 years of age at the time of the commission of the offense is a 2nd Degree Felony. An offense under Subsection (c) is a 2nd Degree Felony.

- (a) In this section:
 - (1) “Minor” means:
 - (A) an individual who is younger than 17 years of age; or
 - (B) an individual whom the actor believes to be younger than 17 years of age.
 - (2) “Sexual contact,” “sexual intercourse,” and “deviate sexual intercourse” have the meanings assigned by Section 21.01.
 - (3) “Sexually explicit” means any communication, language, or material, including a photographic or video image, that relates to or describes sexual conduct, as defined by Section 43.25.
- (b) A person who is 17 years of age or older commits an offense if, with the intent to commit an offense listed in Article 62.001(5)(A), (B), or (K), Code of Criminal Procedure, the person, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, intentionally:
 - (1) communicates in a sexually explicit manner with a minor; or
 - (2) distributes sexually explicit material to a minor.
- (c) A person commits an offense if the person, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, knowingly solicits a minor to meet another person, including the actor, with the intent that the minor will engage in sexual contact, sexual intercourse, or deviate sexual intercourse with the actor or another person.
- (d) It is not a defense to prosecution under Subsection (c) that the meeting did not occur.
- (e) It is a defense to prosecution under this section that at the time conduct described by Subsection (c) was committed:
 - (1) the actor was married to the minor; or
 - (2) the actor was not more than three years older than the minor and the minor consented to the conduct.
- (f) An offense under Subsection (b) is a felony of the third degree, except that the offense is a felony of the second degree if the minor is younger than 14 years of age or is an individual whom the actor believes to be younger than 14 years of age at the time of the commission of the offense. An offense under Subsection (c) is a felony of the second degree.
- (g) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

SECTION 3. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

OBSCENITY—DEFINITIONS

PC § 43.21

(a) In this subchapter:

- (1) “Obscene” means material or a performance that:
 - (A) the average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;
 - (B) depicts or describes:
 - (i) patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or
 - (ii) patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and
 - (C) taken as a whole, lacks serious literary, artistic, political, and scientific value.
- (2) “Material” means anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, but does not include an actual three-dimensional obscene device.
- (3) “Performance” means a play, motion picture, dance, or other exhibition performed before an audience.
- (4) “Patently offensive” means so offensive on its face as to affront current community standards of decency.
- (5) “Promote” means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.
- (6) “Wholesale promote” means to manufacture, issue, sell, provide, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purpose of resale.
- (7) “Obscene device” means a device including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs.

- (b) If any of the depictions or descriptions of sexual conduct described in this section are declared by a court of competent jurisdiction to be unlawfully included herein, this declaration shall not invalidate this section as to other patently offensive sexual conduct included herein.

SEXUAL PERFORMANCE BY A CHILD

PC § 43.25

Subsection (b) is a 2nd Degree Felony, except that the offense is a 1st Degree Felony if the victim is younger than 14 years of age at the time the offense is committed. An offense under Subsection (d) is a 3rd Degree Felony, except that the offense is a 2nd Degree Felony if the victim is younger than 14 years of age at the time the offense is committed.

- (b) A person commits an offense if, knowing the character and content thereof, he employs, authorizes, or induces a child younger than 18 years of age to engage in sexual conduct or a sexual performance. A parent or legal guardian or custodian of a child younger than 18 years of age commits an offense if he consents to the participation by the child in a sexual performance.
- (c) An offense under Subsection (b) is a felony of the second degree, except that the offense is a felony of the first degree if the victim is younger than 14 years of age at the time the offense is committed, regardless of whether the actor knows the age of the victim at the time of the offense.
- (d) A person commits an offense if, knowing the character and content of the material, he produces, directs, or promotes a performance that includes sexual conduct by a child younger than 18 years of age.
- (e) An offense under Subsection (d) is a felony of the third degree, except that the offense is a felony of the second degree if the victim is younger than 14 years of age at the time the offense is committed, regardless of whether the actor knows the age of the victim at the time of the offense.
- (f) It is an affirmative defense to a prosecution under this section that:
 - (1) the defendant was the spouse of the child at the time of the offense;
 - (2) the conduct was for a bona fide educational, medical, psychological, psychiatric, judicial, law enforcement, or legislative purpose; or
 - (3) the defendant is not more than two years older than the child.
- (g) When it becomes necessary for the purposes of this section or Section 43.26 to determine whether a child who participated in sexual conduct was younger than 18 years of age, the court or jury may make this determination by any of the following methods:
 - (1) personal inspection of the child;
 - (2) inspection of the photograph or motion picture that shows the child engaging in the sexual performance;
 - (3) oral testimony by a witness to the sexual performance as to the age of the child based on the child's appearance at the time;
 - (4) expert medical testimony based on the appearance of the child engaging in the sexual performance; or
 - (5) any other method authorized by law or by the rules of evidence at common law.

ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING MINOR
PC § 43.261
Class C, B, or A Misdemeanor, see (c) and (d)

- (a) In this section:
 - (1) “Dating relationship” has the meaning assigned by Section 71.0021, Family Code.
 - (2) “Minor” means a person younger than 18 years of age.
 - (3) “Produce” with respect to visual material includes any conduct that directly contributes to the creation or manufacture of the material.
 - (4) “Promote” has the meaning assigned by Section 43.25.
 - (5) “Sexual conduct” has the meaning assigned by Section 43.25.
 - (6) “Visual material” has the meaning assigned by Section 43.26.
- (b) A person who is a minor commits an offense if the person intentionally or knowingly:
 - (1) by electronic means promotes to another minor visual material depicting a minor, including the actor, engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material; or
 - (2) possesses in an electronic format visual material depicting another minor engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material.
- (c) An offense under Subsection (b)(1) is a Class C misdemeanor, except that the offense is:
 - (1) a Class B misdemeanor if it is shown on the trial of the offense that the actor:
 - (A) promoted the visual material with intent to harass, annoy, alarm, abuse, torment, embarrass, or offend another; or
 - (B) except as provided by Subdivision (2)(A), has previously been convicted one time of any offense under this section; or
 - (2) a Class A misdemeanor if it is shown on the trial of the offense that the actor has previously been:
 - (A) convicted one or more times of an offense punishable under Subdivision (1)(A); or
 - (B) convicted two or more times of any offense under this section.
- (d) An offense under Subsection (b)(2) is a Class C misdemeanor, except that the offense is:
 - (1) a Class B misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted one time of any offense under this section; or
 - (2) a Class A misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted two or more times of any offense under this section.
- (e) It is an affirmative defense to prosecution under this section that the visual material:
 - (1) depicted only the actor or another minor:

- (A) who is not more than two years older or younger than the actor and with whom the actor had a dating relationship at the time of the offense; or
 - (B) who was the spouse of the actor at the time of the offense; and
- (2) was promoted or received only to or from the actor and the other minor.
- (f) It is a defense to prosecution under Subsection (b)(2) that the actor:
 - (1) did not produce or solicit the visual material;
 - (2) possessed the visual material only after receiving the material from another minor; and
 - (3) destroyed the visual material within a reasonable amount of time after receiving the material from another minor.
- (g) If conduct that constitutes an offense under this section also constitutes an offense under another law, the defendant may be prosecuted under this section, the other law, or both.
- (h) Notwithstanding Section 51.13, Family Code, a finding that a person has engaged in conduct in violation of this section is considered a conviction for the purposes of Subsections (c) and (d).

OFFICER DUTIES IN SEXUAL ASSAULT CASES

REPORT CONCERNING CERTAIN ASSAULTIVE OR TERRORISTIC OFFENSES CCP Art. 2.30

- (a) This article applies only to the following offenses:
 - (1) assault under Section 22.01, Penal Code;
 - (2) aggravated assault under Section 22.02, Penal Code;
 - (3) sexual assault under Section 22.011, Penal Code;
 - (4) aggravated sexual assault under Section 22.021, Penal Code; and
 - (5) terroristic threat under Section 22.07, Penal Code.
- (b) A peace officer who investigates the alleged commission of an offense listed under Subsection (a) shall prepare a written report that includes the information required under Article 5.05(a).
- (c) On request of a victim of an offense listed under Subsection (a), the local law enforcement agency responsible for investigating the commission of the offense shall provide the victim, at no cost to the victim, with any information that is:
 - (1) contained in the written report prepared under Subsection (b);
 - (2) described by Article 5.05(a)(1) or (2); and
 - (3) not exempt from disclosure under Chapter 552, Government Code, or other law.

DAYS ALLOWED FOR WARRANT TO RUN CCP Art. 18.07

- (a) The time allowed for the execution of a search warrant, exclusive of the day of its issuance and of the day of its execution, is:
 - (1) 15 whole days if the warrant is issued solely to search for and seize

- specimens from a specific person for DNA analysis and comparison, including blood and saliva samples; or
- (2) 10 whole days if the warrant is issued under Section 5A, Article 18.21; or
- (3) Three whole days if the warrant is issued for a purpose other than that described by Subdivision (1) or (2).
- (b) The magistrate issuing a search warrant under this chapter shall endorse on the search warrant the date and hour of its issuance.
- (c) If a warrant is issued to search for and seize data or information contained in or on a computer, disk drive, flash drive, cellular telephone, or other electronic, communication, or data storage device, the warrant is considered to have been executed within the time allowed under Subsection (a) if the device was seized before the expiration of the time allowed. Notwithstanding any other law, any data or information contained in or on a device seized may be recovered and analyzed after the expiration of the time allowed under Subsection (a).

HEARSAY STATEMENT OF CHILD ABUSE VICTIM CCP Art. 38.072

- Sec. 1. This article applies to a proceeding in the prosecution of an offense under any of the following provisions of the Penal Code, if committed against a child 12 years of age or younger:
- (1) Chapter 21 (Sexual Offenses) or 22 (Assaultive Offenses);
 - (2) Section 25.02 (Prohibited Sexual Conduct); or
 - (3) Section 43.25 (Sexual Performance by a Child).
- Sec. 2. (a) This article applies only to statements that describe the alleged offense that:
- (1) were made by the child against whom the offense was allegedly committed; and
 - (2) were made to the first person, 18 years of age or older, other than the defendant, to whom the child made a statement about the offense.
- (b) A statement that meets the requirements of Subsection (a) of this article is not inadmissible because of the hearsay rule if:
- (1) on or before the 14th day before the date the proceeding begins, the party intending to offer the statement:
 - (A) notifies the adverse party of its intention to do so;
 - (B) provides the adverse party with the name of the witness through whom it intends to offer the statement; and
 - (C) provides the adverse party with a written summary of the statement;
 - (2) the trial court finds, in a hearing conducted outside the presence of the jury, that the statement is reliable based on the time, content, and circumstances of the statement; and
 - (3) the child testifies or is available to testify at the proceeding in court or in any other manner provided by law.

EVIDENCE OF EXTRANEIOUS OFFENSES OR ACTS
CCP Art. 38.37

Sec. 1. (a) Subsection (b) [This article] applies to a proceeding in the prosecution of a defendant for an offense, or an attempt or conspiracy to commit an offense, under the following provisions of the Penal Code:

- (1) if committed against a child under 17 years of age:
 - (A) Chapter 21 (Sexual Offenses);
 - (B) Chapter 22 (Assaultive Offenses); or
 - (C) Section 25.02 (Prohibited Sexual Conduct); or
- (2) if committed against a person younger than 18 years of age:
 - (A) Section 43.25 (Sexual Performance by a Child);
 - (B) Section 20A.02(a)(7) or (8); or
 - (C) Section 43.05(a)(2) (Compelling Prostitution).

(b) [Sec. 2.] Notwithstanding Rules 404 and 405, Texas Rules of Evidence, evidence of other crimes, wrongs, or acts committed by the defendant against the child who is the victim of the alleged offense shall be admitted for its bearing on relevant matters, including:

- (1) the state of mind of the defendant and the child; and
- (2) the previous and subsequent relationship between the defendant and the child.

Sec. 2. (a) Subsection (b) applies only to the trial of a defendant for:

- (1) an offense under any of the following provisions of the Penal Code:
 - (A) Section 20A.02, if punishable as a felony of the first degree under Section 20A.02(b)(1) (Sex Trafficking of a Child);
 - (B) Section 21.02 (Continuous Sexual Abuse of Young Child or Children);
 - (C) Section 21.11 (Indecency With a Child);
 - (D) Section 22.011(a)(2) (Sexual Assault of a Child);
 - (E) Sections 22.021(a)(1)(B) and (2) (Aggravated Sexual Assault of a Child);
 - (F) Section 33.021 (Online Solicitation of a Minor);
 - (G) Section 43.25 (Sexual Performance by a Child); or
 - (H) Section 43.26 (Possession or Promotion of Child Pornography), Penal Code; or
- (2) an attempt or conspiracy to commit an offense described by Subdivision (1).

(b) Notwithstanding Rules 404 and 405, Texas Rules of Evidence, and subject to Section 2-a, evidence that the defendant has committed a separate offense described by Subsection (a)(1) or (2) may be admitted in the trial of an alleged offense described by Subsection (a)(1) or (2) for any bearing the evidence has on relevant matters, including the character of the defendant and acts performed in conformity with the character of the defendant.

Sec. 2-a. Before evidence described by Section 2 may be introduced, the trial judge must:

- (1) determine that the evidence likely to be admitted at trial will be adequate to support a finding by the jury that the defendant committed the separate offense

- beyond a reasonable doubt; and
- (2) conduct a hearing out of the presence of the jury for that purpose.
- Sec. 3. The state shall give the defendant notice of the state's intent to introduce in the case in chief evidence described by Section 1 or 2 not later than the 30th day before the date of the defendant's trial [in the same manner as the state is required to give notice under Rule 404(b), Texas Rules of Evidence].
- Sec. 4. This article does not limit the admissibility of evidence of extraneous crimes, wrongs, or acts under any other applicable law.

EVIDENCE CONTAINING BIOLOGICAL MATERIAL
CCP Art. 38.43

▲ 86th Legislative Change: *HB 8 created new timelines for the collection, preservation, and submission of forensic evidence for analysis to crime labs. It also extends the criminal statute of limitations for sexual assault cases in which evidence has not been submitted for analysis.*

- (a) In this article, “biological evidence” means:
- (1) the contents of a sexual assault examination kit; or
 - (2) any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or any other identifiable biological material that was collected as part of an investigation of an alleged felony offense or conduct constituting a felony offense that might reasonably be used to:
 - (A) establish the identity of the person committing the offense or engaging in the conduct constituting the offense; or
 - (B) exclude a person from the group of persons who could have committed the offense or engaged in the conduct constituting the offense.
- (b) This article applies to a governmental or public entity or an individual, including a law enforcement agency, prosecutor’s office, court, public hospital, or crime laboratory, that is charged with the collection, storage, preservation, analysis, or retrieval of biological evidence.
- (c) An entity or individual described by Subsection (b) shall ensure that the contents of a sexual assault examination kit collected pursuant to an investigation or prosecution of a felony offense or conduct constituting a felony offense is retained and preserved:
- (1) for not less than 40 years, or until any applicable statute of limitations has expired, whichever period is longer. This subsection applies regardless of whether a person has been apprehended for or charged with committing the offense.
 - (2) in a case in which a defendant has been convicted, placed on deferred adjudication community supervision, or adjudicated as having engaged in delinquent conduct and there are no additional unapprehended actors associated with the offense:
 - (A) until the inmate is executed, dies, or is released on parole, if the

- defendant is convicted of a capital felony;
 - (B) until the defendant dies, completes the defendant's sentence, or is released on parole or mandatory supervision, if the defendant is sentenced to a term of confinement or imprisonment in the Texas Department of Criminal Justice;
 - (C) until the defendant completes the defendant's term of community supervision, including deferred adjudication community supervision, if the defendant is placed on community supervision;
 - (D) until the defendant dies, completes the defendant's sentence, or is released on parole, mandatory supervision, or juvenile probation, if the defendant is committed to the Texas Juvenile Justice Department; or
 - (E) until the defendant completes the defendant's term of juvenile probation, including a term of community supervision upon transfer of supervision to a criminal court, if the defendant is placed on juvenile probation.
- (c-1) An entity or individual described by Subsection (b) shall ensure that the contents of a sexual assault examination kit collected pursuant to an investigation or prosecution of a felony offense or conduct constituting a felony offense is retained and preserved for not less than 40 years, or until any applicable statute of limitations has expired, whichever period is longer. This subsection applies regardless of whether a person has been apprehended for or charged with committing the offense.
- (d) The attorney representing the state, clerk, or other officer in possession of biological evidence described by Subsection (a) [(b)] may destroy the evidence, but only if the attorney, clerk, or officer by mail notifies the defendant, the last attorney of record for the defendant, and the convicting court of the decision to destroy the evidence and a written objection is not received by the attorney, clerk, or officer from the defendant, attorney of record, or court before the 91st day after the later of the following dates:
- (1) the date on which the attorney representing the state, clerk, or other officer receives proof that the defendant received notice of the planned destruction of evidence; or
 - (2) the date on which notice of the planned destruction of evidence is mailed to the last attorney of record for the defendant.
- (e) To the extent of any conflict, this article controls over Article 2.21.
- (f) The Department of Public Safety shall adopt standards and rules authorizing a county with a population less than 100,000 to ensure the preservation of biological [the] evidence by promptly delivering the evidence to the Department of Public Safety for storage in accordance with Section 411.052, Government Code, and department rules.
- (g) The Department of Public Safety shall adopt standards and rules, consistent with best practices, relating to a person described by Subsection (b), that specify the manner of collection, storage, preservation, and retrieval of biological evidence.
- (h) A person described by Subsection (b) may solicit and accept gifts, grants, donations, and contributions to support the collection, storage, preservation

retrieval, and destruction of biological evidence.

- (i) Before a defendant is tried for a capital offense in which the state is seeking the death penalty, subject to Subsection (j), the state shall require either the Department of Public Safety through one of its laboratories or a laboratory accredited under Section 411.0205, Government Code, to perform DNA testing, in accordance with the laboratory's capabilities at the time the testing is performed, on any biological evidence that was collected as part of an investigation of the offense and is in the possession of the state. The laboratory that performs the DNA testing shall pay for all DNA testing performed in accordance with this subsection.
- (j) As soon as practicable after the defendant is charged with a capital offense, or on a motion by the state or the defendant in a capital case, unless the state has affirmatively waived the death penalty in writing, the court shall order the state and the defendant to meet and confer about which biological materials collected as part of an investigation of the offense qualify as biological evidence that is required to be tested under Subsection (i). If the state and the defendant agree on which biological materials constitute biological evidence, the biological evidence shall be tested in accordance with Subsection (j). If the state and the defendant do not agree on which biological materials qualify as biological evidence, the state or the defendant may request the court to hold a hearing to determine the issue. On receipt of a request for a hearing under this subsection, the court shall set a date for the hearing and provide written notice of the hearing date to the state and the defendant. At the hearing, there is a rebuttable presumption that the biological material that the defendant requests to be tested constitutes biological evidence that is required to be tested under Subsection (i). This subsection does not in any way prohibit the state from testing biological evidence in the state's possession.
- (k) If an item of biological evidence is destroyed or lost as a result of DNA testing performed under Subsection (i), the laboratory that tested the evidence must provide to the defendant any bench notes prepared by the laboratory that are related to the testing of the evidence and the results of that testing.
- (l) The defendant's exclusive remedy for testing that was not performed as required under Subsection (i) or (j) is to seek a writ of mandamus from the court of criminal appeals at any time on or before the date an application for a writ of habeas corpus is due to be filed in the defendant's case under Section 4(a), Article 11.071. An application for a writ of mandamus under this subsection does not toll any period of limitations applicable to a habeas petition under state or federal law. The defendant is entitled to only one application for a writ of mandamus under this subsection. At any time after the date an application for a writ of habeas corpus is filed in the defendant's case under Section 4(a), Article 11.071, the defendant may file one additional motion for forensic testing under Chapter 64.
- (m) A defendant may have another laboratory accredited under Section 411.0205, Government Code, perform additional testing of any biological evidence required to be tested under Subsection (i). On an ex parte showing of good cause to the court, a defendant may have a laboratory accredited under Section 411.0205,

Government Code, perform testing of any biological material that is not required to be tested under Subsection (i). The defendant is responsible for the cost of any testing performed under this subsection.

EVIDENCE DEPICTING INVASIVE VISUAL RECORDING OF A CHILD CCP Art. 38.451

- (a) During the course of a criminal hearing or proceeding concerning an offense under Section 21.15, Penal Code, that was committed against a child younger than 14 years of age, the court shall not make available or allow to be made available the copying or dissemination to the public property or material that constitutes or contains a visual image, as described by Section 21.15(b), Penal Code, of a child younger than 14 years of age and that was seized by law enforcement based on a reasonable suspicion that an offense under that subsection has been committed.
- (b) The court shall place property or material described by Subsection (a) under seal of the court on the conclusion of the hearing or proceeding.
- (c) The attorney representing the state shall be provided access to the property or material described by Subsection (a). In the manner provided by Article 39.151, the defendant, the defendant's attorney, and any individual the defendant seeks to qualify to provide expert testimony at trial shall be provided access to the property or material provided by Subsection (a).
- (d) A court that places property or material described by Subsection (a) under seal may issue an order lifting the seal on a finding that the order is in the best interest of the public.

STATEWIDE ELECTRONIC TRACKING SYSTEM Government Code § 420.034

▲ 86th Legislative Change: *HB 8 created new timelines for the collection, preservation, and submission of forensic evidence for analysis to crime labs. It also extends the criminal statute of limitations for sexual assault cases in which evidence has not been submitted for analysis.*

- (a) For purposes of this section, "evidence" means evidence collected during the investigation of an alleged sexual assault or other sex offense, including:
 - (1) evidence from an evidence collection kit used to collect and preserve evidence of a sexual assault or other sex offense; and
 - (2) other biological evidence of a sexual assault or other sex offense.
- (b) The department shall develop and implement a statewide electronic tracking system for evidence collected in relation to a sexual assault or other sex offense.
- (c) The tracking system must:
 - (1) track the location and status of each item of evidence through the criminal justice process, including the initial collection of the item of evidence in a forensic medical examination, receipt and storage of the item of evidence at a law enforcement agency, receipt and analysis of the item of evidence

- at an accredited crime laboratory, and storage and destruction of the item of evidence after the item is analyzed;
- (2) allow a facility or entity performing a forensic medical examination of a survivor, law enforcement agency, accredited crime laboratory, prosecutor, or other entity providing a chain of custody for an item of evidence to update and track the status and location of the item; and
 - (3) allow a survivor to anonymously track or receive updates regarding the status and location of each item of evidence collected in relation to the offense.
- (d) The department shall require participation in the tracking system by any facility or entity that collects evidence of a sexual assault or other sex offense or investigates or prosecutes a sexual assault or other sex offense for which evidence has been collected.
 - (e) Records entered into the tracking system are confidential and are not subject to disclosure under Chapter 552. Records relating to evidence tracked under the system may be accessed only by:
 - (1) the survivor from whom the evidence was collected; or
 - (2) an employee of a facility or entity described by Subsection (d), for purposes of updating or tracking the status or location of an item of evidence.
 - (f) An employee of the department or a facility or entity described by Subsection (d) may not disclose to a parent or legal guardian of a survivor information that would aid the parent or legal guardian in accessing records relating to evidence tracked under the system if the employee knows or has reason to believe that the parent or legal guardian is a suspect or a suspected accomplice in the commission of the offense with respect to which evidence was collected.
 - (g) To assist in establishing and maintaining the statewide electronic tracking system under this section, the department may accept gifts, grants, or donations from any person or entity.

**DUTY TO ENTER CERTAIN INFORMATION INTO VIOLENT CRIMINAL APPREHENSION
PROGRAM DATABASE**
Government Code § 420.035

▲ 86th Legislative Change: HB 3106 created a new statute which is referred to as “Molly Jane’s Law.” This new statute requires a law enforcement agency investigating a sex crime to enter certain information into the FBI’s Violent Crime Apprehension Program (ViCAP). This applies to any open investigation of a sex crime, including unsolved cold cases.

- (a) In this section, “database” means the national database of the Violent Criminal Apprehension Program established and maintained by the Federal Bureau of Investigation, or a successor database.
- (b) Each law enforcement agency in this state shall request access from the Federal Bureau of Investigation to enter information into the database.
- (c) A law enforcement agency that investigates a sexual assault or other sex offense shall enter into the database the following information regarding the investigation

of the sexual assault or other sex offense, as available:

- (1) the suspect's name and date of birth;
 - (2) the specific offense being investigated;
 - (3) a description of the manner in which the offense was committed, including any pattern of conduct occurring during the course of multiple offenses suspected to have been committed by the suspect; and
 - (4) any other information required by the Federal Bureau of Investigation for inclusion in the database.
- (d) Information entered into the database under this section is excepted from required disclosure under Chapter 552 in the manner provided by Section 552.108.

ANALYSIS OF SEXUAL ASSAULT EVIDENCE

Government Code § 420.042

- (a) A law enforcement agency that receives sexual assault evidence collected under this chapter or other law shall submit that evidence to a public accredited crime laboratory for analysis not later than the 30th day after the date on which that evidence was received.
- (b) A person who submits sexual assault evidence to a public accredited crime laboratory under this chapter or other law shall provide the following signed, written certification with each submission: "This evidence is being submitted by (name of person making submission) in connection with a criminal investigation."
- (c) If sufficient personnel and resources are available, a public accredited crime laboratory as soon as practicable shall complete its analysis of sexual assault evidence submitted under this chapter or other law.
- (d) To ensure the expeditious completion of analyses, the department and other applicable public accredited crime laboratories may contract with private accredited crime laboratories as appropriate to perform those analyses, subject to the necessary quality assurance reviews by the public accredited crime laboratories.
- (e) The failure of a law enforcement agency to submit sexual assault evidence within the period required by this section does not affect the authority of:
 - (1) the agency to submit the evidence to an accredited crime laboratory for analysis; or
 - (2) an accredited crime laboratory to analyze the evidence or provide the results of that analysis to appropriate persons.

DATABASE COMPARISON REQUIRED

Government Code § 420.043

On the request of any appropriate person and after an evidence collection kit containing biological evidence has been analyzed by an accredited crime laboratory and any necessary quality assurance reviews have been performed, the department shall compare the DNA profile obtained from the biological evidence with DNA profiles maintained in:

- (1) state databases, including the DNA database maintained under

- Subchapter G, Chapter 411, if the amount and quality of the analyzed sample meet the requirements of the state database comparison policies; and
- (2) the CODIS DNA database established by the Federal Bureau of Investigation, if the amount and quality of the analyzed sample meet the requirements of the bureau's CODIS comparison policies.

RELEVANT CASE

Espinoza v. State, 2005 WL 1047115 (Tex.App.-Amarillo; May 5, 2005)

Facts: On August 15, 2000, the victim and two male friends, one being appellant Stephen Espinoza, went to a bar and began drinking. The victim became intoxicated and began to feel sick. Since the others wanted to stay longer, she went out to Albert's car and fell asleep in the back seat. Sometime later she awoke to find Stephen having intercourse with her, which she states she did not consent to. Although Stephen claims the intercourse was consensual, he admits that the victim was "groggy" when he approached her in the car, that she was unconscious when he completed the act, and that she did not "verbally" consent to intercourse. He further stated that he "took advantage of her because she was too drunk." Stephen claimed that since the victim was unaware of the intercourse as it occurred, she did not have to consent. **Decision:** The Court of Appeals affirmed the conviction for sexual assault and ruled that "a person commits sexual assault if he intentionally or knowingly causes the penetration of the anus or sexual organ of another person by any means without that person's consent," citing Texas Penal Code § 22.011(a)(1)(A). The Court further cites Texas Penal Code § 22.011(b)(5): "a sexual assault is without consent of the other person if the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring."

Protective Orders for Certain Victims of Sexual Assault or Abuse, Stalking, or Trafficking

{For Definitions and Statutes See Chapter 5: Family Violence Laws on page 64.}

Stalking

{For Definitions and Statutes See Chapter 9 (A): Stalking on page 240.}

OPERATION OF STASH HOUSE PC 20.07

▲ 86th Legislative Change: *HB 2613 creates a new offense to combat human trafficking.*

- (a) A person commits an offense if the person knowingly:
- (1) uses or permits another to use any real estate, building, room, tent, vehicle, boat, or other property owned by the person or under the person's control to commit an offense or to facilitate the commission of an offense under Section 20.05, 20.06, 20A.02, 20A.03, 43.04, or

- 43.05; or
- (2) rents or leases any property to another, intending that the property be used as described by Subdivision (1).
- (b) An offense under this section is a Class A misdemeanor.
- (c) If conduct that constitutes an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

TRAFFICKING OF PERSONS

TRAFFICKING OF PERSONS DEFINITIONS

PC § 20A.01

- (1) “Child” means a person younger than 18 years of age.
- (2) “Forced labor or services” means labor or services, other than labor or services that constitute sexual conduct that are performed or provided by another person and obtained through an actor’s use of force, fraud, or coercion.
- (3) “Sexual conduct” has the meaning assigned by Section 43.25.
- (4) “Traffic” means to transport, entice, recruit, harbor, provide, or otherwise obtain another person by any means.

TRAFFICKING OF PERSONS

PC § 20A.02

2nd or 1st Degree Felony

▲ 86th Legislative Change: *Added offenses that enable online solicitation of prostitution (for example Bedpage, formerly known as Backpage) and enhances penalties for individuals who repeatedly solicit for prostitution. It also expanded the definition of coercion to include the use of drugs and alcohol.*

- (a) person commits an offense if the person knowingly:
 - (1) traffics another person with the intent or knowledge that the trafficked person will engage in forced labor or services; or
 - (2) benefits from participating in a venture that involves an activity described by Subdivision (1), including by receiving labor or services the person knows are forced labor or services;
 - (3) traffics another person and, through force, fraud, or coercion, causes the trafficked person to engage in conduct prohibited by:
 - (A) Section 43.02 (Prostitution);
 - (B) Section 43.03 (Promotion of Prostitution);
 - (B-1) Section 43.031 (Online Promotion of Prostitution);
 - (C) Section 43.04 (Aggravated Promotion of Prostitution);
 - (C-1) Section 43.041 (Aggravated Online Promotion of Prostitution); or
 - (D) Section 43.05 (Compelling Prostitution)
 - (4) receives a benefit from participating in a venture that involves an activity

- described by Subdivision (3) or engages in sexual conduct with a person trafficked in the manner described in Subdivision (3);
- (5) traffics a child with the intent that the trafficked child engage in forced labor or services;
 - (6) receives a benefit from participating in a venture that involves an activity described by Subdivision (5), including by receiving labor or services the person knows are forced labor or services;
 - (7) traffics a child and by any means causes the trafficked child to engage in, or become the victim of, conduct prohibited by:
 - (A) Section 21.02 (Continuous Sexual Abuse of Young Child or Children);
 - (B) Section 21.11 (Indecency with a Child);
 - (C) Section 22.011 (Sexual Assault);
 - (D) Section 22.021 (Aggravated Sexual Assault);
 - (E) Section 43.02 (Prostitution);
 - (F) Section 43.03 (Promotion of Prostitution);
 - (G) Section 43.031 (Online Promotion of Prostitution)
 - (H) Section 43.04 (Aggravated Promotion of Prostitution);
 - (I) Section 43.041 (Aggravated Promotion of Prostitution);
 - (J) Section 43.05 (Compelling Prostitution);
 - (K) Section 43.25 (Sexual Performance by a Child);
 - (L) Section 43.251 (Employment Harmful to Children); or
 - (M) Section 43.26 (Possession or Promotion of Child Pornography); or
 - (8) receives a benefit from participating in a venture that involves an activity described by Subdivision (7) or engages in sexual conduct with a child trafficked in the manner described in Subdivision (7).
- (a-1) For purposes of Subsection (a)(3), “coercion” as defined by Section 1.07 includes:
- (1) destroying, concealing, confiscating, or withholding from the trafficked person, or threatening to destroy, conceal, confiscate, or withhold from the trafficked person, the trafficked person's actual or purported:
 - (A) government records; or
 - (B) identifying information or documents.
 - (2) causing a trafficked person, without the person’s consent, to become intoxicated, as defined by Section 49.01, to a degree that impairs the person’s ability to appraise the nature of the prohibited conduct or to resist engaging in that conduct; or
 - (3) withholding alcohol or a controlled substance to a degree that impairs the ability of the trafficked person with a chemical dependency, as defined by Section 462.001 Health and Safety Code, to appraise the nature of the prohibited conduct or to resist engaging in that conduct.
- (b) Except as otherwise provided by this subsection, an offense under this section is a felony of the second degree. An offense under this section is a felony of the first degree if:
- (1) the applicable conduct constitutes an offense under Subsection (a)(5),

- (6), (7), or (8), regardless of whether the actor knows the age of the child at the time the actor commits the offense; or
 - (2) the commission of the offense results in the death of the person who is trafficked.
 - (3) the commission of the offense results in the death of an unborn child of the person who is trafficked.
- (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) If the victim of an offense under Subsection (a)(7)(A) is the same victim as a victim of an offense under Section 21.02, a defendant may not be convicted of the offense under Section 21.02 in the same criminal action as the offense under Subsection (a)(7)(A) unless the offense under Section 21.02:
 - (1) is charged in the alternative;
 - (2) occurred outside the period in which the offense alleged under Subsection (a)(7)(A) was committed; or
 - (3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a)(7)(A).

CONTINUOUS TRAFFICKING OF PERSONS

PC § 20A.03

1st Degree Felony

- (a) A person commits an offense if, during a period that is 30 or more days in duration, the person engages two or more times in conduct that constitutes an offense under Section 20A.02 against one or more victims.
- (b) If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific conduct engaged in by the defendant constituted an offense under Section 20A.02 or on which exact date the defendant engaged in that conduct. The jury must agree unanimously that the defendant, during a period that is 30 or more days in duration, engaged in conduct that constituted an offense under Section 20A.02.
- (c) If the victim of an offense under Subsection (a) is the same victim as a victim of an offense under Section 20A.02, a defendant may not be convicted of the offense under Section 20A.02 in the same criminal action as the offense under Subsection (a), unless the offense under Section 20A.02:
 - (1) is charged in the alternative;
 - (2) occurred outside the period in which the offense alleged under Subsection (a) was committed; or
 - (3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a).
- (d) A defendant may not be charged with more than one count under Subsection (a) if all of the conduct that constitutes an offense under Section 20A.02 is alleged to have been committed against the same victim.
- (e) An offense under this section is a felony of the first degree, punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term

of not more than 99 years or less than 25 years.

ADDITIONAL SEXUAL ASSAULT LAWS

Justin's Law

- Prohibited Employment – CCP Art. 62.063
- Penalties for Repeat and Habitual Felony Offenders on Trial for First-, Second- or Third-Degree Felony – PC § 12.42

“Justin’s Law” was prompted by the 2010 death of 12-year-old Justin Bloxom who was kidnapped and killed in Louisiana by a twice-convicted sex offender who drove a cab and used text messages to lure the boy into his taxi.

- Institutes life without parole for convictions for a sexually violent offense, as defined by the bill, if the offender had a previous conviction for a sexually violent offense. Sexually violent offense would be defined as continuous sexual abuse of a young child or aggravated sexual assault or any of the following offenses committed by a person at least 17 years old against a child younger than 13 years old:
 - human trafficking of children involving certain sex offenses;
 - indecency with a child involving sexual contact, sexual performance by a child;
 - aggravated kidnapping with sexual intent; and
 - burglary of a habitation with intent to commit third-degree felony indecency with a child, prohibited sexual conduct, or certain other felony sex crimes.
- Prohibit persons subject to the state’s sex offender registry for convictions of sexually violent offenses, as defined in Code of Criminal Procedure, Art. 62.001(6), with victims younger than 13 years old from working for compensation in certain jobs. Registrants would be prohibited from:
 - driving or offering to drive a bus
 - driving or offering to drive a taxicab or limousine
 - providing or offering to provide any type of service in another’s home
 - operating or offering to operate an amusement ride.

Identity Theft by Sex Offenders

- Failure to Comply with Registration Requirement – CCP Art. 62.102
- Fraudulent Use of Possession of Identifying Information – PC § 32.51

House Bill 2637 from the 84th Legislative Session addressed the use of identity theft by sex offenders trying to avoid the oversight of the sex offender registry.

- Increases the punishments for failing to comply with the state’s sex offender registry requirements and for attempts to commit this offense if done with the fraudulent use of identifying information in violation of the PC § 32.51 provisions on identity theft. The punishments would be increased to the next highest felony.
- Increases the punishments for the offense of fraudulently using or possessing

the identifying information of another if the identifying information were used with the intent to facilitate a violation of the sex offender registry requirements.

- Current state jail, third-degree, and second-degree felony punishments would be increased to the next highest category.

Reporting Images of Child Pornography

- Business & Commerce Code Sec. 109.002. Reporting of Images of Child Pornography
- Business & Commerce Code Sec. 109.003. Criminal Penalty

House Bill 2539 from the 84th Legislative Session requires a computer technician who, in the course and scope of employment or business, views an image on a computer that is or appears to be child pornography to immediately report the discovery of the image to a local or state law enforcement agency or the CyberTipline at the National Center for Missing and Exploited Children. The bill requires the report to include the name and address of the owner or person claiming a right to possession of the computer, if known, and as permitted by federal law provides that an offense under this subsection is a Class B misdemeanor.

REPORTING ON COLLEGE CAMPUSES

▲ **86th Legislative Change:** *House Bill 1735 amended the Education Code to expand the scope of the sexual assault policy whose adoption is required for each public, private, and independent institution of higher education to also address sexual harassment, dating violence, and stalking. This statute is applicable to students and employees. The bill also repealed a statute that previously addressed some of these elements (51.9365), adding those elements to this bill along with the additional policies outlined below. These additional changes can be found in Education Code Secs. 51.285 – 51.293. HB 1735 added the following:*

- Mandates peace officer employed by an institution to complete training on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking. This mandate for officers has been incorporated into Special Investigative Topics Course #3232
- Requires each institution, to facilitate effective communication and coordination regarding such allegations, to enter into a memorandum of understanding with one or more of the following types of entities: local law enforcement agencies, appropriate advocacy groups, or hospitals or medical resource providers
- Creates measures to protect victims from retaliation during the disciplinary process
- Requires a statement emphasizing the importance of victims going to a hospital for treatment and preservation of evidence as soon as practicable
- Outlines the victim's right to report the incident to the institution and to receive a prompt and equitable resolution
- Outlines the victim's right to choose whether to report a crime to law enforcement, to be assisted by the institution in reporting a crime, or to decline to report a crime to law enforcement

- Authorizes the Texas Higher Education Coordinating Board to assess a maximum administrative penalty of \$2 million against an institution that the coordinating board determines not to be in substantial compliance with the bill's provisions and sets out further provisions relating to such penalties.

Definitions, Policy on Sexual Harassment, Sexual Assault, Dating Violence, and Stalking, and Electronic Reporting Option, Education Code Sec. 51.281-51.283

- (2) "Dating violence," "sexual assault," and "stalking" have the meanings assigned by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act [20 U.S.C. Section 1092(f)(6)(A)].
- (3) "Postsecondary educational institution" means an institution of higher education or a private or independent institution of higher education, as those terms are defined by Section 61.003.
- (4) "Sexual harassment" means unwelcome, sex-based verbal or physical conduct that:
 - (A) in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or
 - (B) in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities at a postsecondary educational institution.
- (a) [Each postsecondary educational institution shall provide an option for a student enrolled at or an employee of the institution to electronically report to the institution an allegation of sexual harassment, sexual assault, dating violence, or stalking committed against or witnessed by the student or employee, regardless of the location at which the alleged offense occurred.] Each postsecondary educational institution shall adopt a policy on sexual harassment, sexual assault, dating violence, and stalking applicable to each student enrolled at and each employee of the institution. The policy must:
 - (1) include:
 - (A) definitions of prohibited behavior;
 - (B) sanctions for violations;
 - (C) the protocol for reporting and responding to reports of sexual harassment, sexual assault, dating violence, and stalking;
 - (D) interim measures to protect victims of sexual harassment, sexual assault, dating violence, or stalking during the pendency of the institution's disciplinary process, including protection from retaliation, and any other accommodations available to those victims at the institution; and
 - (E) a statement regarding:
 - (i) the importance of a victim of sexual harassment, sexual assault, dating violence, or stalking going to a hospital for treatment and preservation of evidence, if applicable, as soon as practicable after the incident;

- (ii) the right of a victim of sexual harassment, sexual assault, dating violence, or stalking to report the incident to the institution and to receive a prompt and equitable resolution of the report; and
 - (iii) the right of a victim of a crime to choose whether to report the crime to law enforcement, to be assisted by the institution in reporting the crime to law enforcement, or to decline to report the crime to law enforcement; and
- (b) Each postsecondary educational institution shall make the institution's sexual harassment, sexual assault, dating violence, and stalking policy available to students, faculty, and staff members.
- (c) Each postsecondary educational institution shall require each entering freshman or undergraduate transfer student to attend an orientation on the institution's sexual harassment, sexual assault, dating violence, and stalking policy before or during the first semester or term in which the student is enrolled at the institution. The institution shall establish the format and content of the orientation.
- (d) Each postsecondary educational institution shall develop and implement a comprehensive prevention and outreach program on sexual harassment, sexual assault, dating violence, and stalking. The program must:
 - (1) address a range of strategies to prevent sexual harassment, sexual assault, dating violence, and stalking, including a victim empowerment program, a public awareness campaign, primary prevention, bystander intervention, and risk reduction; and
 - (2) include providing to students' information regarding the protocol for reporting incidents of sexual harassment, sexual assault, dating violence, and stalking adopted under Subsection (a), including the name, office location, and contact information of the institution's Title IX coordinator.
- (e) As part of the protocol for responding to reports of sexual harassment, sexual assault, dating violence, and stalking adopted under Subsection (a), each postsecondary educational institution shall:
 - (1) to the greatest extent practicable based on the number of counselors employed by the institution, ensure that each alleged victim or alleged perpetrator of an incident of sexual harassment, sexual assault, dating violence, or stalking and any other person who reports such an incident are offered counseling provided by a counselor who does not provide counseling to any other person involved in the incident; and
 - (2) notwithstanding any other law, allow an alleged victim or alleged perpetrator of an incident of sexual harassment, sexual assault, dating violence, or stalking to drop a course in which both parties are enrolled without any academic penalty.
- (f) Each biennium, each postsecondary educational institution shall review the institution's sexual harassment, sexual assault, dating violence, and stalking policy and, with approval of the institution's governing board, revise the policy as necessary.

Texas Education Code, Sec. 51.251-51.260

▲ 86th Legislative Change: SB 212 enacts this new subchapter, which requires employees of higher education institutions to report certain sexually related incidents against a student or employer to the institution's Title IX Coordinator. Failure to make a required report or making a false report will be a misdemeanor offense under 51.255 and grounds for termination. Knowingly failing to make a report is a Class B Misdemeanor and knowingly making a false report with intent to harm or deceive is a Class A misdemeanor. HB1735 also models these changes in Sec. 51.281-51.295 to revise requirements for higher education institution policies on reporting and responding to campus sexual harassment, sexual assault, dating violence, and stalking (see these sections in the Education Code for complete details).

TITLE IX¹

Note: On August 14, 2020, the *Final Rule*, released by U.S. Secretary of Education Betsy DeVos, under Title IX of the Education Amendments of 1972 is set to carry the force and effect of law. The regulations will most likely decrease victims' likelihood of reporting a sexual assault due to added barriers such as a higher burden of proof, re-traumatization through live hearings with cross examination, and narrowing the scope of universities' responsibilities. For detailed information on Title IX, please visit www.KnowYourIX.org.

Title IX of the Educational Amendments of 1972 is a federal civil rights law that prohibits discrimination based on sex in any education program or activity that receives federal funding. Title IX discrimination includes both sexual harassment and sexual violence. The act qualifies as discrimination if it is "so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit." Courts have found that even a single instance of rape or sexual assault by another student meets this standard for discrimination. Title IX protects students from sexual harassment and sexual violence in primary, secondary, and university school activities and programs and includes academic, extracurricular, athletic and other programs of the school, including harassment on non-school property.

The following are required by schools:

- Publish a notice on nondiscrimination and create and publish grievance procedures.
- If a school knows, or reasonably should know about sexual harassment that creates a hostile environment, Title IX requires the school to take immediate action to eliminate the harassment, prevent its reoccurrence, and address its effects.
- The harassed student, his or her parent, or a third party can file a complaint under the school's grievance policy and the school must promptly investigate.
- In the case of sexual violence, the act constitutes both sexual harassment under

¹ Ali, R. "Dear Colleague Letter: Sexual Violence." *United States Department of Education. Office for Civil Rights*. Web. 2012.

Title IX as well as criminal activity.

- The school should notify the victim of the right to file a criminal complaint and should not dissuade a victim from doing so during or after the school's internal Title IX investigation.
- Any agreement or Memorandum of Understanding (MOU) with a local police department must allow the school to meet its Title IX obligation to resolve complaints promptly, though the school may have to temporarily delay the Title IX investigation until after the law enforcement has gathered necessary evidence.
 - The contents of the MOU, or the investigation itself, should not prevent the school from notifying the victim of their Title IX rights, the schools grievance procedures, or to keep from taking interim steps to ensure the safety and well-being of the victim and the community.
 - The school's MOU should include clear policies on when a school will refer a matter to local law enforcement.

All school law enforcement unit employees should receive training on the school's Title IX grievance procedures and any other procedures used for investigating reports of sexual violence. In addition, these employees should receive copies of the school's Title IX policies. Schools should instruct law enforcement unit employees both to notify complainants of their right to file a Title IX sex discrimination complaint with the school in addition to filing a criminal complaint. In some circumstances, the school will be obligated to address the hostile environment even if the victim doesn't consent. The school's overall Title IX policy will address when law enforcement should report complaints to the school.

Even if a criminal investigation does not show enough evidence of a criminal violation, conduct still can be unlawful under Title IX. Schools violate Title IX themselves if they wait until the conclusion of a criminal investigation to begin a Title IX investigation.

THE CLERY ACT

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act is codified at 20 U.S.C. § 1092(f) as part of the Higher Education Act of 1965. *The Clery Act* is a federal law that requires all colleges and universities that participate in federal financial aid programs to disclose timely and annual information about campus crime and security policies.

The purpose of the act is to:

- Report Campus Crime Data
- Support Victims
- Require colleges and universities to outline policies and procedures to address campus crime

The Clery Act was originally enacted by Congress and signed into law by President George Bush in 1990 as the Crime Awareness and Campus Security Act of 1990. The act was championed by Howard & Connie Clery after their daughter Jeanne was sexually assaulted and murdered while asleep in her residence hall room at Lehigh University in 1986. Connie

and Howard Clery discovered that students had not been informed of 38 violent crimes on the Lehigh campus in the three years before her murder. Amendments to the Act in 1998 renamed it in memory of Jeanne Clery.

2014 Updates to The Clery Act:

On March 7, 2013, President Obama signed a bill that strengthened and reauthorized the Violence Against Women Act. Included in the bill were amendments to the Jeanne Clery Act which afford additional rights to campus victims of sexual violence, dating violence, domestic violence, and stalking. In 2014, the final regulations for the Violence Against Women Act amendments to the Clery Act were published by the Department of Education. The following changes were made:

- **Law Enforcement:** Institutions must have a policy statement that addresses the jurisdiction of security personnel and notes any agreements that are in place for the investigation of alleged criminal offenses (such as written memoranda of understanding).
- **Sexual Assault, Dating Violence, Domestic Violence, & Stalking:** Colleges and universities must provide data regarding incidents of sexual assault, dating violence, domestic violence, and stalking.
- **Policy Statements:** Institutions also must add policy statements specific to these crimes. These policy statements must outline the procedures an institution will follow an incident of sexual assault, dating violence, domestic violence, or stalking, and identifies rights and options available to survivors.
- **Prevention Programming:** The VAWA amendments require prevention programs that aim to stop these crimes before they occur. These programs promote positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention tactics, and seek to change behavior and social norms in healthy and safe directions.
- **Confidentiality:** The annual security report must address how the college or university completes Clery Act public recordkeeping and data-sharing without including identifying information about the survivor, and while keeping any accommodations or protective measures confidential.
- **Hate Crimes:** Institutions must share data on incidents of hate crimes within their Clery-reportable geography. The VAWA amendments added gender identity and national origin to the categories of bias institutions must reflect within their statistics.

Each school must disclose crime statistics for the following:

- The college or university campus
- Any unobstructed public areas immediately adjacent to or running through the campus
- Certain non-campus facilities, including Greek housing and remote classrooms

The statistics must be gathered from campus police or security, local law enforcement, and other school officials who have “significant responsibility for student and campus activities” such as student judicial affairs directors.

Crimes are reported in the following major categories, with several sub-categories:

- Criminal Homicide
- Sex Offenses: Forcible and Non-Forcible
- Robbery
- Aggravated Assault
- Burglary
- Motor Vehicle Theft
- Arson
- Crimes considered “Hate Crimes”
- Dating Violence
- Domestic Violence
- Stalking

Schools are also required to report the following three types of incidents if they result in either an arrest or disciplinary referral:

- Liquor Law Violations
- Drug Law Violations
- Illegal Weapons Possession

If both an arrest and referral are made, only the arrest is counted. The statistics are also broken down geographically into “on campus,” “residential facilities for students on campus,” “non- campus buildings,” or “on public property” (streets and sidewalks). The report must also indicate if any of the reported incidents, or any other crime involving bodily injury, was a “hate crime”.

Colleges and universities are required to publish an annual report by October 1st that contains three (3) years’ worth of campus crime statistics, security policy statements including sexual assault policies, the law enforcement authority of campus police, and where students should go to report crimes. The report is to be made automatically available to all current students and employees. Prospective students and employees are to be notified of the report and given an opportunity to request a copy. A copy of the statistics must also be provided to the U.S. Department of Education. Schools can also post the report on the Internet if the required recipients are notified and provided the exact web address where the report can be found. Paper copies must also be available upon request. Compliance is monitored by the United States Department of Education, which can fine violators up to \$57,317 per violation. They can also suspend institutions from participating in federal student financial aid programs.

{For more information visit CleryCenter.org, or for a Checklist of VAWA Amendments to Clery refer to Resources for Law Enforcement at www.safvic.org.}

TEXAS STATUTES OF LIMITATIONS

The following statutes of limitations are effective for offenses committed on or after September 1, 2015. Statutes of limitations for crimes committed before that date may vary depending upon the law in effect at the time those crimes were committed; consult those older statutes or contact your local prosecutor for assistance with those cases.

OFFENSE	TIME LIMIT	STATUTE
Sexual Assault of a Child [PC Sec. 22.011(a)(2)]	NONE	CCP Art. 12.01(1)(B)
Agg. Sexual Assault of a Child [PC Sec. 22.021(a)(1)(B)]	NONE	CCP Art. 12.01(1)(B)
Sexual Assault involving unidentified DNA evidence in which the biological matter was tested but did not result in a match, or the kit has not yet been tested (PC Sec. 22.011)	NONE	CCP Art. 12.01(1)(C)(i)(a) & (b)
Sexual Assault where probable cause exists to believe that the defendant has committed the same or a similar sexual offense against <u>five</u> or more victims	NONE	CCP Art. 12.01(1)(C)(ii)
Continuous Sexual Abuse of Young Child or Children (PC Sec. 21.02)	NONE	CCP Art. 12.01(1)(D)
Indecency with a Child (PC Sec. 21.11)	NONE	CCP Art. 12.01(1)(E)
Sex Trafficking of Children [PC Sec. 20A.02(a)(7)-(8)]	NONE	CCP Art. 12.01(1)(G)
Continuous Trafficking of Persons (PC Sec. 20A.03)	NONE	CCP Art. 12.01(1)(H)
Compelling Prostitution of Victim under 18 [PC Sec. 43.05(a)(2)]	NONE	CCP Art. 12.01(1)(I)
Injury to an elderly or disabled individual for crimes not punishable as a felony of the first degree (PC Sec 22.04)	5 YEARS	CCP Art. 12.01(4)(C)
Injury to an elderly or disabled individual for crimes punishable as a felony of the first degree (PC Sec 22.04)	10 YEARS	CCP Art. 12.01(2)(D)
Sexual Assault of an Adult w/ Identified DNA (PC Sec. 22.011), except for the crime of fertility fraud (see below)	10 YEARS	CCP Art. 12.01(2)(E)
State Jail Felony Sex Crime – “Fertility Fraud” [PC Sec 22.011(b)(12)]	2 YEARS FROM DATE OF DISCOVERY	CCP Art. 12.01(7)
Sexual Performance by a Child < 17 YOA (PC Sec. 43.25)	VICTIM’S 38 TH BIRTHDAY	CCP Art. 12.01(5)(A)
Agg. Kidnapping of Victim < 17 YOA w/ intent to commit a sex crime [PC Sec. 20.04(a)(4)]	VICTIM’S 38 TH BIRTHDAY	CCP Art. 12.01(5)(B)
Burglary of Victim < 17 YOA w/ intent to commit a sex crime (PC Sec. 30.02)	VICTIM’S 38 TH BIRTHDAY	CCP Art. 12.01(5)(C)

Trafficking of Persons involving Child Labor [PC Sec. 20A.02(a)(5)-(6)]	VICTIM'S 38 TH BIRTHDAY	CCP Art. 12.01(6)(A)
All other felony sex crimes	3 YEARS FROM COMMISSION OF OFFENSE	CCP Art. 12.01(8)
An attempt, conspiracy, or solicitation	SAME AS OFFENSE ALLEGED	CCP Art. 12.03

CHAPTER EIGHT: SEXUAL ASSAULT AND FAMILY VIOLENCE INVESTIGATIVE TECHNIQUES

LEARNING OBJECTIVES: INVESTIGATIVE TECHNIQUES

By the end of this chapter, the student will be able to identify and discuss the following terms, concepts, and practices as they relate to investigative techniques:

- A. Inherent Danger When Responding to Family Violence Incidents
 - 1. Officer Safety
 - 2. Gaining Entry
 - 3. Initial Contact/Sweep
 - 4. Determining the Crime Scene Search Area
- B. Victimology: Variables and Perspectives Related to Family Violence and Sexual Assault Victimization
 - 1. The Victim's Experience: Reactions to Trauma and Victimization
 - 2. Individual Intervention Strategies for Law Enforcement Officers
- C. Initial Interview
 - 1. Techniques for Interviewing Victims of Sexual Assault or Family Violence
 - 2. Initial Interview with an Adult Sexual Assault Victim
 - 3. Initial Interview with an Adult Victim of Family Violence
- D. Evidence Documentation and Collection
 - 1. Types of Evidence
 - 2. Specific Equipment for Sexual Assault Investigations
- E. Drug-Facilitated Sexual Assault
- F. Forensic Sexual Assault Exam
- G. Detailed Interviews
- H. The Arrest Decision
 - 1. Offense Identification and Arrest Authority
 - 2. Dual Arrest
 - 3. Lethality Indicators
- I. Report Writing
 - 1. Offense Report
 - 2. Use of a Pseudonym
 - 3. Case Report
- J. Enforcement of Protective Orders, Including Full Faith and Credit
 - 1. Protective Orders
 - 2. Full Faith and Credit for Protective Orders from Other Jurisdictions
 - 3. Officer Liability
- K. Victim Recovery and Services
 - 1. Factors of Recovery
 - 2. Victim Referral Information
 - 3. Civil Standby Assistance
 - 4. Follow-Up Visits with the Victim
 - 5. Victim Notification of Pending Release or Escape of the Defendant

Sexual assault and family violence have become all too commonplace in communities across the United States. Family violence is a violation of a person's right to physical integrity, liberty, and the right to life itself. Statistics show that most sexual assaults are committed by someone the victim knows and trusts, and many times with whom they share their lives, homes, and children. In addition to the violation of their bodies, they are faced with a betrayal of trust and intimacy. Victims of intimate partner abuse are less likely to see it as a violation of their rights. This is illustrated through opinion polls which show that people believe intimate partner assaults are less harmful than stranger assaults. Research indicates that victims of intimate partner assault are more likely to be assaulted multiple times when compared with stranger and acquaintance assault victims, and they tend to suffer long-lasting physical and psychological injuries which are as severe as, or more severe than, stranger assault victims. Regardless of the relationship between the victim and the perpetrator, family violence and sexual assaults are violent and forcible crimes based on power and control which have devastating effects on victims and their families.

Despite the personal impact, many victims are reluctant to report the assault or cooperate with the investigation for a variety of reasons including: fear of criticism or retaliation, embarrassment, monetary impact, family pressure, and distrust of the criminal justice system, making family violence and sexual assaults some of the most difficult criminal cases to investigate. Criminal investigations are usually focused on finding evidence that will identify the offender, however, most sexual assaults are committed by someone known to the victim, negating the need to identify the offender. The focus of the family violence case is to determine the predominant aggressor and prevent future violence. Therefore, we must shift our focus from suspect identification to an evidence-based investigation, utilizing crime scene searches, sexual assault exams, and interviews with the victim, suspect, and witnesses.

To understand the totality of the situation we must factor in each incident of family violence and sexual assault. Statistics prove these crimes are often repetitive in nature with the offender increasing the level of violence with each offense. These crimes are usually committed in a residence or other private place with few or no eyewitnesses and are complicated by both parties reporting two distinctly different versions of the incident. Officers must follow every lead to corroborate the victim's statement, discover the facts of the incident, collect evidence, and provide the prosecution with the tools needed for conviction of the offender.

INHERENT DANGER WHEN RESPONDING TO FAMILY VIOLENCE INCIDENTS

In 2018, Texas reported 207,360 offenders involved in family violence incidents.¹ These numbers represent only the *reported* family violence incidents in which an officer filled out the family violence reporting form and sent it in. Officers must realize that these calls are often emotionally charged and present a significant danger to the parties involved and to themselves especially when handled improperly. In 2018, in the course of responding to

¹ Uniform Crime Reporting (UCR) Bureau Crime Records Service Law Enforcement Support, Annual Report of 2018 UCR Data Collection: Crime in Texas 2018 Overview.

family violence incidents, 143 Texas law officers were injured.² The dynamics and emotions involved in these calls are unpredictable, making the situation more dangerous. There are several factors contributing to the inherent danger in these calls. One contributing factor is the frequency and the repetitive nature of family violence calls. Due to the frequency of these calls and the relatively low level of injuries to victims, officers are sometimes lulled into a false sense of security and safety when responding to these calls. This perception is far from reality and has shown to be a costly mistake.

Another contributing factor is the prevalence of an emotionally charged atmosphere. By the time officers are summoned, tempers and emotions are often at their highest levels. The dynamics impacting the situation can push the offender from being apologetic to committing violent acts. A unique aspect of these calls is that both of the angered and upset parties are usually at the scene of the incident when police arrive, and both feel entitled to remain at the location after police depart. To make matters even more challenging, domestic disturbances often involve drugs, alcohol, children, and the potential for arrests. These factors compound the stress and anxiety of the situation requiring the officer to be skilled at effective communication and de-escalation techniques.

Another contributing factor increasing the level of danger for these calls is the offender's proximity to weapons and first-hand knowledge of the location. Typically, family violence calls occur at the home of one or both individuals involved. These parties have an intimate knowledge of their surroundings and may use other items as weapons if the opportunity arises. In these circumstances, officers are at a distinct disadvantage. Special attention to the actions of the individuals present is necessary to prevent further violence toward the victim or assaults on the officers.

Finally, some officers fail to recognize family violence as an ongoing problem. Family violence, as defined in the *Texas Family Code*, *Penal Code*, and *Code of Criminal Procedure*, refers to each act of assault or threat committed. It is important for officers to view the specific event as part of a bigger picture. When officers focus only on specific events, they may overlook important details that contribute to the lethality of the situation. These details have the potential of impacting the officer's safety and the safety of the parties involved. The dynamics of family violence do not often lend themselves to immediate solutions. Many times, victims will not cooperate with law enforcement during the investigation, even if they called for help. It is not unusual for investigators to work with a victim for years before she feels safe enough to leave the relationship. Avoiding the factors discussed above and remaining attentive and alert will increase the officers' safety and their ability to protect all the parties involved.

OFFICER SAFETY

Four factors affecting officer safety while responding to family violence calls:

1. Apathy resulting from the repetitive nature and frequent lack of significant injuries and lack of cooperation by the victim.

² The Texas Crime Report for 2018, Chapter 5: Family Violence.

2. Emotionally charged atmosphere often with both parties at the scene when officers arrive.
3. Proximity to weapons and the individual's intimate knowledge of the surroundings.
4. Failure to recognize the disturbance or violence as a part of an ongoing problem, which could gradually increase in severity.³

The following was adapted from a ten-year study of officers killed on family violence calls from Case Data of the Uniform Crime Report – DOJ/FBI:

- The first minute is the most dangerous
- Most died on the approach to the location
- 50% were killed getting out of their vehicle
- Most parked their vehicle in plain view of the residence
- 81% of the offenders were armed and knew the officers were coming
- 10% of the offenders were hiding outside the residence
- Most of the offenders intended to kill the officer at the first opportunity
- 41% of the officers had some indication of danger
- Many of the officers were killed while trying to establish control
- Alcohol was present in most of the cases
- The officer was often alone
- 44% were not marital disputes
- 22% died while having a conversation with the offender
- Eluding control of the officer
- Handcuffing

OFFICERS INJURED OR KILLED WHILE RESPONDING TO A FAMILY VIOLENCE CALL:

Year	Texas Peace Officers Assaulted While Responding to a Family Violence Call	Texas Peace Officers Killed While Responding to a Family Violence Call
2008	342	0
2009	385	1
2010	358	1
2011	287	1
2012	277	1
2013	303	0
2014	358	0
2015	206	0
2016	581	0
2017	180	0
2018	143	0

³ Ibid.

OFFICER SAFETY WHEN RESPONDING

Officer safety begins long before the officer arrives on the scene of a family violence disturbance or a sexual assault. Responding officers must obtain as much information as possible before arriving at the call to facilitate a thorough investigation and safe response. Pertinent information about either party includes but is not limited to:

- History of family violence at the residence or between the parties
- History of other violence
- History of drugs or alcohol use/abuse
- Access to weapons
- Flagged addresses
- Type of sexual assault: stranger or known assailant
- Location of victim(s)
- Location of suspect(s)
- Location of crime scene(s)
- Description of suspect(s)
- Any other information about the victim(s) or the offender(s) that is available

Obtaining information while en route to the scene increases officer safety and provides information that will assist in gaining access to the residence. Very few family violence calls leave the officer without any provision for gaining access to the residence. Officers must have a solid knowledge of their authority and be able to articulate their reasons for entering without a warrant or consent (see *Code of Criminal Procedure on next page*).

APPROACHING THE SCENE

Whether responding to a family violence disturbance or a sexual assault, first responding officers should be observant of suspicious vehicles and individuals attempting to hide or whose appearance indicates they have been in a struggle. Depending upon the freshness of the call, officers should inquire about any vehicles not normally associated with the area and make note of the license plate and descriptions. Officers should scan the area for possible evidence, such as clothing or other personal items, and secure those items for identification. This information could make the difference in the protection of a victim, the successful apprehension of a suspect, and the identification of evidence that will hold an offender accountable.

Statistics show that the first minute is the most dangerous in responding to family violence incidents, therefore:

- Always have at least two officers respond to a family violence call. Additional officers provide backup and allow for the separation of the parties to conduct interviews.
- Do not respond with emergency equipment, if possible, and park in a “safe” zone, not directly in front of the residence.
- The officers should be alert for assailants leaving the scene.

While approaching the scene, officers should:

- Not approach the scene blindly
- Look for places that may hide a suspect and clear them on approach
- Discuss the approach with each other, identifying each other's specific roles
- Employ cover and concealment tactics and never stand in front of doors or windows

Prior to knocking on the door, officers should pause outside to observe and listen. This will help determine additional information such as the layout of the premises, number of people present, and potential risk from weapons or other dangers.

GAINING ENTRY

Most family violence and sexual assault calls for service take place in the victim's home. Therefore, it becomes necessary to have a concrete understanding of the appropriate laws governing a person's expectation of privacy and an officer's duty to maintain the peace. Typically, officers are invited into a residence to sort out the problem. However, on rare occasions law enforcement may be denied access. Although officer presence is often enough to gain entry, officers should also have knowledge of their statutory authority.

CODE OF CRIMINAL PROCEDURE:

CCP Art. 2.13 states that it is the duty of every peace officer to preserve the peace in their jurisdiction and whenever possible and provided by the code, interfere without warrant to suppress and prevent crime. This article also states that officers shall arrest offenders without warrant in every case authorized by law to present them to a magistrate.

CCP Art. 5.04 (a) outlines a peace officer's responsibility to protect any potential victim of family violence, enforce the laws of this state, enforce protective orders, and make lawful arrests.

CCP Art. 6.05 and 6.06 outline a peace officer's duty to protect individuals and provide authority for the officer to use whatever force may be necessary to prevent the injurious conduct.

CCP Art. 14.03 (c) states that an officer shall remain on the scene to investigate an allegation of family violence or violation of a protective order and prevent the further commission of family violence.

CCP Art. 14.05 states that an officer who has probable cause to arrest without warrant may use any means provided for arrest with warrant except that he/she may not enter a

residence to make the arrest without consent of one of the residents or *exigent circumstances*⁴.

CCP Art. 15.25 states that when an officer possesses a warrant for the arrest of an individual for a felony, the officer may break down the door of any house to make the arrest, if he be refused admittance after giving notice of his authority and purpose. In addition to the authorities cited in the above listed codes, several Texas courts have consistently upheld the “exigent circumstances doctrine” and allowed officers warrantless entry to check welfare and protect fragile evidence (see cases outlined below).

Joe Reginald Randle, Appellant v. The State of Texas, Appellee NO. 07-01-0160, April 19, 2002

In this case, deputy sheriffs responded to a 911 hang-up call that appeared to be domestic (family) violence. Defendant opened the door and officers heard a woman crying. They forced entry and found marijuana on the dresser. The court held that under the “doctrine of exigent circumstance,” the officers were legitimately inside the house and therefore could seize evidence in plain view.

The court’s determined that according to *Torrez v. State* (cited later), an “officer may conduct warrantless search when there is reasonable cause to believe a person’s health or safety is threatened.”

Vernon Edward Gipson Jr., Appellant v. The State of Texas, Appellee NO. 10-00-202-CR, June 26, 2002

In this case, officers articulated several facts relating to their belief that a victim of family violence needed attention within the residence.

1. The victim had been missing for one day without providing for childcare.
2. Relatives had tried to call and no one answered the phone or the door.
3. The phone line indicated that someone had been in the residence.
4. The officers were aware of past incidents of family violence including the arrest of the suspect.
5. The suspect had a history of violence toward the victim.
6. Officers were concerned that the victim was injured inside the house.
7. Upon entry, officers immediately saw streaks of blood leading to the bathroom where they located the victim’s body.

The court ruled in favor of the officers stating the evidence was found under the “emergency doctrine.”

Antonio Rico Torrez, Appellant v. The State of Texas, Appellee NO. 14.99.00955-CR

In this case, the officer tried to use the “exigent circumstance doctrine,” but was unable to justify the fear that someone’s well-being was in jeopardy. However, this case more clearly articulated the requirement of “exigent circumstance.”

“The Texas Court of Criminal Appeals recognizes two exigent circumstances where an immediate search without warrant is permissible:

1. where there is a threat to someone’s health or safety; and
2. where police reasonably conclude that evidence would be destroyed before they could obtain a search warrant.”

Jose Luis Guerrero, Appellant v. The State of Texas, Appellee NO. 05-99-02061-CR

In this case, officers responded to a domestic disturbance call and were told by the apartment manager that Guerrero had been assaulting the victim, they lived together in the apartment, and that they were still in the apartment. Officers attempted to make contact with someone inside the residence but no one answered. Officers were concerned for the victim's safety and after consulting with a supervisor decided to force entry to check the welfare of the victim. Once inside, they immediately observed the victim with marks, indicating an assault took place, then they arrested Guerrero. They subsequently found amphetamines and charged him with possession.

The court held that the officers were justified in entering the apartment based on the "exigent circumstances doctrine."

The responding officers' primary responsibility is to provide for the safety of the parties involved. Officers and agencies often expose themselves to civil liability if they do not provide the level of protection called for in these situations. Ensuring the victim's safety can be broken down into four general phases:

1. Control the scene and restore the peace;
2. Assess the physical, emotional, and mental state of the victims and potential witnesses, such as children;
3. Take actions to ensure the victim's continued safety by providing information on medical treatment, social services, the legal process, and the victim's options, and making every effort to hold the offender accountable; and
4. Follow up with the victim to determine if their safety has been compromised since the incident.

INITIAL CONTACT/SWEEP

INITIAL CONTACT OF AREA:

When contacting the victim and initiating the investigation, officers should be cognizant of the dynamics and the impact of sexual assault and family violence. Officers should identify themselves as law enforcement, provide identification if requested, give an explanation as to why they are present, and request entry. The attitude and professionalism of the officer(s) can have a profound impact on the victim. Positive, reassuring messages may contribute to the victim's mental healing process and ability to cooperate. Accusatory or apathetic messages may lead to further anguish and ultimately unwillingness or inability to cooperate with law enforcement. The officers' demeanor should demonstrate their competence, experience, and professionalism. It is important to remember that the victim relies on you—the officer—and the actions you take may determine if the investigation is successful or not.

INITIAL SWEEP OF AREA:

Make a quick observation of the surroundings. Usually this is done during a safety sweep while checking the location for weapons and other individuals. The safety sweep is a quick and cursory walk through a location, looking into rooms, behind doors, and other potentially hazardous locations. Officers should move throughout the location to determine if anyone else is present and locate potential safety issues. It is imperative that officers control the movements of individuals detained for investigation. Efforts should be made to separate

victims, witnesses, and suspects, keeping them in places where their safety and the safety of the officers is considered. This will also aid in the prevention of cross-contamination of witness accounts. When possible, maintain a sight line with other officers for additional safety. Officer presence is a strong tool in controlling potential outbursts of violence. Be firm, but kind, and know your authority and limitations. Special effort should be made to protect evidence that could corroborate the statements of either party. For example, if an officer rights a chair to offer to the victim, it is possible that he/she has disturbed a crime scene.

DETERMINING THE CRIME SCENE SEARCH AREA

When determining the scope of your crime scene area, efforts should be made to encompass all locations that potentially contain evidence of the crime. These areas can be narrowed as the search progresses. Due to potential contamination, search areas typically cannot be enlarged. There may be more than one crime scene such as: the location where the offense occurred, the location where the victim is currently located, and the location where the victim changed clothing, washed, showered, or bathed. In sexual assault cases, the victim may be the most significant source of evidence, therefore it is important to conduct an initial interview with the victim before conducting the search of the scene. Understanding the disclosure process and being knowledgeable regarding proper victim interview techniques will yield the most information from the interview, resulting in a more thorough investigation.

VICTIMOLOGY: VARIABLES AND PERSPECTIVES RELATED TO FAMILY VIOLENCE AND SEXUAL ASSAULT VICTIMIZATION

In some ways, sexual assault and family violence have much in common. While it is widely acknowledged that most of these crimes are committed against women, there are significant differences and contrasts in the nature of the crimes, the individual and societal impact of the offenses, and the individual and societal perspectives related to the crimes.

Consider the following comparisons:

Acute or Chronic: Family violence is generally perceived as a chronic or ongoing offense. Although there are certainly isolated, one-time incidents of physical violence, most offenses represent a continuing cycle of abuse. Conversely, 20% of sexual assaults are often acute in nature, as the victim may have no warning or indication that the attack is imminent. Certainly, there are exceptions to these generalizations, including situations in which batterers use sexual assault as an element of control, punishment, or belittlement.

Known or Unknown Offender: In cases of family violence, the offender is not only known, but is intimately involved with the victim. In comparison, according to the Bureau of Justice Statistics, nationally, 80% of sexual assaults are committed by an intimate person, a relative, a friend, or an acquaintance. The remaining 20% are committed by strangers.

Short-Term or Long-Term Impact: A one-time incident of family violence may represent a short-term impact that is overcome by way of reconciliation, counseling, or other resolutions and/or interventions. Nonetheless, the event will likely be “imprinted” on the relationship and may again arise as an issue or point of contention. Sexual assaults and recurring episodes of family violence, however, generally have a multi-faceted and long-term impact on the victim. These crimes often represent the source of significant emotional, physical, sexual, and psychological difficulties—the manifestations of which may linger for a lifetime.

A common point of discussion among all of those involved in the professional response to these crimes is the various perspectives and personal opinions associated with the crimes. As noted in other sections of this curriculum, the perspectives of these professionals may differ greatly, although this span has narrowed significantly over the past several years.

On one end of the spectrum, a collective mindset exists that considers the personal impact of the crime and the needs of the crime victim. This may include a personal and professional desire to utilize the available resources necessary to effectively intervene in the matter, to help mitigate the impact of the crime, and to reduce the likelihood that the crime will occur again.

On the other end of the spectrum, the mindsets range from mere indifference to that of blaming the victim—directly or indirectly—for their participation in or contributions to the offense. These mindsets are often reflected in the provider’s regard for the victim, and in the degree of time and effort that they are willing to expend in developing a response and resources for the victim.

THE VICTIM’S EXPERIENCE: REACTIONS TO TRAUMA AND VICTIMIZATION

SPECIFIC MANIFESTATIONS AND REACTIONS

Most dictionaries have only recently included the term “victimology.” Although the term is widely accepted and often used within the professions of law enforcement, criminal justice, and victim advocacy, the study of victimization as we know it today is a relatively new field. In his book, *The Crime Victim’s Book*, Morton Bard (1986) introduced the concept of several reactionary phases of trauma and victimization.

Bard noted that the victim experience is unique—no two individuals react, respond, or cope with trauma in the same manner. He offered, however, that there were certain commonalities observed within the reactions of these individuals. Bard outlined the following phases in his work:

Impact Phase: In this phase, often accompanied by shock, denial, and disbelief, the individual’s typical coping mechanisms fail because the event is so far beyond the range of normal experiences.

Recoil Phase: The victim comes to the realization that the event has altered his/her life and begins to cope with feelings of fear, anger, alienation, self-blame, and helplessness.

Reorganization Phase: As the victim accepts that certain irrevocable changes have taken place, he/she begins to move forward, restructuring his/her life according to these changes.

These phases have been broadly distributed, paraphrased, and adopted by educators and advocates throughout the profession. The additional phase of “outward reorganization” has been adopted to describe a step between the recoil and reorganization phases. Within this phase, the individual begins to go through the motions of reorganization, such as returning to work or school and reassuming the activities of daily life before the actual acceptance of the event has been realized or fully processed.

For most law enforcement officers, many interactions with victims will occur at the “impact” phase of the event. The individual reactions within this phase may vary and include significant elements of the “fight, flight, or freeze” response. Also referred to as the “adrenal mind,” the “alarm reaction,” and other descriptors, the response is a defense-oriented function of the sympathetic nervous system. As a perceived threat causes this complex system to activate, any number of physiological, psychological, cognitive, and emotional alterations may occur. The most common of the physical reactions includes the release of natural chemicals and endorphins, such as adrenalin and natural analgesics, and an increase in heart rate and respiration. In addition to these physiological reactions, a myriad of cognitive, psychological, emotional, and sensory responses may be experienced.

Among these are:

Tachypsychia: Translated from Latin, the term means “fast mind.” The phenomenon is responsible for altered cognitive processes and altered perceptions related to time, space, and distance. Events may be described as “being in slow motion” or “happening in a split second,” but they lasted only seconds or several minutes, respectively.

Tunnel Vision: In the fight, flight, or freeze response, an individual’s visual field may be narrowed, excluding the peripheral field. Another altered visual perception is referred to as *visual white-out*. Unlike tunnel vision, this phenomenon represents an actual loss of vision known as *hysterical blindness*. There are various publications that apply the term *amaurosis fugax* to this phenomenon, although others assert that this term should be limited to the description of a cardiovascular incident that brings about a temporary blindness.

Precognition: There are two separate and distinct definitions applied to this term: in one, the individual’s reflex action is based on previous learning or experience. For instance, golfers will often cover their heads and duck when someone yells “fore,” without looking to see if they are about to be struck by a ball. In the other, the individual’s alarm response is based on an ambiguous notion or “gut feeling,”

as if they knew something was about to happen before there was a tangible, audible, or visual indication that the event was about to occur.

Loss of Fine Motor Skills: Among the physiological elements of the fight, flight, or freeze response are surges in gross motor strength and a dramatic decrease in peripheral circulation. Blood and oxygen are redirected to the major muscle groups and away from the peripheral vessels. The physiological responses that allow for great strength and help to prevent one from bleeding to death may also cause a decrease in dexterity and tactile (touch) sensitivity.

Decreased Cognitive Processing: In essence, the individual's ability to think clearly, use problem solving techniques, analyze abstract information, and other cognitive processes are disrupted.

Time and Space Distortions: Often associated with tachypsychia, the ability to estimate or precisely recall various elements of time, distance, and space are distorted or altered.

Memory Suppression: The thought processes associated with capturing and storing images and information may be disrupted, thus leaving a "blank spot" in the recollection of the event(s). Some in the field suggest that these memories may be repressed. The mind processes the information, but the images are so horrific that it refuses to store the data (see "dissociation" below).

As noted earlier, a typical reaction to a traumatic event may include shock, denial, disbelief, and a general inability to understand and comprehend the event. Because of the sudden, unexpected, extreme nature of the event, the individual's usual coping processes may be overwhelmed.

Although we are all born with certain reflex-oriented defense mechanisms, others are learned as a result of our experiences or training. Emotional and psychological defenses may be learned and activated of our own volition, or they may be automatically initiated. One of the most intriguing of these mechanisms, *dissociation*, involves the willful or automatic emotional and psychological separation of the individual from the event. The result of this process ranges from the inability to recall certain elements of an event to a more profound extent that allows or causes the individual to perceive the event as though it were happening to someone else. Another construct of this level of dissociation involves "blanking out" various segments of a traumatic event or the event in its entirety. Those who have been subjected to trauma and injury, especially if the trauma is of a recurring or long-term nature, describe the ability to block the imagery, sounds, and sensations associated with the trauma. Many describe a trance-like phase in which they were able to emotionally and psychologically "escape" the event.

Peritraumatic dissociation is defined as the complicated response to trauma including depersonalization, dissociative amnesia, altered perception of time, and emotional numbness. Peritraumatic dissociation may reduce a survivor's awareness of physical pain

and emotional distress immediately after the trauma has occurred. It may also affect a person's ability to process information and ultimately disrupt the ability to recall the trauma later down the line.

Depersonalization, a form of dissociation, causes an individual to feel as if they are an outside observer to their actions, thoughts, and feelings. The person can feel physically and emotionally numb or detached. They also struggle to recall their memories clearly and may feel like their memories are not their own. Depersonalization is triggered from experiencing or witnessing a traumatic event such as domestic violence or being sexually assaulted. These feelings may only be temporary but have the possibility of becoming a chronic condition the survivor will have to deal with throughout their life.

Dissociative amnesia, as defined by the DSM-V, is the inability to recall important information that would not occur with ordinary forgetting. This type of memory loss is usually caused by a traumatic event. Once the person is removed from the traumatic situation and any immediate stress, the memories may start to return. With time and a supportive environment, most people will recover parts or all their memory.

ACUTE POST-TRAUMA REACTIONS

In the immediate aftermath of a traumatic event, the fight, flight, or freeze reactions begin to diminish. The individual's heart rate and respiration begin to return to normal, and the "dump" of natural chemicals, such as adrenaline, norepinephrine, and others, begin to subside. During a traumatic event, the individual is typically focused on the threat and a means to survive it. It is only *after* the event that the person may then redirect his/her focus to their own well-being, thoughts, and feelings.

This redirection often involves a physical assessment that may include a visual self-inspection of the body and limbs to ascertain the presence or extent of injuries. As noted above, a combination of the dump of natural analgesics, dissociation, and other factors may cause the person to be completely oblivious to the fact that they have been injured. It is recommended that investigating officers consider the possibility of injuries as they make the initial contact with the victim. Again, the victim may not immediately express a complaint of pain or injury. Bruising, lacerations, and even fractures may go unnoticed in the minutes or hours following the assault. As the victim attempts to assess the personal impact of the event, they will also begin to process the event cognitively and emotionally. Common reactions at this point include feelings of fear and anxiety, confusion, and intrusive thoughts or a sense of reliving the event.

Not every individual who has survived a traumatic event will experience each of these emotional reactions within the described ranges. It should also be noted that the typical experience cannot be described as a linear process—the height of the reaction being at the outset of the event and diminishing over the next several hours or days. Instead, the experience is often described as an emotional roller coaster. The individual may express that they are "doing better," only to then be overwhelmed by intense swells of fear, anger, grief, and frustration.

INDIVIDUAL INTERVENTION STRATEGIES FOR LAW ENFORCEMENT OFFICERS

IMMEDIATE NEEDS

The law enforcement officer may be the first person to interact with the victim of a crime following a traumatic event. This initial contact may be made in the moments after the event, several days or weeks after the event, or while the event is still in progress.

An initial and primary concern should be for the physical well-being of the crime victim. Depending on the situation, this may involve removing the victim from an actively dangerous environment. If the individual has been injured, the officer should request immediate medical attention. By notifying emergency medical services, the victim is then afforded the opportunity to be assessed for injuries and transported to a medical facility for treatment, if necessary. Consider that, in cases of sexual assault, the victim will likely undergo a forensic examination. In many areas, forensic examinations are conducted at only one hospital or health care facility. Ideally, the forensic exam and medical treatment for other injuries should occur at the same facility. Bear in mind that victims may be oblivious to their injuries in the minutes or hours following the event.

Throughout the first minutes or hours following the initial contact with the crime victim, the investigating officer and other responders should seek to stabilize the environment and the involved individual(s). Environmentally, stabilization efforts may include removing the threat from the immediate vicinity, squelching any “chaos factors,” or removing the victim from the environment.

There are several efforts and strategies that may help to bring about some sense of stability for the involved individuals. The International Critical Incident Stress Foundation, Inc. (ICISF) has developed a specific protocol designed to assist first responders in their intervention efforts with traumatized individuals and groups. Known as the SAFER-R Revised Model, the model breaks the intervention process into five separate stages. The model, first introduced by Dr. George Everly (1995), has been modified by Everly and Dr. Jeffrey Mitchell (1997) (2001) and appears in ICISF’s *Assisting Individuals in Crisis & Group Crisis Intervention* course.

The five stages of the SAFER-R Revised Model consist of:⁵

1. **Stabilization of the situation:** Meet basic needs and mitigate the impact of acute stressors.
2. **Acknowledge the crisis:** Not only an acknowledgement of the event, but of the individual’s reactions.
3. **Facilitate understanding:** As noted earlier, provide information and insight regarding the event and normalize the individual’s reactions.
4. **Encourage effective coping:** Mechanisms of action; teach basic crisis management; develop a plan for immediate support.

⁵ International Critical Incident Stress Foundation, Inc. (2020). “SAFER-R Revised Model of Individual Crisis Intervention.” Ellicott City, MD.

5. **Recovery or referral:** Assess immediate needs and develop a plan for continued support; facilitate access to support systems.

This model broadly considers the personal aspects of intervention and the logistical aspects of a continuum of care and support for the affected individuals. The model outlines intervention strategies that may be utilized by law enforcement officers, first-responders, crime victim advocates, and others.

INTERVIEWING, INTERACTIONS, AND INTERVENTIONS

Veteran law enforcement officers, crime victim advocates, and other responders are aware of the impressions they make and the influence they have on those whom they assist in the aftermath of a violent crime. These impressions range from positive to negative and will likely last a lifetime. Many of those who offer positive accounts of their interactions with law enforcement officers base their accolades on two perceived qualities: professionalism and compassion.

Regardless of the number of cases of sexual assault and family violence the officer has previously responded to, in the minds of the victims of these crimes there is only one offense—theirs. Communicating with the victim of sexual assault or family violence in the minutes or hours following the offense can be a difficult and challenging undertaking. There are, however, some basic guidelines that may serve to minimize this difficulty while providing for the needs of the victim:

Allow emotional expression: “Crisis intervention” is not synonymous with “make them stop crying.” The best interventions may include no intervention effort at all. Merely being there and allowing individuals to emotionally express themselves may be the most effective strategy.

Acknowledge and affirm: Validate the reactions and emotions offered by the victim. As noted in the SAFER-R Revised Model, acknowledge the reactions *and* the event.

Don’t offer “consolation” facts: Now is not the time to be looking at the “bright side.” Statements such as, “At least he didn’t kill you,” or “It could have been worse,” minimize what has occurred. Again, acknowledge the event and its significance.

Normalize fears and reactions: Let individuals know that what they are experiencing is often experienced by those who have been through similar events, and that they are not “going crazy.”

Take the opportunity to educate: Provide information and insight into the current and potential trauma reactions, as well as information regarding the systems and persons that will be involved in the investigation.

Be aware of your demeanor, affect, and language: Consider the perspective of the crime victim and ask yourself:

Are you asking “why” questions? These tend to directly or indirectly place blame or imply that the victim contributed to her own victimization. Certainly, there will be investigative aspects of the interaction that will require “why” questions but use them sparingly.

Are you forcing details and making demands? Remember the trauma reactions and consider how they might disrupt thought processes and memory. Be patient and help guide the victim through the event.

Are you making judgmental statements? Don't. Making judgmental statements about a victim will only re-traumatize them and discourage them from contacting law enforcement in the future.

Are you using “alphabet soup” in your language? Avoid acronyms, abbreviations, codes, etc. Use short words, short sentences, and short pauses.

Are you making promises you can't keep? It is easy, but unrealistic, to offer consolation assurances, such as promising that the suspect will be in jail by morning and will never see the light of day again. Be realistic in your commitments. In addition, if you offer, “I'll be there,” then be there.

Virtually every aspect of your presence and communication will contribute to the perceptions of the crime victim. Simple efforts such as maintaining eye contact, using “attentive” body language, and maintaining active listening techniques can have an extremely positive effect on the individual, and the interactive and investigative process. Lastly, reinforce that it is *not* their fault.

INITIAL INTERVIEW

DIFFERENTIATING BETWEEN THE INITIAL INTERVIEW AND DETAILED INTERVIEW OF THE VICTIM

The initial interview should establish the basic facts such as, what offense occurred, where it occurred, identification of evidence from the assault, and a description of the suspect for a radio broadcast to other responding officers. For family violence cases, the initial interview needs to be detailed and comprehensive for the following reasons:

- There may be no follow-up investigation or interview
- Victim may not cooperate later
- Victim's story may change (i.e. “He didn't mean to do it,” “I was clumsy and fell,” “He didn't hit me,” etc.)

The initial interview in sexual assault cases is intended to be a brief overview of the incident to determine if a criminal offense was committed. A detailed forensic interview will be conducted later to gather detailed information about the offense, the offender, and possible witnesses or additional victims. Whether the case is acute (sexual assault occurred within 120 hours) or chronic/non-acute (assault occurred more than 120 hours ago) will determine if the forensic interview will be conducted before or after the sexual assault exam. Because advocates can help facilitate the interview process, law enforcement officers are encouraged to contact their local family violence/sexual assault program and ask an advocate to be present (with permission from the victim).

Before interviewing victims of assault, it is important to have a working knowledge of the disclosure process and victim interview techniques.

UNDERSTANDING DISCLOSURE:

When interviewing victims of an assault, particularly those involving family members or persons known to the victim, it is important to understand that disclosure is a process, not an isolated event. Victims may minimize the assault and attempt to protect the offender. Victims often want the abuse to stop but do not want negative consequences for the person abusing them. The victim's attachment to the perpetrator and the victim's support system (i.e. family and friends) will have an impact on the disclosure process. The disclosure process may include one or more of these stages:

- **Denial:** the victim denies that the offense occurred or denies who committed the offense.
- **Tentative:** the victim admits that some aspects of the offense occurred; may blame themselves or take responsibility for the offender committing the act.
- **Active:** the victim can give an account of the offense.
- **Recantation:** the victim states that the previous statement given was inaccurate; victim states that the offense did not occur or that the person named as the offender did not commit the offense.
- **Reaffirmation:** the victim takes back the recantation statement and reaffirms that offense occurred.

It is important to document whether the disclosure was accidental or purposeful. An accidental disclosure is one in which the victim did not intend to make an outcry. A purposeful disclosure is one in which the victim intended to make an outcry. One is not more credible than the other but may have an impact on the victim's willingness to cooperate with the interview.

Officers should recognize that interview techniques used with suspects do not typically work well with victims, requiring officers to become skilled at victim interview techniques. The next section includes general techniques that should be adapted to meet the situation.

TECHNIQUES FOR INTERVIEWING VICTIMS OF SEXUAL ASSAULT OR FAMILY VIOLENCE

- It is helpful to maintain eye contact with the victim. However, be aware that some victims may want to avert eye contact due to their emotional state. The victims' difficulty making eye contact should not be taken as a sign of disrespect or deception.
- Be aware of your body language; don't let shock, anger, or disbelief register on your face or in your body language. This can be a challenge if the victim is relaying information that is difficult to hear. Be aware of your subtle body language cues that indicate anger, disbelief, or impatience.
- Using a calm, compassionate, confident demeanor will facilitate the victim being able to tell you what happened. Help set the pace of the interview by slowing down or speeding up your speech and by softening your voice or speaking louder if necessary. Making statements acknowledging the victim's emotional state while emphasizing the importance of the interview will help the victim work through blocks to disclosure they are experiencing. For example, "I can see that this is difficult for you to talk about, but it is really important that I understand what happened before we begin the search."
- Use open ended questions that do not assume information not already stated. For example, asking "Did he say anything to you while he assaulted you?" inquires but does *not* assume that the offender said something whereas, "What did he say while he assaulted you?" assumes that the offender said something.
- Do not initiate touching the victim. Victims may become emotional and for some officers a natural inclination would be to offer a hug or a pat as comfort. Victims of assault may have an adverse reaction to being touched. Additionally, they may not feel comfortable asking you not to touch them.
- Make sure to use a trauma-informed approach. Victims often cannot remember events in sequence after a traumatic experience. Distraction techniques such as offering a drink of water or a tissue may help the victim work through their emotions (offering water or tissue should not be done before the sexual assault exam in an acute case).
- One of the most important things to be aware of is to phrase questions in a non-judgmental, non-threatening way. Avoid asking questions starting with 'why.' This tends to be accusatory in nature. For example, instead of asking "Why were you at the park?" ask, "What did you do at the park?" If you are confused about an aspect of the victim's account, it is appropriate to clarify the information by asking the victim to clarify what they meant or to explain an aspect in more detail.

INITIAL INTERVIEW WITH AN ADULT SEXUAL ASSAULT VICTIM

As mentioned previously, the initial interview should be brief with the purpose of obtaining enough information to determine if a criminal offense occurred and if there is evidence that can be collected. There are several things to consider: where the interview is conducted,

what to expect from the victim, what should be asked, and instructions on abstaining from activities that interfere with evidence collection.

The interview should be conducted in a comfortable, safe environment with privacy. The interview should not be conducted in the presence of boyfriends, girlfriends, spouses, partners, parents, children, friends, or anyone else personally associated with the victim. Without privacy, the victim's reluctance to discuss the details may be magnified greatly.

As with any traumatic event, there is a wide range of emotions in the hours immediately following a sexual assault. Officers may observe the victim acting in ways that seem inappropriate for the circumstances such as smiling, laughing, or being seemingly disinterested in the investigation. The victim may also shake, cry uncontrollably, express intense fear, or have scattered thoughts. Officers should be aware that these actions may be the result of Rape Trauma Syndrome (RTS), an acute phase and long reorganization process that occurs as a result of forcible rape or attempted forcible rape. The syndrome of behavioral, semantic, and psychological reactions is deemed an acute stress reaction to a life-threatening situation. More recently, the term Posttraumatic Stress Disorder (PTSD) has been used to describe the effect of traumatic events. The physical and emotional impact of the incident may be so intense that the victim is in shock or in a state of disbelief. The victim may appear disoriented. Some victims cope by becoming overly expressive, verbalizing their feelings of fear, anger, sadness, shame, and anxiety, while other victims tend to be more guarded or shut down, appearing composed and calmly discussing the assault with little or no emotion or by withdrawing completely. Many times, victims will vacillate between these coping styles. RTS or PTSD may affect the victim's physical symptoms, emotional reactions, thoughts, long-term process reorganization, physical lifestyle, psychological lifestyle, social lifestyle, and sexual lifestyle.

Instruct the victim to give an overview of the offense. Ask clarifying questions when necessary. Investigators should also work with the victim to identify probable locations for DNA evidence. Questions, such as the ones listed below, will help the investigator determine where to look for evidence:

- Did the suspect use the toilet and if so, did the suspect raise the seat?
- Did the suspect use any tissues; were they discarded?
- Did the offender smoke? Brand of cigarettes? If the assault took place in the family residence, do any family members smoke? What brand of cigarettes?
- Did the suspect use the telephone?
- Did the suspect look in the medicine cabinet?
- Did the suspect go to the refrigerator, eat anything, or discard any food wrappings or containers?
- Did the suspect use a glass cup or any other utensils? Did the suspect drink anything and if so, what?
- Did the offender chew gum and discard it?
- Did the offender use a condom or lubricant? Discard condom?
- Did the suspect steal anything?
- Is there potential that the suspect's body fluids were left behind and where?

Because evidence can also be located by using alternate light sources that reveal latent stains on carpet, walls, sheets, or other materials, the officer should take this into consideration while questioning the victim.

Officers should be straight forward and convey in a sympathetic manner that the victim needs to abstain from certain activities such as urinating, wiping the vagina, anus, or penis, douching, defecating, showering, blowing nose, brushing teeth, rinsing out mouth, clipping nails, removing false nails, washing hair, or rubbing/scratching any bite, torture wound, or injury until the sexual assault exam is completed. The victim should also be advised that any articles of jewelry, eyeglasses, hearing aids, or watches worn during the assault will be collected as potential sources of biological trace evidence. The victim's purse or wallet may also need to be checked for latent prints because offenders sometimes check for cash or steal a driver's license to threaten the victim.

At the conclusion of the interview, the victim should be told about the necessity of a physical examination. The victim should be informed that this is voluntary but vital to the collection and preservation of evidence that will reveal and corroborate the assault and, in the case of an unknown assailant, will contribute to the identification of the offender.

INITIAL INTERVIEW WITH AN ADULT VICTIM OF FAMILY VIOLENCE

All victims of family violence have three basic needs: physical, emotional, and legal. A successful interview addresses the victim's needs in that order, in a manner that communicates concern and a willingness to help. Officers must be patient while interviewing victims who may need time to process the incident. In addition to using the general interview techniques discussed previously, maintain eye contact, use open ended questions, don't touch the victim, be aware of body language, and use non-judgmental questions. The following techniques are valuable when interviewing victims of family violence:

- Communicate sincere concern for the victim's safety and commitment to help the victim in the long term
- The officer's distance during the interview may cause discomfort or solicit trust. Sensitivity to the victim's responses will help the officer judge whether the physical distance in the interview is beneficial
- Allow the victim to give a free narrative. Listen and record pertinent information. After the free narrative, ask follow-up questions to clarify meaning or fill in gaps
- Reassure the victim that their feelings are normal
- Be aware that the victim may fear what will happen if the offender is arrested; be prepared to respond
- Victims are often confused and need time to collect their thoughts; slow down the pace of the questions if the victim is struggling with answers
- Silence provides a period for the victim to reflect and add important information
- Collect pertinent facts prior to discussing the possible law enforcement action
- The victim should always be encouraged to seek medical treatment even if there are no visible signs of injury
- Provide information about victim's assistance and resources

- Avoid using terms that reflect a medical or psychological diagnosis

One of the most important questions to ask the victim is, “What is the status of the relationship?” Are they in the “danger zone?” (i.e. Did she just tell him she is going to leave him? Has she just moved out?)

VICTIMS OF STRANGULATION/ASPHYXIATION:

Intimate partner violence is about one partner obtaining power and control over the other, often by instilling fear to obtain compliance. This is called coercive control. Strangulation and other forms of asphyxiation are considered an *escalated* form of violence because it indicates that other, less lethal forms of violence are no longer working. Strangulation is used to show the partner that the abuser is both willing to and capable of killing them. Strangulation is both a physical assault that can result in serious medical conditions, including death, and a psychological attack, often resulting in trauma. Research shows that after one non-fatal strangulation, that abuser is now eight times more likely to kill that partner.

Although focus has been on intimate partner violence, it is important to consider the presence of strangulation in areas such as sexual assault, child abuse, human trafficking, and homicide. In some circumstances, perpetrators are using strangulation to gain sexual gratification as opposed to attempting to control the victim.

MISCONCEPTIONS

Strangulation investigations can be easily misguided when officers rely on visible injury to determine: (1) the credibility of a strangulation claim; and (2) the predominant aggressor. First, many strangulation assaults do not have obvious external signs that can be seen with the eye. Instead, the assault is internal, depriving the proper flow of oxygen into and through the body. If officers rely on external marks on a victim, most of these cases will not be identified. Second, because this type of violence often leads to a victim thinking they are going to die, those victims will often claw or bite to release pressure around their neck. As a result, the offender often has scratches and/or bite marks that can be misinterpreted by responding officers as evidence of an assault against the assailant.

TYPES OF ASPHYXIATION

What makes this type of assault dangerous is that it is all forms of asphyxia, which occurs when the body does not get enough oxygen. Various physical acts can result in asphyxiation, so paying attention to how a victim describes an assault is key to identifying this assault. Four main types tend to overlap with criminal behavior and should invoke an investigation if identified. These four types are: strangulation, suffocation, aquatic assault, and positional.

Strangulation is defined as external pressure placed on the neck, such that there is a reduction of blood flow through the brain, or constriction of breathing through the airway in the throat. Many victims will describe this as being “choked” so it is important to distinguish what occurred when this term is used. Choking is the blocking of an airway from some internal object. Victims may minimize the events, be unable to describe the event in technical terms, or they may have quickly blacked out. Specific injuries to a victim will depend on the method, the force, and duration of the strangulation. There are three types of strangulation discussed below.

Ligature strangulation is strangulation without suspension using some form of a cord-like object (i.e. phone cords, electrical cords, towels, etc.).

Hanging is suspension from a cord or cord-like object worn around the neck (i.e. suicide).

*To distinguish between **suicidal hanging** and **ligature strangulation** injuries, pay attention to the pattern of injury around the neck. If the pattern of injury tends to be a “tear drop” shape, where the point of the tear drop comes up behind or in front of the ear, then most likely it is caused by a hanging. If the pattern of injury is lower down the neck and on the same plain, then it is most likely caused by a ligature.*

Manual strangulation is strangulation using the hands, feet, or other extremities.

Suffocation is covering or blocking the nose and mouth, a process that halts or impedes respiration, such as holding a pillow or piece of cloth over one’s nose and mouth.

Positional asphyxia is a form of asphyxia that occurs when the position of a person’s body prevents them from breathing adequately. This can occur if an offender is on top of a victim, placing pressure on their chest or torso. Independently, this type of asphyxiation is not recognized under the Texas Strangulation Statute but could be considered under other assault statutes.

Aquatic asphyxiation is when the use of a liquid or fluid is used to prevent a person from breathing, increasing the body’s accumulation of carbon dioxide (which is the gas that stimulates you to feel the need to breathe). When water reaches the airway, the first response is to cough or swallow the liquid which can result in water ingestion. These cases can lead to unrecognized assaults and homicides as officers rarely get training on asking about or preserving evidence (such as wetness) in these cases. An example would be a victim’s head being held under water or a running faucet for a long period of time.

DEVELOPMENT OF EVIDENCE

Without proper training or the guidance of the *Strangulation Supplement*, most officers simply ask the question: “Could you breathe?” This question misses many cases where the victim’s breathing wasn’t entirely cut off but rather became difficult or labored. The statute requires that we prove that the act simply “impedes the normal breathing or circulation of the blood” of the victim. Evidence collection can be divided into seven sections each

mirroring the Strangulation Supplement that first responders can use to guide their questioning. These seven sections are each discussed below.

*{A free copy of the “Strangulation Supplement” can be requested from
www.RESPONDAgainstViolence.org.}*

IDENTIFIERS

In Texas, it is required to establish the relationship between the parties to qualify under 22.01(b)(2)(B). Keep in mind that other statutes, such as aggravated assault, can be used if this relationship is absent. Identifying the parties by name, determining the type and length of relationship, as well as assessing for any recent separation will also be helpful.

MECHANISM OF INJURY

The mechanics of the assault are important to identify where potential injuries may occur in addition to preparing for a potential defense. It is important to establish how the assault occurred (i.e. where was pressure placed, what was used to apply that pressure, how long that pressure was applied, and whether pressure was consistent) and whether the victim attempted to physically stop the strangulation (either by pulling at the item around their neck or by clawing at the assailant).

ESTABLISHING INTENT

Many defenses in these cases involve claims that the assault was exaggerated and that it really “wasn’t that bad.” Obtaining evidence that establishes both the assailant and the victim’s state of mind can be key to overcoming these assertions. It is important to ask the victim the following questions:

- What, if anything, did the suspect say during the strangulation/suffocation?
- Describe the suspect’s face/demeanor/expression during the strangulation/suffocation.
- What were you thinking during the strangulation/suffocation?
- What caused the person to stop?
- Has this person ever strangled/suffocated you in the past?

INTERVIEWING ASPHYXIATION VICTIMS

Victims of strangulation/asphyxiation often present unique challenges to law enforcement officers. In addition to the inherent minimization of the events, some victims are unable to describe the event using the technical terms or they may have quickly blacked out. Victims of strangulation are not experts on the evidence that needs to be collected. They may not know that symptoms they are experiencing (i.e. nausea, a headache, and/or involuntary urination) are related to the assault. It is important to shift the burden of identification and investigation to the responding parties rather than rely on the survivor to know what to tell us. Trauma-informed practices should be invoked in these interviews.

AIRWAY

One of the ways the law allows us to prove these cases is to show that the assault “impeded normal breathing.” Direct observations about a victim’s breathing from the officer are helpful and should be documented. It is also important to ask the victim the following questions:

- Instead of asking “Could you breathe?” which might miss a lot of cases, ask: “Could you breathe *normally* during the strangulation/suffocation?” or “Is there anything different about your breathing now?”
- Establish how their throat felt both during and after the assault.
- Determine whether they coughed during or after the assault.
- Document any changes in their voice and/or swallowing.

BLOODFLOW

This is the least investigated element, but often the most useful if responders know what to ask. Below is a list of questions that help identify if the blood flow to the brain or other organs is impeded.

- How did your body feel during/after the strangulation/suffocation?
- How did your head feel during/after the strangulation/suffocation?
- Did you experience any loss of vision or hearing during/after the strangulation/suffocation? How did your ears feel?
- Look for gaps in memory and try to establish whether the victim lost consciousness.
- Determine whether the victim urinated, defecated, or felt the urge to do either.

OTHER SYMPTOMS

Some symptoms cannot be divided by air versus blood, as the systems work together. For instance, it is important to determine whether the victim vomited or felt nauseous, felt faint or dizzy, or if their body experienced any different symptoms.

EXTERNAL SIGNS

While many cases often leave an assailant with external injuries, those injuries tend to be superficial (such as a scratch or bite mark as the victim fights for their life). External injuries on the victim tend to be minimal but are important to document if present. Below are things to look for, keeping in mind that many injuries (especially bruising) may not appear for hours or until the next day.

- Scratches, abrasions, or fingernail imprints on the *victim* (may have been inflicted by the assailant or the victim who is trying to release the “chokehold”) or on the *offender* (from where the victim may have clawed the offender when trying to escape—often found on the face, neck, or chest).

- Neck swelling or stiff neck. This can be particularly concerning as it creates a risk that the neck will swell and close the airway.
- Bruises that may be delayed in presentation.
- Petechiae, which are tiny pin-point dots that indicate ruptured capillaries from blood building up.
- Ligature marks.
- Broken fingernails.
- Cuts or indentations on the inside of lips.

PROPER PHOTOGRAPHY OF STRANGULATION

Three types of photos should be taken of a victim: distant, close-up and follow-up photos. Make sure photos include the front of the face, ears, neck (front and back), chest, underneath the chin, the scalp, and inside of the mouth. Follow-up photos are crucial, as some bruises do not develop until several days later.

INTERVIEWING VICTIMS WITH HEAD INJURIES

It is common in family violence incidents for head injuries to occur. Due to the violence involved in these types of incidents, injuries may occur without the victim being aware.

The common signs of head injuries include:

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

The officer should question the victim regarding:

- Was the victim hit on the head? How many times?
- Was the victim slammed into a wall?
- Was the victim hit with an object or fist, or pushed into something?
- Did the victim fall or were they pushed down?
- Did the victim lose consciousness?
- How often has this happened?

Once information from the initial interview is collected, investigators must turn their attention to the evidence gathering process. This process of observing, collecting, labeling, and storing evidence must be completed in a timely manner so the evidence is not lost.

{For a Head Injury Assessment Form, refer to Resources for Law Enforcement at www.safvic.org.}

EVIDENCE DOCUMENTATION AND COLLECTION

You will only get one chance at fresh crime scene evidence. It is extremely important to treat every family violence or sexual assault call as a crime scene and search for evidence that supports or refutes the statements made by the victim and the suspect. The officer must determine if the statements indicate physical evidence that can be identified, photographed and collected. Officers should use commonly accepted collection and documentation techniques for crime scenes. Every agency should have policies and procedures to guide the officer. Officers must be knowledgeable and comply with applicable search and seizure laws.

TYPES OF EVIDENCE

Substantive evidence tends to prove or disprove a fact at issue in the case. This can be direct or circumstantial evidence.

Direct evidence is the witness' first-hand knowledge of the incident or facts surrounding the incident; for example, if the witness saw, felt, heard, or otherwise experienced the event.

Circumstantial evidence is dependent on reasonable inferences, where one fact is in evidence and another fact is reasonably inferred from it.

Corroborative evidence tends to bolster the credibility of the witness. On its own, corroborative evidence does not prove the case, but lends credibility to the victim's statement. An example is if the victim stated that the perpetrator came home from work at lunchtime and assaulted her, retrieving employment records showing he left work during that time frame does *not* prove that he committed the crime. It *does*, however, lend credibility to her statement. Statements that she made to her friends and family can corroborate the similar statements she made to police and become very important if she recants. The officer(s) should ask the victim if they told anyone about the assault, and if so, seek to obtain information for those persons. These outcry witnesses are significant and can testify to their knowledge in many circumstances.

Illustrative or demonstrative evidence illustrates or demonstrates some aspect of the statement of a witness, such as anatomical drawings, drawings, or writings.

Real evidence is the object itself, such as the gun used to kill the victim versus the statement of a witness who saw the gun and describes it.

The case will be made or broken based on the evidence identified, documented, and collected, and by the details that are corroborated.

SPECIFIC EQUIPMENT FOR SEXUAL ASSAULT INVESTIGATIONS

- Sealed sexual assault evidence collection kit
- Paper evidence bags, both small and large (collection of clothing and bedding should always be placed in paper bags)

- Latex powder-free surgical gloves
- A new 8 x 8 drop cotton cloth for the victim to stand on and undress for collection of victim's clothing

DRUG-FACILITATED SEXUAL ASSAULT

Public awareness of drug-facilitated sexual assault is increasing. Most law enforcement officers know that this has been a problem for years. The drugs used are now easier to obtain and administer and more difficult to detect. Many times, the perpetrator simply slips the substance into the victim's drink or misrepresents the drug and its effects. A victim can voluntarily ingest drugs or alcohol, and then become a victim of drug-facilitated sexual assault if a perpetrator takes advantage of the victim's intoxication. A drug-facilitated sexual assault occurs whenever a person takes advantage of another person while they are unconscious or unable to give consent because of the consumption (whether voluntary or involuntary) of a drug or alcohol. Texas law provides for an enhanced penalty if the suspect administers a controlled substance to the victim with the intent to facilitate a sexual assault.

{For more detailed information about Drug Facilitated Sexual Assault see Chapter 9 (E): Drug-Facilitated Sexual Assault on page 305.}

P.C. § 22.021 Aggravated Sexual Assault: administers or provides to the victim of the offense any substance capable of impairing the victim's ability to appraise the nature of the act or to resist the act.

FORENSIC SEXUAL ASSAULT EXAM

If a sexual assault is reported to a law enforcement agency within 120 hours, with consent of the victim, law enforcement **must** request a medical forensic examination.⁶ These examinations are called "acute" examinations. During acute exams, it may be possible to collect physical or trace evidence on the victim's body. In cases surpassing 120 hours, efforts should be made to determine the feasibility of evidence recovery by consulting with a forensically trained medical professional. The presence or absence of evidence will partially depend on the type of assault, the time that has passed, and whether the victim has changed clothes, showered, or exercised other types of hygiene prior to the examination. These acute examinations are almost always done at a hospital in case physician intervention is needed.

It is important to know there may be physical injuries that require a victim be initially taken to a facility that does not perform sexual assault exams. In the event this occurs, it is necessary the victim understands that they can anticipate a transfer to another facility for the forensic exam after they are stabilized medically at the initial facility.

Due to the traumatic nature of sexual assaults, many victims find it difficult to speak with law enforcement at the initial time of the crime. Code of Criminal Procedure 56.065 was

⁶ Code of Criminal Procedure, Art. 56.021 & Art. 56.06, 86th Texas Legislature

created in Texas with the purpose of encouraging victims of a sexual assault to obtain a forensic medical exam by a forensic examiner (i.e. Sexual Assault Nurse Examiner) within the first 120 hours following the crime, when the most evidence can be obtained. This law does not require the adult victim to report, nor are they liable for the cost of the exam. However, they are still given the right to speak with an advocate at the time of the exam. Sexual Assault Response and Resource Teams (SARRT) and Sexual Assault Response Teams (SART) in Texas are also developing protocols for the forensic examiner to receive permission for follow-up contact by an advocate, should the victim decline advocate assistance at the time of the exam.

As of September 1, 2019, if the victim chooses to report the sexual assault, the healthcare facility is responsible for covering expenses for the forensic portion of the exam and can directly bill the AG's office (the Attorney General Law Enforcement Request for Sexual Assault Exam form must accompany the bill). If the victim chooses not to report, the Texas Department of Public Safety (DPS) is required to pay the fees for the forensic portion of the exam, as well as preserve the evidence for five years, or until the victim is ready to report—whichever comes first.⁷ However, the exam is limited to a dry-kit only (the basic forensic exam kit without blood, urine samples, or clothing), as the state crime lab does not have the capacity to store wet evidence (blood and urine) that requires refrigeration for that amount of time.

When an adult victim presents to a hospital either for a REPORT or a NON-REPORT of a sexual assault, the victim should be told by the officer (or SANE, doctor, advocate, etc.) that they can apply to the Crime Victims' Compensation (CVC) Program to cover the medical expenses incurred (i.e. broken bone, stitches, etc.) for the initial visit (see CVC in Chapter 10: Community Response and Victim Resources for more details).

For anonymity of the victim, the forensic examiner generates a unique ID number for NON-REPORT evidence retrieval. Information included with the ID number also includes the date of the exam, county, and exam facility name. If the victim later chooses to report, he/she must sign a release form so the forensic examiner can release the victim's name and assault location to the law enforcement agency with jurisdiction. Created by House Bill 2626 by the 81st Texas Legislature, the Non-Reported Sexual Assault Evidence Program became effective June 21st, 2009.

During the 83rd Legislative Session (2013), Senate Bill 1191 was passed into law as Health and Safety Code 323 (Emergency Services for Survivors of Sexual Assault) and created the following:

⁷ During the 86th Legislature, House Bill 8 amended sections of this section of the CCP 56.065 (g-1-g-3), which requires DPS to develop procedures for the notification of a victim before the destruction of rape kit evidence in unreported cases. This amendment also extended the preservation from two to five years as well as prohibits destruction of the evidence after the expiration of one of those dates unless the receiving entity has sent notice to the victim and not received a written objection to the destruction at least 90 days before the planned destruction. HB 8 also amends CCP 38.43 (Evidence Containing Biological Material) to require all rape kits in reported cases to be retained and preserved for much longer periods of time (see Chapter 7: Sexual Assault Laws).

- **Basic Sexual Assault Forensic Evidence Collection Training**
 - (a) A person who performs a forensic examination on a sexual assault survivor must have at least basic forensic evidence collection training or the equivalent education.
 - (b) A person who completes a continuing medical or nursing education course in forensic evidence collection that is approved or recognized by the appropriate licensing board is considered to have basic sexual assault forensic evidence training for purposes of this chapter. *Basic* is defined as two hours of training. This basic training does not take the place of the extensive education a SANE completes before certification.
 - (c) Each health care facility that has an emergency department and that is not a health care facility designated in a community-wide plan as the primary health care facility in the community for treating sexual assault survivors shall develop a plan to train personnel on sexual assault forensic evidence collection.
- **Sexual Assault Survivors Who Are Minors**

This chapter does not affect participating entities of children's advocacy centers under Subchapter E, Chapter 264, Family Code, or the working protocols set forth by their multidisciplinary teams to ensure access to specialized medical assessments for sexual assault survivors who are minors. To the extent of a conflict with Subchapter E, Chapter 264, Family Code, that subchapter controls. Children who are sexually assaulted or suspected of being sexually assaulted should be examined by forensically trained health care professionals (SANEs or child abuse pediatricians, for example).
- **Data Publication**

The department shall post on the department's Internet website a list of all hospitals that are designated in a community-wide plan as the primary health care facility in the community for treating sexual assault survivors.

It is not financially feasible for all hospitals in Texas to have SANE Programs and it is a career field that not all nurses are equipped to perform. Health and Safety Code 323 wants facilities that are not designated as SANE Programs to highly encourage the survivor to transfer to the designated facility for state-of-the-art care by specialized practitioners, but at the same time, respect the rights of the patient to decline the transfer and still receive the best possible care the original facility can provide.

It is important to recognize the reasons some survivors may choose to decline the transfer. Travel distance for rural survivors may be too great and cause financial difficulties with travel expenses (some hospitals require all transfers to travel by ambulance). They may be unfamiliar with the location they are being transferred to and/or the survivors' support system may not be able to travel to the other facility or have safe travel arrangements back home. Most facilities cannot cover costs associated with returning the patient to their home. This law does not require all Texas Hospitals to have a SANE, nor does it prevent any hospital from transferring a sexual assault patient to a designated facility. What it does provide is respect for the patient's right to choose their healthcare and receive the best care possible within the training of their chosen facility. Patients are to be thoroughly informed of

their rights, to include the capabilities of the designated facility and their chosen facility in an informative, non-coercive manner.

When performing the medical forensic examination, standard preassembled sexual assault evidence collection kits should be utilized. These kits are designed to collect evidence directly from the victim's body that may corroborate sexual activity [i.e. deoxyribonucleic acid (DNA)]. The *Texas Evidence Collection Protocol* (TECP) lists the items required to be in a sexual assault evidence collection kit. Once this exam has been completed, it will also become part of the case record and document the possible presence of bodily injury to the victim and possible evidence of force in relation to the sexual assault. Law enforcement must request a sexual assault examination, complete the attached form, and provide a copy to the victim. The hospital submits a bill to the Crime Victims' Compensation (CVC) Program with the completed form for reimbursement. Law enforcement is required to give the victim information about the CVC Program, which may reimburse the victim for the cost of medical treatment.

There are benefits for a victim to have a medical forensic examination by a trained medical professional, such as a sexual assault nurse examiner (SANE). A SANE is a registered nurse who has been specifically classroom and clinically trained in the proper procedures on how to perform a sexual assault medical forensic examination following a sexual assault. A SANE is trained to provide comprehensive care to sexual assault victims, has competency in conducting a medical forensic examination for the collection of evidence, can testify as an expert witness in court, and shows compassion and sensitivity to sexual assault victims. A SANE may be certified in adult/adolescent examinations, pediatric examinations, or both.

When the sexual assault victim is a child, there is an exception to the 120-hour time frame. Since many children make an outcry after a lengthier time, a "non-acute" examination can be performed on children. These examinations may be done at a hospital, but most often are done at a local children's advocacy center. A non-acute examination involves all the same components of an acute examination, but the evidence collection is determined on the detailed history obtained by the medical forensic healthcare provider. The non-acute examination uses specialized equipment to visualize and photo-document findings. Some examiners use a colposcope to magnify and document findings of the female/male sexual organ, and others may use high-resolution digital photography. Using a colposcope or high-resolution digital photography allows a SANE to visualize and possibly photo-document signs of trauma that may not be visible to the naked eye, such as notches, tears, or scarring. The importance of conducting a non-acute exam is to ensure the physical well-being of the victim, provide a verbal history of the assault, and provide medical treatment when necessary. Negative findings for trauma are not an indicator that the sexual assault did not occur. In fact, research shows most children who experience sexual assault have normal or non-specific examination findings.

The sexual assault medical forensic exam is performed for the purpose of providing medical care to the victim as well as collecting evidence following a sexual assault. There are four basic parts to a sexual assault medical forensic examination. They include:

- Obtaining a medical forensic history from the victim
- Detailed head-to-toe examination for trauma identification
- Detailed anogenital examination for trauma identification
- Assessment if evidence collection is warranted (debris, specimen collection, and photographs)

SANEs are not employed by law enforcement. However, prior to initiating a sexual assault medical forensic examination, SANEs will contact law enforcement *only* if the victim wishes to make a report to law enforcement. By doing so, law enforcement may provide the SANE with a case number. During the 86th Legislature, House Bill 616 changed the process for reimbursement of forensic medical sexual assault examinations. Prior to September 1, 2019, law enforcement agencies (LEAs) paid health care facilities for completing the forensic medical examination of people who reported sexual assault. LEAs then requested reimbursement from the Office of the Attorney General of Texas (OAG). Effective September 1, 2019, health care facilities can directly bill the OAG, but the Attorney General's *Law Enforcement Request for Sexual Assault Exam* form must accompany the bill.

{For a Law Enforcement Request for Sexual Assault Exam form, refer to Resources for Law Enforcement at www.safvic.org.}

The importance of preserving potentially valuable physical evidence prior to the sexual assault examination is crucial. Attempts to preserve evidence prior to SANE involvement include limiting such activities as:

- Washing
- Showering
- Brushing teeth or using mouthwash
- Smoking or vaping
- Eating or drinking
- Swimming, douching, urinating, or defecating
- Changing clothes

Clothing may need to be collected if the victim has not changed clothes or showered since the sexual assault. Some, but not all, programs have clothing available for the patient. It may be advisable to have the patient bring a complete change of clothes (undergarments, top, and pants) with them to the hospital.

At the hospital, the SANE will obtain the history of the assault directly from the victim either alone or with a support person of the victim's choosing. Law enforcement should *not* be present during this medical forensic history. The SANE will determine whether information is needed from the police about the events that occurred during the assault. Many SANEs do not want to know details that occurred prior to speaking with the victim/patient since an attorney in court may claim the SANE was leading the victim.

Law enforcement can **NOT** be present in the room during evidence collection. After the examination is complete, an officer may choose to meet with the SANE. Many officers ask

SANEs about whether the victim engaged in consensual sex with the rapist. This is not an appropriate or relevant question. There is no way for the SANE to determine if there was consensual intercourse and interpret forensic laboratory findings. The only thing a SANE may be able to tell law enforcement is if there is evidence of trauma, pregnancy, or a sexually transmitted infection (after testing). Determining presence of sperm is no longer a standard part of a medical forensic examination because lack of sperm does not mean an assault did not occur; the perpetrator may have used a condom or been an infertile male.

Another consideration in determining whether a sexual assault occurred is understanding that estrogen (a naturally occurring female hormone) makes genitalia tissue stretchy. Because of this, a lack of evidence of trauma does not mean an assault did not take place. Once a female has started having regular menstrual cycles, they can deliver a baby vaginally. This means that even very young girls may not show evidence of trauma. Research shows most victims of sexual assault do not have genitalia injury.

The assistance of support persons, such as those from a rape crisis center or victim services, may make the experience less traumatic. Advocates are specially trained in the dynamics and impact of sexual assault and are knowledgeable resources for the victims. They can also accompany the victim throughout the exam. Texas Code of Criminal Procedures (Art, 56.045) states: (a) before conducting a forensic medical examination of a person who consents to such an examination for the collection of evidence for an alleged sexual assault, the physician or other medical services personnel conducting the examination **shall** offer the person the opportunity to have an advocate from a sexual assault program, as defined by Section 420.003, Government Code, who has completed a sexual assault training program described by Section 420.011(b), Government Code, present with the person during the examination, if the advocate is available at the time of the examination.

Victims of sexual assault who have vaginal, anal, or oral penetration may be considered for testing and prophylactic treatment for sexually transmitted infections. Medical personnel will evaluate the history of the assault and the patient, allowing them to provide optimal treatment for sexually transmitted infections. This includes HIV, hepatitis, herpes, gonorrhea, syphilis, chlamydia, and trichomonas. In addition, medical personnel will also assess the patient for the need for emergency contraception.

The 86th Legislature (HB 8) made changes to Government Code 420.035. Law enforcement has seven days from the time they are notified (via Track Kit) that a kit needs to be picked up to transport it to the crime lab. If the jurisdiction is more than 100 miles away from the hospital, they have 14 days to pick up the kit and transport it to the crime lab.

DETAILED INTERVIEWS

DETAILED INTERVIEW OF AN ADULT VICTIM OF SEXUAL ASSAULT

Detailed sexual assault interviews should be conducted after the medical examination has been complete and the victim has had an opportunity to change clothes and get

comfortable. The sex of the interviewer is often less important than his /her sensitivity, skill, experience, and understanding. The interview requires intimate communication between the interviewer and the assault victim. The interviewer must be sensitive to the psychological state of the victim. Insensitivity to the victim's needs and emotions can have negative effects such as diminishing the ability or the willingness of the victim to cooperate, causing serious psychological after affects for the victim.

Certain steps can make the interview less painful for the victim and more effective for the interviewer. As with the initial interview, the detailed interview should be conducted in a room that is comfortable, relaxed, and provides privacy. Family members and friends should be instructed to wait in another location, even if the victim requests their presence during the interview. The investigator should articulate to the victim that this interview will be more detailed, and the questions will necessarily be personal. Having other parties present may affect the victim's response when asked questions. A comfortable interview environment will accommodate a more successful interview. It is recommended to record the interview with the victim to show the victim's demeanor, and record the complete interview verbatim. This will assist the investigator and the D.A.'s office in the prosecution of the case. Although the recording will unlikely be admitted in court, it's important to adhere to evidentiary guidelines.

The importance of the detailed interview cannot be overemphasized. It will aid greatly in the investigation and the identification of the offender (if necessary). The interviewer should explain the interview procedures and reassure the victim that the interview is necessary to conduct a thorough investigation. Victims often feel a complete loss of control and may feel overwhelmed by the investigative process. The victim should be allowed as much control as possible during the interview. Simply asking how she would like to be addressed (e.g., Miss Jones, etc.) is a good way to start. Making transition statements help the victim prepare for personal questions. For example, after taking down the basic facts, using a transition statement, such as, "I think I understand what happened. Now I need to go back over what you told me and ask some very specific questions," will help the victim prepare for the increased level of detail needed.

During the interview it is crucial to remember the dynamics and impact of trauma on a sexual assault victim. The interviewer should:

- Be alert to expressions of guilt, fear, and humiliation.
- Reassure the victim that their feelings are common, and the assault was not their fault.
- Never make any accusatory remarks to the victim or use consent language.
- Ask follow-up questions for clarity of discrepancies or gaps in the victim's recollection of the events (at a later date).
- Keep in mind that it is very common with trauma victims to be disorganized and remember things that happened two to three days *after* the assault.
 - These inconsistencies are often used against the victim.
 - Don't push for what the victim cannot provide: sequence, context, peripheral details, etc. Pushing for narrative may lead to errors, guesses and/or assumptions.

- Traumatic events are first organized in memory on a perceptual or sensory level. Do elicit visual images, smells, pain, taste, body positions, and sounds. You may want to ask, “Do you recall seeing anything? Smelling anything? Hearing anything?”

THE ARREST DECISION

Studies have shown that the most effective way to reduce recidivism in family violence is by making an arrest. The Code of Criminal Procedure states that making a lawful arrest of family violence violators is a primary duty of a peace officer. Legislatively, officers are required to arrest individuals that violate a protective order in their presence or within their view. Many agencies have instituted a zero-tolerance policy for family violence offenses. Officers should have a strong command of the laws associated with family violence and understand the ways they apply.

OFFENSE IDENTIFICATION AND ARREST AUTHORITY

Officers should consider the totality of the circumstances in identifying whether a crime has been committed and if so, what crime(s). Investigators should consider all applicable charges when determining the type of offense committed. Some offenses which may be applicable are:

PENAL CODE:

- | | | |
|---|-----------------------|---------------------|
| • Murder | • Aggravated Assault | • Assault |
| • Sexual Assault | • Agg. Sexual Assault | • Child Abuse |
| • Terroristic Threat | • Stalking | • Harassment |
| • Criminal Mischief | • Weapons Violation | • Violation of P.O. |
| • Interference w/ Emergency Telephone Calls | | |

CODE OF CRIMINAL PROCEDURE: ARTICLE 14—ARREST WITHOUT WARRANT

Article 14 provides officers with the tools and authority to intervene and make arrests when called for. Remember, under CCP, peace officers may arrest a person (without warrant) if the officer has probable cause to believe he/she has committed family violence or dating violence (as defined in FC 71.004).

Before making an arrest decision, officers should consider the following:

1. Is there probable cause to believe an offense has been committed, whether in your presence or not?
2. Do you have the authority to make the arrest for this offense?

The statutes concerning arrest authority contain numerous exceptions for family violence. The following chart is a brief explanation of the offenses and the arrest authority.

Warrantless Arrest Authority for Offense Committed Outside the Presence of a Peace Officer or Magistrate		
Offense	Warrantless Arrest Authority for Family Violence/Dating Violence	Warrantless Arrest Authority without Family Violence/Dating Violence
Murder	Yes	Maybe (14.03a.1.)
Agg. Assault	Yes	Maybe (14.03a.2)
Assault	Yes	Maybe (14.03a.2)
Agg. Sexual Assault	Yes	Maybe (14.03a.1)
Child Abuse	Yes	Maybe (14.03.a.2)
Violation Protective Order ⁸	Yes	Yes
Terroristic Threat	Yes	No
Stalking	No	No
Harassment	No	No
Interference with Emergency Call	Yes	Yes
Criminal Mischief	No	No

DUAL ARREST

DETERMINING THE PREDOMINANT AGGRESSOR

Dual arrest situations occur when officers are faced with conflicting stories and evidence that supports assaults by both parties and opt to take both parties to jail. Dual arrest typically fails to consider the statutory provision allowing self-defense or the defense of a third party. Self-defense is clearly authorized by the penal code, including preemptive strikes. A person is justified in using force against another when, and to the degree, he reasonably believes the force is immediately necessary to protect against the other's use or attempted use of unlawful force.

The following wounds may be observed on a perpetrator that may have been caused by a victim acting in self-defense:

- Scratches to the back of the perpetrator's hands, wrists, back, face, or neck
- Bite marks on the inside of the perpetrator's arms, chest, or neck
- Indications of the batterer's hair being pulled
- Groin or kicking injuries
- Injuries caused by hard objects or weapons

LETHALITY INDICATORS

The following checklist lays out several risk factors and conditions that help officers recognize an offender's potential for serious or lethal violence and may assist in the arrest determination.

⁸ Violation of a protective order within the presence of a peace officer is a mandatory arrest, including possession of a firearm as provided in the order.

- History of Violence: Previous assaults, especially strangulation, by the offender can indicate an escalating pattern of violence. If the officer really wants to know how far the victim is on the path of violence, look at the past 12 months. Has there been an increase in frequency and severity?
- Use of or Access to Weapons: Offender possesses weapons and has used or threatened to use them in the past; access to weapons increases the potential for a lethal assault. The use of guns is a strong predictor of homicide.
- Threats to Kill the Victim, Kill the Children, and/or Commit Suicide: An offender will usually attempt/commit homicide before attempting suicide.
- Strangulation: Strangulation is dangerous and may result in brain injury or death.
- Stalking or Surveillance of Victim: Reading the victim's mail and eavesdropping on the victim's conversations are behaviors that often precede murders and attempted murders of spouses and partners.
- Sexual Assaults: Offenders who have sexually assaulted their victims in the past are twice as likely to commit a lethal or dangerous act of violence.
- Substance Abuse: Substance abuse does not "cause" family violence, but it can exacerbate any family violence situation.
- Obsession with Victim: Obsessive, jealous, possessive feelings can lead to violent behavior meant to keep the victimized partner from being with someone else. Obsession is often a major factor in a murder/suicide scenario.
- Mental Illness: Mental health issues, such as depression and paranoia, increase the chances of a lethal assault.
- Violation of a Protective Order (separation violence): When an offender believes they are about to lose their partner and can't envision life without the partner; or if the separation causes the offender despair or rage, they may choose to kill.
- Depression: Offenders who are acutely depressed and see little hope for moving beyond the depression may be candidates for homicide and suicide.
- Repeated Law Enforcement Response: 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.
- Escalation of Batterer Risk: A less obvious indicator of increasing danger may be the sharp escalation of personal risk undertaken by an offender; when an offender begins to act without regard to the legal or social consequences that previously constrained their violence, chances of lethal assault increase significantly.
- Hostage Taking/Kidnapping: A hostage-taker is at high risk of inflicting homicide.
- Pet Abuse: Abuse of a pet is often used as a clear, symbolic threat of death to the victim.

NEGATIVE CONSEQUENCES OF ARRESTING THE VICTIM

Arresting the victim may have numerous negative consequences. The victim can be disqualified from the CVC Program, public assistance (i.e. housing, TANF, SNAP, etc.), and emergency shelter—the vital resources needed to leave a dangerous situation. 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 reduces the probability

that the victim will call law enforcement again, putting the victim at increased risk, including homicide, suicide, or both. If children are involved, an arrest of the victim further traumatizes them as well.

In cases where officers have probable cause to believe an offense, such as assault, has been committed, every effort should be made to determine the predominant aggressor and proceed with a lawful arrest. Remember the dynamics involved in family violence. Family violence is an issue of power and control. Violence is only one of the batterer's tools used to control their victim. When making the arrest decision:

OFFICERS SHOULD LOOK FOR THE PERSON THAT:

- Inflicted the more severe injuries on the other
- Received the less severe injuries
- Has a history of violence against the other
- Used an inappropriate amount of force in response to an actual or perceived assault
- Is usually the aggressor
- Poses the most danger to the other
- Is feared by the other
- Is using whatever means possible to control the situation and the other person, including demanding the arrest of the other person

OFFICERS SHOULD SEEK TO DETERMINE IF:

- The stories offered by both parties make sense.
- Is one person overly helpful and apologetic?
- Is the person you believe to be the victim taking visual cues from another person about what to say?
- Can anyone else (i.e. children, witnesses, 911 call taker, etc.) corroborate either story?

THINGS NOT TO CONSIDER IN THE ARREST DECISION:

- 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
- 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

- The racial, cultural, social, political, professional position, or sexual orientation of either the victim or the alleged perpetrator

POSITIVE IMPACTS OF ARRESTING THE PREDOMINANT AGGRESSOR:

- 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

Officers must consider several issues before executing the arrest of the suspect. Investigating officers must consider the safety of all parties involved; analyze the information and evidence obtained through the investigation, and the impact of the arrest on the continued investigation.

Foremost in the investigator's mind should be the protection of the victim. If there is any indication that a suspect may seek retribution for the victim's report or encourage others to do so, the investigation should be accelerated, and an arrest should be made as soon as legally possible. Family violence assaults and many sexual assaults are committed by non-strangers, meaning the suspect has access to and knowledge of the victim. In many cases the victim and suspect may live and interact in similar circles and have mutual friends. Victims may obtain a protective order, and officers should inform the victim of their rights and assist them in obtaining the order as necessary. Officers should pay special attention to and document the level of violence used during the assault, threats made against the victim, efforts to pressure the victim to recant or stop prosecution, and any stalking-related activity. These are indications of a higher level of threat to the victim and extra precautions should be made to ensure the victim's safety.

When reviewing the arrest decision, investigators must analyze all the information obtained through the investigation. This provides an opportunity to identify any potential problems with witness or victim statements to resolve the problems or provide an explanation for issues that arise. When possible, it is beneficial to involve a prosecutor in the case as early as possible to ensure the details necessary are present. If upon careful review of the existing evidence and information the investigator develops probable cause to believe that an assault occurred and that the suspect committed the assault, then the investigator should obtain a "search and seizure/arrest" warrant.

In some instances, the officer may believe an offense occurred but is unable to obtain enough probable cause to obtain a warrant or make an arrest. In those cases, it is recommended that the case be presented to the grand jury for their review. If the grand jury determines that there is enough evidence for a trial, they will return a "true bill." If they determine there is not enough evidence to continue, they will fail to return an indictment or a "no-bill." If a case is "no-billed" and through your investigation you develop additional information or discover additional evidence, the case may be presented to a grand jury if the statute of limitation has not run out.

REPORT WRITING

OFFENSE REPORT

The offense report for sexual assault and family violence is crucial to the successful prosecution of the offender. The report provides the investigating officer the opportunity to preserve a chronological and real-time account of the facts and details of the case, which can be studied later by attorneys, judges, and juries. Although many components of the initial family violence report are essential, there are four main components that must be covered to ensure offender accountability:

1. Officers should include the nature of the familial relationship in every report regarding family violence. This provides many statutory provisions for the protection of the victim such as the ability to detain the offender after they post bail or the ability of the state to prosecute without victim's consent or testimony.
2. Establishing probable cause is crucial to protecting the victim, holding the offender accountable, and protecting the officer from civil liability for false arrest, and should be adequately documented. Each offense contains one or more of the four mental culpability levels: intentionally, knowingly, recklessly, or with criminal negligence. In addition to the culpable mental factors, each offense cites an act or omission that codifies the criminal violation.
3. Document the type of action taken to protect the victim, such as arrest or separation of parties. In addition to the arrest decision, officers are required to provide information to victims regarding referrals to resources that can further help them deal with their situation. An officer's efforts to provide the assistance should be included in the report.
4. Every indicator of lethality that was reported by the victim or observed by the officer should be described in detail.

{For a Danger/Lethality Assessment form, refer to Resources for Law Enforcement at www.safvic.org.}

The offense report should include the basic details of the case including *who, what, when, where, and why*. The reporting officer should ensure that they have recorded any observations, brief discussions, or other material information. Furthermore, it is imperative to identify the type of offense committed and clearly state the facts of the investigation that satisfy the elements of the offense.

Sexual assault offense reports contain similar investigative requirements as family violence incidents. Example:

Offense: Aggravated Sexual Assault

...during the initial interview, the victim reported that the suspect had held her down and placed a long kitchen knife to her throat. The victim heard him say, "If you scream, I'll kill you." The suspect then forced his penis into the victim's vagina repeatedly. The victim

feared for her life and did not scream. The victim repeatedly told the suspect “no” and did not consent to the attack.

PC § 22.021 Aggravated Sexual Assault — Person intentionally or knowingly causes the penetration of the sex organ of another by any means without that person’s consent and uses or exhibits a deadly weapon during the criminal episode (paraphrased).

In the example above, the elements of the offense were presented in one paragraph that clearly demonstrated the actions of the assailant and the helplessness of the victim. Although the last sentence explicitly explains that the victim did not give consent, accurate use of terms such as “held her down,” “knife to her throat,” “forced,” and “fear” paint a picture of someone who was not in a position of their own choosing. Furthermore, the descriptive terms also demonstrate the type of offense that was committed, the lethality of the suspect, and why the victim did not physically resist.

THE LANGUAGE OF SEX⁹

Law enforcement officers have both the privilege and the difficult task of responding to rape victims who call for help. Seeing the trauma on the face of a victim is difficult, and it may be tempting to use watered down language in order to ease the victim’s burden of having to relive the event. The use of minimizing language is a disservice, not only to the truth, but to the successful prosecution of the offender. The police report paints an indelible image of the crime and therefore must contain accurate language that does not inadvertently minimize the seriousness of the offense.

Everyone knows that consensual sexual acts between consenting adults are very different than forced sexual acts, but a close look shows us that we sometimes import “language of consent” to describe humiliating criminal sexual acts.

Many times, the threat of force in a sexual assault case is not overt; therefore, investigating officers must be cognizant of the language they use to describe the assault in the report. Because many officers and victims do not have the language to accurately describe the attacks, they use common vernacular, or they attempt to sanitize the events.¹⁰

Using terms such as “performed oral sex” implies consent or voluntary participation. For example:

The suspect tried to force the victim’s head down onto his penis. The victim told the suspect she did not want to do that. The suspect persisted and the victim then performed oral sex on the suspect.

The wording in this example could lead a jury to believe that because of the suspect’s perseverance, the victim consented to perform oral sex. This is a vivid demonstration of a

⁹ The Language of Sex (2009), Anne Munch, J.D., SAFVIC on the Scene, Volume 4, Issue 4.

¹⁰ Interviewing Victims of Sexual Assault (2004), Joanne Archambault, presented at the International Domestic Violence, Sexual Assault and Stalking Conference, San Diego, California.

sanitized report or a lack of understanding the dynamics and the language of sexual assaults. If the victim had made this statement verbatim, the officer should have attempted to clarify by asking questions such as:

- “Did the suspect continue to apply *pressure* to the back of your head and *force* it down toward his penis?”
- “Did the suspect *force* your mouth on his penis?”
- “Did you feel *threatened* or *fearful*?”
- “Did the suspect say anything else to you either before, during, or after he *forced* your mouth on his penis?”

With clarification, the officer can clearly relay the circumstance the victim faced during the attack. For example:

*The suspect tried to force the victim’s head down onto his penis by holding her by the back of the neck and applying pressure with his hand and fingers. The victim stated she told the suspect she did not want to perform oral sex, but the suspect continued to force the victim’s head down. The victim stated she felt powerless because of the strong grip and the pressure. The suspect forced his penis into the victim’s mouth.*¹¹

The initial report should clearly articulate the action taken by the victim, the suspect, and the responding officers. Officers should clearly articulate any medical or advocacy assistance offered or provided to the victim. Officers should also indicate that they provided the victim with information regarding the CVC Program and advocacy support.

An accurate sexual assault offense report is crucial to a successful prosecution. The report should recreate the series of events surrounding the attack, the scene of the attack, and the personal impact of the attack on the victim. A good report can aid a more thorough and aggressive prosecution, encourage the offender to plead guilty, and protect the victim from undue scrutiny or emotional hardship in court.

Each of the supplemental reports should contain details specific to that part of the investigation and should not make effort to rehash other aspects of the report. It is important to relay the information in each supplemental report in a way that is descriptive and accurate. Officers should be cautious to use the victim’s pseudonym in every instance where the victim information is available or could be obtained by an open records request.

USE OF A PSEUDONYM

Many times, victims will choose to use a pseudonym to protect their identity and personal information. The Code of Criminal Procedure (CCP) Article 57.01 defines *pseudonym* as a set of initials or a fictitious name chosen by a victim to designate the victim in all public files and records concerning the offense, including police summary reports, press releases, and records of initial proceedings. CCP Art. 57.02 (Confidentiality of Records and Files) stipulates a state Pseudonym Form will be used to record the pseudonym of a victim as well as the

¹¹ Ibid.

victim's true name, address, and telephone number. A completed and returned Pseudonym Form is confidential and may not be disclosed to any person unless ordered so by the court. It is an offense if a public servant knowingly discloses the name, address, and telephone number of the victim to any person who is not assisting in the investigation or prosecution of this offense. Violation of this article is a Class C misdemeanor.

If for some reason the Pseudonym Form is not obtained, the victim should be contacted prior to writing the report so the victim's information is not accidentally released in documents.

COURTESY REPORTS¹²

Any law enforcement agency should be prepared to take a courtesy report of sexual assault, regardless of jurisdiction. This would not require the law enforcement officer taking the report to be familiar with other state's penal codes or procedures. Rather, regular procedures should be followed within the law enforcement organization taking the report. This is a service that any law enforcement agency should be prepared to provide to someone who has been sexually assaulted in the aftermath of a natural disaster (i.e. Hurricane Katrina), when a student makes an outcry after returning home from college, while on vacation, etc.

CASE REPORT

Taking the time to do a complete case report will provide an accurate representation of the extensive work done on the investigation.

Family violence and sexual assault offense reports should consist of at least an initial case investigation and supplemental reports detailing the following:

- Forensic medical examination
- Crime scene search and evidence collection
- Detailed interviews of the victim(s), witness(es), and suspect(s)
- Laboratory analysis of the evidence
- The events surrounding the arrest of the suspect
- Case synopsis that compiles the pertinent information summarized to assist with prosecution
- Witness list detailing the involvement of each party involved

{For an example of a Family Violence Offense Report Supplement, refer to Resources for Law Enforcement at www.safvic.org.}

¹² End Violence Against Women (EVAW) International

FURTHER DETENTION OF FAMILY VIOLENCE BATTERERS¹³

The Texas Code of Criminal Procedure, Chapter 17, Article 17.291 allows for the extended detention of violent offenders who have committed family violence. After posting bail, the offender can be held for an additional four hours if there is probable cause to believe the violence may continue when the person is released. For example, if a peace officer arrests a family violence suspect who, while being transported to jail, tells the officer, “That’s okay. When I get out, I’m going to kill the bitch!” the peace officer would have probable cause to hold the suspect for four additional hours *after* the suspect has posted the bond. This gives the opportunity for the victim to do what is necessary to seek safe shelter.

If the incident is particularly egregious, for instance, the suspect tells the peace officer, “I’m going to kill the bitch! I’ve got a rifle and I’m going to blow her mother-fucking head off when I get out. She can’t hide from me and you can’t stop me!” then the suspect can be held for more than four hours and up to 48 hours *after* posting bond. The probable cause for this extended period must be obtained by the peace officer, in writing, by a magistrate. The magistrate’s considerations are based on the probable cause the officer provides showing the violence would continue if the suspect was released and if it is more than 24 hours, it must include probable cause that the suspect committed the most recent incident and that in the previous ten years, the suspect has been arrested:

- On more than one occasion for family violence; or
- For any other offense if a deadly weapon (§ 1.07 Penal Code definition) was used or exhibited during the commission of the offense or during immediate flight after commission of the offense.

ENFORCEMENT OF PROTECTIVE ORDERS, INCLUDING FULL FAITH AND CREDIT

PROTECTIVE ORDERS

VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN A FAMILY VIOLENCE, SEXUAL ASSAULT OR ABUSE, INDECENT ASSAULT, STALKING, OR TRAFFICKING CASE
PC § 25.07

Note that conditions of bond set in a family violence, sexual assault or abuse, indecent assault, stalking, or trafficking case apply the same as a protective order or MOEP issued under the Code of Criminal Procedure (see below).

A **Temporary Ex Parte Protective Order** is issued by the court as a notice to the person subject to the order that they are not to make contact with the victim, come to the victim’s residence or place of business, or come to the victim’s childcare or school facility. Temporary Ex Parte Protective Orders are good for 20 days unless the court extends it an additional 20 days for a maximum of 40 days. Before November of 2007, the Temporary Ex Parte Protective Order was criminally unenforceable because the judge issued the order in the absence of the person subject to the order (thus the name “Ex Parte,” meaning *one*

¹³ Sgt. Sandy Kline (ret), Houston Police Department, Family Violence Unit

party). However, after the 2007 Legislative Session, both an amendment to Article I, Sec. 11c of the Texas Constitution and changes to the language in Penal Code Sec. 25.07 (Violation of Certain Court Orders) now make it a crime to violate a Temporary Ex Parte Protective Order, and gives officers the same arrest authority as a violation of other protective orders.

{For detailed language, see Chapter 5: Family Violence Laws on page 66.}

A violation of a **Magistrate's Order for Emergency Protection** (MOEP) is a criminal violation with warrantless arrest authorities. These orders can be issued at the request of the victim, a prosecutor, a member of the Department of Family and Protective Services, a peace officer, or any other adult for a child victim (refer to Art. 17.292 as to who can request a MOEP). The magistrate executes MOEP after the offender has been arrested and before they are released from custody. Therefore, they can notify the defendant of the existence of the order and that violation of the order is subject to arrest and additional criminal penalties. In addition, magistrates are required to issue a MOEP if the arrest was for an offense that involved "serious bodily injury" (SBI) to the victim or the use or exhibition of a deadly weapon. The MOEP is good for *no more than 91 days* and *no less than 61 days*. However, if the offense did not involve SBI to the victim or the use or exhibition of a deadly weapon, the MOEP is good for *no more than 61 days* and *no less than 31 days*.

A **Final Protective Order** also carries criminal penalties and warrantless arrest authorities for a violation. The court issues a Final Protective Order in an open court hearing with both parties present to allow for due process or a default protective order may be issued if the respondent is properly served and does not appear. The criminal penalty is still available even with a default order. The final protective order is good for two years but can be modified by the court of record. In some circumstances, a protective order can last more than two years. This can occur if the respondent inflicted serious bodily injury to the applicant or a member of the applicant's family or household or the respondent was the subject of two or more previous protective orders rendered to protect the person on whose behalf the protective order is sought, and after finding by the court that the subject committed family violence and is likely to commit family violence in the future. Upon issuance, a Final Protective Order takes precedence over a MOEP or a Temporary Ex Parte Protective Order.

Officers are instructed by the Family Code to err on the side of caution and protection of the victim when determining the validity and reliability of a protective order. In addition, officers are forbidden by Penal Code Sec. 25.07 (Violation of Certain Court Orders) from arresting a person protected by that order for the violation of that order. The same code goes on to say that "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." In other words, even if *she* invites him back home, *he* is still in violation of the order and, if in the presence of an officer, the respondent SHALL be arrested.

When presented a certified or hard copy of a protective order from the victim, the peace officer is to presume that the protective order is valid on face value, unless:

- The order contains a termination date that has passed
- It is more than two years after the date the order was issued
- The law enforcement officer has been notified by the clerk of the court vacating the order

A brief summary of the types of protective orders is provided in the chart below.

TYPE OF PROTECTIVE ORDER	CRIMINAL ENFORCEMENT PROVISION	ARREST AUTHORITY
TEMPORARY EX PARTE	YES	YES (Mandatory if violation in the presence of peace officer) (Warrantless with probable cause outside officer's presence)
FINAL PROTECTIVE ORDER	YES	YES (Mandatory if violation in the presence of peace officer) (Warrantless with probable cause outside officer's presence)
MAGISTRATE'S ORDER FOR EMERGENCY PROTECTION	YES	YES (Mandatory if violation in the presence of peace officer) (Warrantless with probable cause outside officer's presence)
RESTRAINING ORDER (not a protective order)	NO	NO
PEACE BOND (not a protective order)	NO	NO

▲ 86th Legislative Change: Changes to corresponding CCP Article 7A as a result of **HB 4173** do not go into effect until January 1, 2021 and will simply combine Articles 6.08 and 6.09 with the prior provisions of this chapter into a new Article, 7B (Protective Orders). The revision is non-substantive and was passed simply to reorganize the non-family violence protective order laws in a more logical fashion.

FULL FAITH AND CREDIT FOR PROTECTIVE ORDERS FROM OTHER JURISDICTIONS

Both federal and Texas state law provide for the enforcement of protective orders from outside jurisdictions as if they were issued from within the officer's jurisdiction. If the order prohibits one person from committing violence, harassing, or threatening a family member or a member of the household, it should be enforced as if it were a protective order issued

in Texas. These orders can carry various names depending on the state of issue and require the investigating officer to read the language of the order to determine if it meets the criteria. If the officer is acting in good faith and enforces an order that, for whatever reason, is unenforceable from another jurisdiction, they are immune from civil liability. If the officer determines the order is a “Mutual Order” that refers to both parties as both applicant and respondent, generally the order is unenforceable.

OFFICER LIABILITY

The six most common areas of officer liability are:

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

VICTIM RECOVERY AND SERVICES

LOSSES FROM TRAUMA AND VICTIMIZATION

A considerable portion of the grief, pain, readjustment, and stress associated with trauma and victimization may be attributed to the losses endured by the victim. Each victim of violent crime yields something as a result of the crime. For some, the losses may be minimal and/or short term. For others, the losses are immense and lifelong. These losses may be tangible or conceptual, and may pertain to one’s mindsets, values, or perspectives related to a variety of issues. Among these losses are senses of:

- | | | | | |
|----------|----------|-----------|------------|------------|
| • Trust | • Future | • Faith | • Justice | • Property |
| • Safety | • Life | • Control | • Morality | • Fairness |

FACTORS OF RECOVERY

As noted earlier, the experiences of those who have been subjected to trauma and victimization are unique. No two events are the same; no two reactions to similar events are the same. There are, however, a few factors that may serve as prognostic indicators as to the potential for recovery from traumatic events. Among them are:

- The severity of the crisis reaction
- The individual’s perceived ability to control one’s life
- The individual’s ability to understand/comprehend what has happened
- A supportive environment
- Validation of the experience

The severity of the crisis reaction is significant when considering the individual's potential for recovery from a traumatic event. Posttraumatic Stress Disorder (PTSD) or Posttraumatic Stress Syndrome (PTSS) are anxiety disorders associated with serious traumatic events. PTSD and PTSS are characterized by such symptoms as survivor guilt, reliving the trauma in dreams, numbness and lack of involvement with reality, or recurrent thoughts and images. Many individuals diagnosed with PTSD/PTSS have described an initial reaction to the trauma that was profound, intense, and included elements of dissociation. While this is not to imply that everyone who experiences an intense trauma-related reaction or dissociation will develop PTSD/PTSS, these factors should be considered when developing referrals and resources for crime victims.

The individual's perceived ability to control one's life may be one of the most critical factors in the recovery process associated with criminal victimization. Many victims of crime describe a span of time beyond the event in which they feel as though they are functioning in a responsive or reactive mode. They note that the ability to make decisions, establish timetables, develop schedules or plans, and continue with daily life have been relinquished, having become elements of a system of which they have no control.

Additionally, especially in situations in which the threat of violence or the perceived threat of violence continues, individuals often feel that they are limiting or altering their activities, schedules, and plans in response to the threat. Again, this reactive or responsive manner of functioning deprives the individual of freedoms, autonomy, and a sense of security.

Reestablishing a sense of control may be a protracted process. Law enforcement officers, criminal justice professionals, and service providers may take advantage of opportunities to facilitate this process by offering options—as opposed to directives—whenever possible. Simple matters, such as allowing the individual to choose between two appointment times or choosing the day of the week for the appointment, may serve to instill a certain degree of decision-making ability, allowing the individual to take an active role in the process.

Obviously, issues regarding safety are far more complex. Actual or potential threats should never be minimized for the sake of the individual's peace of mind. Instead, working with the individual to establish safety and contingency plans may serve to instill a greater sense of control. In addition, providing education and insight into the systems and resources that may be utilized may also enhance the individual's control-taking efforts.

The individual's ability to comprehend what has happened is often directly proportionate to the level of applied interventions, the provision of information, and post-incident support services. "Crisis" is a relative term. A crisis is as significant as it is perceived to be. Very often, reactions to a specific incident are based on the information available to the individual about the incident. Likewise, a great deal of the stress, concern, fear, and anxiety experienced by the individual may be rooted in the lack of available information.

Considering the cognitive and emotional reactions associated with the trauma, the individual may emerge from the event with little comprehension or understanding of what has happened. It is at this point that officers and responders should consider efforts to facilitate

understanding, provide education and insight, and assess the individual's grasp of the magnitude and impact of the event.

A supportive environment is critical to the process of understanding the event, developing coping strategies, and moving from "crisis mode" to a more adaptive, responsive mode. An effective intervention strategy related to this effort involves the *validation of the experience* and the "normalization" of the individual's reactions to the event.

TRIGGER EVENTS

In the aftermath of a traumatic event, many crime victims will experience reactions, emotions, and sensations like the ones experienced during and immediately following the initial event. These reactions have been described as ranging from "pangs" of grief, anxiety, or fear to that of profound "re-experiences" that may be as intense as those experienced initially. Any number of sensory elements, such as sights, sounds, smells, and tactile stimulation (body memories), can generate these reactions. In this context, a "body memory" generally refers to the individual's reaction to a certain physical stimulus, sensation, or position that is associated with the traumatic event. An otherwise benign touch, such as placing a hand on the individual's shoulder, may be immediately associated with an element of an assault in which the victim was restrained by the shoulders.

There are numerous events or situations that may contribute to such experiences, such as:

- The identification of the assailant
- Sensing or experiencing something similar to the trauma
- Anniversaries of the event
- Holidays and significant life events
- Hearings, trials, appeals, etc.
- Media coverage of the event or similar events

RIPPLE EFFECT OF CRIME VICTIMIZATION

There are no individual crimes. Each offense perpetuates additional losses, elements of personal impact, and elements of impact on society. As the analogy implies, the ripples represent concentric waves of impact that multiply outward from the event, encompassing individuals, entities, and systems. It has been estimated that for each violent crime committed, an average of 24 people will be directly affected, and many more affected indirectly. If these estimates seem high, consider a hypothetical case and the subsequent response to a violent sexual assault:

- | | |
|------------------------------|-----------------------------|
| • 1 victim | • 2 crime scene specialists |
| • 4 immediate family members | • 2 investigators |
| • 6 extended family members | • 2 crime victim advocates |
| • 6 – 10 coworkers | • 2 prosecutors |
| • 6 – 10 friends | • 12 jurors |
| • 2 patrol officers | • <i>Possibly others...</i> |

SECONDARY VICTIMIZATION

The term “secondary victimization” refers to the negative impact on the victim by the actions, reactions, and processes of individuals and entities associated with the crime. Very often, crime victims will express that they were victimized by the offender and then re-victimized by _____. Among those that may be inserted in this blank are:

- the criminal justice system
- the media
- family and/or friends
- employers
- first responders/law enforcement officers
- others

KEY POINTS

- The victim may have never been exposed to the criminal justice system, law enforcement, emergency services, and other response-oriented services. Also, they may have never experienced a traumatic event. Help provide orientation, education, and insight.
- There are no “individual” victims. Most have families, other support systems, and networks. Facilitate access to these individuals and help keep them involved and informed.
- Needs that seem minor to the investigating officer may be extremely important to the victim. Provide for these needs.
- The victim is depending on you. Be dependable.
- The Texas Constitution, the *Texas Code of Criminal Procedure*, and the *Texas Family Code* all contain provisions and rights for crime victims. Afford these rights to all crime victims (see following section).
- Sexual assault victims have the right to assume a pseudonym. Make the offer.
- Support systems, such as advocacy organizations, trauma counselors, victim assistance providers, and others, are not luxuries—they are necessities.
- Ask yourself: “Whose case is it?”

VICTIM REFERRAL INFORMATION

State law requires officers to provide victims of family violence with information regarding their rights as a victim of a crime, along with the case number assigned to the investigation, the number with which to contact law enforcement, and referral resources for further social service support (CCP Art. 56.07). In some cases, the officer’s failure to provide this information has led to civil liability claims from the victim or the victim’s family. In addition, the law states the victim has the right to ask for and receive information regarding the procedure the defendant must obtain bail and be released.

CIVIL STANDBY ASSISTANCE

The Texas Code of Criminal Procedure states, “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.” *This provides officers the legal justification to remain and protect the victim of the offense (CCP Art. 5.045).*

FOLLOW-UP VISITS WITH THE VICTIM

Follow-up visits are very important to the case and to the victim. Officers should make efforts to get contact information for the victim exclusive of the defendant or the contact information of someone who will know the victim’s whereabouts (don’t just accept the cell phone number of the victim as a contact; tell her we need a person that can be contacted). In addition to the added sense of importance and safety felt by the victim, a follow-up visit will often reveal new evidence and perhaps new criminal offenses. Evidence of an assault, such as bruising and redness, will be more pronounced a day or so after the attack. Many protective order violations occur shortly after the defendant is released from jail, constituting additional intervention.

Follow-up visits demonstrate a continued commitment on the part of the officer and the department to solve the problem. Officers should complete a report detailing information obtained during the visit and any evidence collected.

VICTIM NOTIFICATION OF PENDING RELEASE OR ESCAPE OF THE DEFENDANT

The Texas Department of Criminal Justice or the county sheriff is charged with notifying the victim whenever the person convicted of family violence, stalking, or violation of a protective order or magistrate’s order is released or escapes from a correctional facility. The agency responsible will also notify local law enforcement officials in the county in which the victim resides.

VICTIM NOTIFICATION & INFORMATION

Texas Victim Information and Notification Everyday, or Texas VINE, (1-877-TX4-VINE) is a free and anonymous telephone service that provides victims of crime:

- Offender information and notification
- Status of offenders
- Basic case/court information

The Texas VINE is a statewide service that is sponsored by the Office of the Attorney General of Texas, Office of the Texas Governor, and local county officials. Texas VINE obtains information through an interface with the detention and court facilities throughout Texas and stores the information in the Securitas National Communications Center in Louisville, KY. The transfer of data occurs every 15 minutes, 24 hours a day, for custody information and as often as 15 minutes, 24 hours a day, for court information. Texas VINE provides information about offenders in custody in a county jail for jurisdictions that have agreements with the VINE system.

Information is available 24 hours a day, 365 days a year, and is available in English and Spanish. While there are several victim notification systems in place in Texas, there is

currently no statewide standardized system supporting all 254 counties and their local jails and courts.

INTEGRATED VICTIM SERVICES SYSTEM (IVSS)

IVSS is operated by the Texas Department of Criminal Justice (TDCJ) Victim Services Division. IVSS is a free, automated service that provides crime victims and criminal justice professionals with vital information and notification 24 hours a day, 365 days a year. This system will allow you to:

- Obtain information about offenders in TDCJ custody or on parole/mandatory supervision
- Register for notification of changes in offender status, such as offender release

All registrations through IVSS are kept completely confidential. For more information about IVSS, visit their website at <https://ivss.tdcj.texas.gov/>.

EFFECTIVE COURTROOM PERFORMANCE FOR LAW ENFORCEMENT OFFICERS¹

TO THE LAW ENFORCEMENT OFFICER:

Thank you for all your hard work in helping bring these cases to court.

BEFORE THE TRIAL: Diligent investigation, adequate documentation, and preparation are key to successful prosecution.

- If it's not in the incident report, it did not happen. The defense attorney will expect all relevant facts to be documented. If you leave out information in your report, it is important to admit as such when you are on the stand to make sure you cover all aspects of the truth. Officers must be prepared to step up and admit that it should have been in the report. It's best to tell the truth rather than get stymied by a poorly written report.
- All reports, statements, or other evidence in the case should be brought to the attention of the prosecutor in advance of trial so that he/she may adequately comply with discovery orders.
- If the defendant is not notified about evidence before trial, the court may exclude it from the trial.
- If you have not had previous courtroom experience, you may want to visit the court and listen to others testify.

Writing an accurate and complete offense report is key. Officers should note key facts about the case to jog their memory. Prosecution is not limited to what is in the report, but key facts, evidence documentation, and notes on interviews should be reflected in the report and supplemented as more investigation takes place. Make sure the following are done and noted in the file; if not, it could lead to evidence being excluded or worse—the defendant getting out on bond for the case to be reset:

- Color photo and injuries; family violence packets
- 911 calls
- Documented- excited utterance or comments from defendant made at scene or time of arrest
- Victim and witness statements
- Crime scene diagram
- Physical evidence
- Medical evidence
- Prior criminal history
- Audio or visual evidence (in car or videotaped)

¹ Adapted from the website of the Office of the Clark County (Indiana) Prosecuting Attorney, www.clarkprosecutor.org

CRIMINAL COURT PROCEDURE: Although a case is scheduled for a trial or hearing, the defendant may enter into a plea agreement. If that happens, it may not be necessary for you to testify. This often occurs because you have done a good job and the defense attorney sees the futility of going to trial. Cases that are unlikely to go to trial are:

- Cases where the detective has done a great job
- Cases where there is little to no supporting evidence—no photos or 911 calls
- Predominant aggressor identified after arrest
- Case where low range of punishment available

Know what type of court proceeding you are being called to testify (different rules apply):

- Examining trial
- Suppression hearing
- Trial before the court
- Bond hearing
- Jury trial

AT TRIAL: Effective courtroom performance is based on **preparation and honesty**.

- Before taking the stand, you should be thoroughly familiar with all reports, statements, or depositions given by or prepared by you. **Read each one at least THREE times** before trial.

Read reports before you take the stand. Go over key points with other officers and prosecutors before you go on the stand to see why you are testifying. Rarely is one officer being called to get in the “whole story”. Many different officers/witnesses are needed for their piece of the puzzle. Because more than likely “the rule” will be invoked, you need to talk with other officers *before* trial begins. This is the time to sort out who is best to testify as to each element or portion of the case. Know who else is testifying and what you are to bring with you to trial. A large problem is created when all law enforcement shows up but no one stopped by the property room to collect evidence for trial. This could result in a delay, an angry judge, and a perfect opportunity for defense to cross examine you.

- Be aware of your actions.
 - Do not chew gum or engage in other distracting habits while on the stand.
- Dress to convince. **Most of believability is how you look and talk.**
 - Uniform—clean and pressed
 - Not in uniform—professional attire
 - No tennis shoes
- Walk into court with good posture and confidence; carry your neatly organized file so that your whole look is professional.
- **Look the attorney or judge in the eye** when he/she asks a question.
- **LISTEN to the question(s).**

- **Always be polite**, even if the opposing attorney is not. You can score many points with the judge and jury by being **polite and professional**, especially when the other side is not.
- Answer, “**Yes, sir,**” “**No sir,**” “**Yes, ma’am,**” and/or “**No, ma’am.**”
- Any **change in testimony** at trial may result in impeachment by defense counsel and points scored for the defendant. It is okay to clarify prior testimony, especially when the defense attorney is asking the question differently. Make sure you clarify the change (i.e. “That is not the question I was asked last time,” or “I was not able to give a full answer last time.”).
- If you **forget**, say so, and you will be permitted to refer to your reports to refresh your memory.

While you should take your reports with you to the witness stand, keep in mind that a witness who fumbles through notes or reads verbatim from a report when asked about important events is not very effective. Officers should know their report well enough to be able to testify without it. Remember to know what kind of hearing you are testifying at—no notes in examining trial.

- Use **plain English** and define police terms the average juror is not likely to know.
- Make **eye contact** with the judge or jurors when testifying. Don’t look at the prosecutor for answers or when you get stuck. Look at the person who is asking you the question, then turn and address the jury and/or judge.
- It’s fine to say, “**I don’t know,**” or “I don’t understand your question.”
- Be **direct** with your answer(s). If it appears you are being evasive, you will seem less credible.
- If your answer is an **estimate or approximation**, say so.
- **Don’t preface your response with “I think,” or “I believe.”** State the facts clearly and without hesitation. Starting out with “I think” or “I believe” hurts your credibility and gives opposing counsel a chance to challenge you on cross examination.
- **Answer** only the question being asked and don’t provide additional information, especially on cross examination. Answer the question being asked. If interrupted, it is okay to ask the attorney to repeat the question or ask to be allowed to finish your answer—be polite but direct. Know what you can and cannot talk about. If you answer the question and evidence was excluded (Motion In Limine), **MISTRIAL**.

CROSS EXAMINATION

- Try not to **change your demeanor** when cross examination begins.
- **DO NOT LOSE YOUR TEMPER ON THE STAND.** You will make the defense attorney and the defendant very happy if you get angry or appear rattled. Maintain your composure and be polite, but firm, no matter how rude the attorney is.

- You may need to sound like a **broken record** in restating your testimony, as the defense attorney will likely try to get you to change your story.
- Offer the prosecutor cross examination **questions to be used on the opposing expert or witness**. Your expertise is often invaluable in crafting a winning strategy. Although this may not be needed, it is more important you document everything you know.

OFFICER AS EXPERT

- Expert testimony may be necessary to **explain victim behavior that is completely normal for someone who has been severely traumatized** but may seem irrational to a jury or judge.
- Experts should never testify as to whether they believe the victim is **telling the truth**.
- Do not offer opinions outside your **area of expertise**.
- **TEXAS CASE EXAMPLE:** Expert testimony of a women's shelter director explained emotional and behavioral patterns typical of spousal abuse, explaining why some victims of spousal abuse may recant their accusations. The testimony was both relevant and probative in prosecution for assault of defendant's wife, as it consisted of specialized information valuable in assisting the jury in understanding evidence, and testimony did not improperly attempt to replace jury as trier of fact, thus, it was admissible. Rules of Crim. Evid., Rule 702. *Scugoza v. State*, 949 S.W.2d 360 (Tex. App. San Antonio 1997).

BIASES YOU CAN HELP OVERCOME

By addressing the biases present at every stage of the case, from initial interviews through closing arguments, a law enforcement officer can greatly increase the likelihood the jury will properly attribute blame with the perpetrator.

BLAME THE VICTIM

1. Responsibility Bias

Jurors may believe that the victim is responsible for making the batterer or rapist angry. The police officer can help the jury understand that the offender **chose to commit these crimes against the victim and should be held accountable for his actions**.

2. Suspicion Bias

Jurors may believe that the accused is the true victim; that anyone alleging rape or domestic violence is likely lying and taking advantage of the system. A law enforcement officer can help **bolster the victim's credibility** by testifying in a manner that conveys confidence in her version of the facts. The officer can help

the prosecutor identify and fill gaps in the evidence; otherwise, the jury may view any gaps as impinging on the victim's truthfulness.

3. Defensive Attribution Bias

Jurors may be afraid for their own safety and want to distance themselves from the victim to gain a sense of control over their destiny. **By blaming the victim, a juror may feel he/she can distance himself/herself from danger and gain a sense of safety.** Particularly, jurors are more likely to adopt ways of thinking to address their fear of being harmed in the same way as the domestic violence or sexual assault victim. Regardless of how ridiculous the reality of their blaming is, jurors may say, "I would never have..." or "I would have made sure..."

THE RULE

The "rule" means that if you are going to testify as a witness, you may not be in the courtroom when others are testifying. Officers **cannot** talk to other witnesses about the case once the rule has been invoked; they can only talk to the lawyers about their testimony.

COMMON QUESTIONS ASKED ON DIRECT EXAMINATION OF OFFICER IN A DOMESTIC VIOLENCE CASE (with sample answers, which may vary)

1. *What is your occupation and rank? Please describe your responsibilities.*
I am a police officer and my rank is sergeant. I drive with a partner officer and we patrol Sector A within the City of Austin, Texas. Usually, I work second shift, from 3PM to 11PM. We respond to calls from Austin Police Department emergency communications, but also stop and investigate if we see suspicious activity while patrolling.
2. *For which department do you work?*
Austin Police Department.
3. *For how long have you been a law enforcement officer?*
Eleven years.
4. *What special training do you have to be a law enforcement officer?*
I received six months of basic officer training with the Austin Police Department Training Academy 11 years ago. Then every year, I have received at least an additional 20 hours of refresher training. I also have specialized training to be a detective and have received certificates from TCOLE (Texas Commission on Law Enforcement) for taking specialized training in drunk driving, child abuse investigations, and family violence.
5. *What special training do you have in the area of family violence?*
In addition to the original eight hours from the APD Training Academy and eight hours every year from TCOLE, for the past six years I have attended the eight-hour family violence training sponsored by the Travis County Family Violence Task Force and the District Attorney's Office. For the past three years, I have also been a trainer with them, speaking to younger officers about the correct way to respond to and investigate family violence cases.

6. *About how many calls have you responded to as a law enforcement officer?*
In 11 years as an officer, approximately four calls per eight-hour shift, with five shifts per week, and about 50 weeks worked each year equals 1,000 calls per year; so, that's about 11,000 calls since I started.
7. *About how many of those calls involved family violence?*
Of those, at least half have been family violence calls; so, I'd say nearly 6,000 family violence calls.
8. *On the night of June 10, 2005, were you on duty?*
Yes.
9. *Did you receive a family violence call on that night?*
Yes.
10. *About what time were you dispatched?*
Eight o'clock in the evening.
11. *About what time did you arrive at the scene of 10 Smith Street?*
Five minutes past eight o'clock in the evening.
12. *What, if anything, did you observe on your arrival to 10 Smith Street?*
A white female in her early 20s standing outside the open front doorway.
13. *What, if any, demeanor did you observe on her?*
She was crying and hyperventilating; she could barely get her words out. She was visibly upset and scared.
14. *What, if any, injuries did you observe on her?*
She had purplish bruises around her right eye and on the right side of her face; she also had purplish bruising on her left arm.
15. *What did you do upon your arrival to 10 Smith Street?*
My partner, Officer Mary Jones, and I approached the house with caution and asked the woman in the doorway if she had called the police. She said she had and that her boyfriend had just run out the back door.
16. *What did you do next?*
Officer Jones ran around to the back with her gun drawn and I hurried through the house toward the back door. We found the boyfriend hiding outside the back door. We kept the parties separated and Officer Jones interviewed the suspect's boyfriend while I interviewed the victim.
17. *What, if anything, did she say to you?*
At first she said everything was okay and we could leave.
18. *Did you believe her?*
No.
19. *Why not?*
Because her demeanor indicated to me that she was really scared; plus, I could see the bruises on her. My training and experience have taught me that domestic violence

victims sometimes say everything is okay in front of the batterer because they are afraid of what he'll do if she tells us that he beat her.

20. *So, what, if anything, did you say to her?*

I told her that we'd do our best to protect her, I could see the bruises, and I wanted to help her, but to do that, I'd need her to tell me what happened.

21. *And how did she respond?*

She said her boyfriend, John Doe, had punched her in the eye and grabbed her arm to pull her away from the phone when she was trying to call 911 for help. She said he had also hit her in the head with the butt of his .357 Magnum. She stated she was terrified of him and that he has beaten her up in the past when he gets jealous. Based on her injuries and the fact that her eye was swelling up, I called the EMTs to provide medical attention for her and determine if she needed to go to the hospital.

22. *Did you take any photos of her injuries?*

Yes.

23. *I show this photo that has been marked as Prosecution Exhibit #1 and ask you to identify it.*

That's a photo of Jane Longhorn that I took on the night of June 10, 2005 at her home at 10 Smith Street in Austin, Texas. I can tell it's the photo I took because it is marked with her case name and number on the back as you can see.

24. *Is this a true and accurate depiction of how Jane Longhorn looked on the night of June 10, 2005?*

Yes.

25. *What did you do next?*

I saw a gun on the floor that I recognized to be a .357 Magnum based on my training and experience.

The prosecutor will next:

- have the exhibit-gun marked;
- show it to defense counsel;
- ask permission to approach you in the witness stand;
- show you the gun; and
- establish the foundation for getting the gun admitted into evidence.

26. *Officer, I show you State's Exhibit #2 for identification and ask you to examine it. Have you seen this before?*

Yes. I first saw it on the night of June 10th, 2005 at the Longhorn residence.

27. *How are you able to recognize it as the same gun?*

I recognize it to be a .357 S&W Magnum and it has my evidence tag on it, listing the date it was seized, case number, and my name.

28. *Is this gun, marked as Exhibit #2 for identification purposes in the same or substantially same condition today as when you first saw it on June 10th, 2005?*

Yes. The only thing different is my evidence tag on it.

The prosecutor will then move to admit the gun into evidence, have it marked as admitted, and be able to reference it throughout the trial.

29. *What did you do next?*

I observed Officer Jones place the suspect in handcuffs and take him to the patrol car. She and I then discussed what each party had told us, and we decided that we had probable cause to believe the boyfriend had committed assault and battery on the victim and had interfered with her attempt to place a 911 call—both crimes. On that basis, Officer Jones read him his rights and placed him under arrest.

30. *What happened next?*

I called Jane Longhorn the next week to take follow-up photos because the bruises usually get much worse a few days later. But she then said she didn't want me to take any pictures and wasn't going to testify against him in court.

31. *Were you surprised that she had changed her mind about testifying?*

No.

32. *Why not?*

Because it is not uncommon for family violence victims to go back with their batterers and refuse to testify in court against them.

33. *Based on your training and experience, what are some of the reasons why abuse victims go back with the batterer?*

Well, many of the defendants call the victims from jail and either beg them to refuse to testify or threaten them if they do cooperate with the prosecutor. Many victims can't pay the rent without the defendant and don't want to become homeless with their kids. Some have no job skills and may not have a support system. Most of the victims have low self-esteem from getting beaten down, and some are child abuse victims, too, so they think this is just the way families are.

34. *So, Officer, what you are saying is that in your experience, most of the time the victims are telling the truth but recant or go back to the abuser for other reasons?*

Yes. That is correct.

35. *Thank you, Officer. I have no further questions.*

You're welcome.

COMMON QUESTIONS ASKED ON DIRECT EXAMINATION OF AN OFFICER IN A SEXUAL ASSAULT CASE (with sample answers, which may vary)

1. *What is your occupation and rank? Please describe your responsibilities.*

I am a police officer and my rank is sergeant. I drive with a partner officer and we patrol Sector A within the City of Austin, Texas. Usually I work second shift, from 3PM to 11PM. We respond to calls from Austin Police Department emergency communications, but also stop and investigate if we see suspicious activity while patrolling.

2. *For which department do you work?*

Austin Police Department

3. *For how long have you been a law enforcement officer?*
Eleven years.
4. *What special training do you have to be a law enforcement officer?*
I received six months of basic officer training with the Austin Police Department Training Academy 11 years ago. Then every year, I have received at least an additional eight hours of refresher training. I also have specialized training to be a detective and have received certificates from TCOLE (Texas Commission on Law Enforcement) for taking specialized training in drunk driving, child abuse investigation, domestic violence, and sexual assault.
5. *On June 10, 2005, were you on duty?*
Yes.
6. *Did you receive a sexual assault call that day?*
Yes.
7. *About what time were you dispatched?*
Four o'clock in the afternoon.
8. *What time did you arrive at the scene of 10 Smith Street?*
Five minutes past four o'clock in the afternoon.
9. *What, if anything, did you observe on your arrival to 10 Smith Street?*
Ten Smith Street is a house, and I first confirmed the address. I didn't see anyone outside, so I knocked on the door. A white female in her early 20s answered the door. I identified myself as an officer with the Austin Police Department and she let me inside.
10. *What, if any, demeanor did you observe on her?*
She seemed to be exhausted, but overall her demeanor was normal and calm.
11. *What, if any, injuries did you observe on her?*
I did not observe any injuries.
12. *Was anyone else present?*
No.
13. *What happened after you entered the house?*
I informed Ms. Johnson that I was going to ask her some questions and explained that she should take as much time as she needed because it was important for her to give me as much information as she could remember.
14. *What, if anything, did Ms. Johnson tell you at that time?*
She said she had been at a party with her friends the night before, which was June 9, 2005, at 250 Maple Street. She did not know who lived there, but she said her friend knew the resident. Ms. Johnson and her friends arrived at approximately 10:30PM. Ms. Johnson then said that she had spent about one hour at the party before meeting a man there who said his name was Peter. She said she then talked and drank with Peter for about 90 minutes. Ms. Johnson explained that she suddenly began to feel extremely drowsy and had trouble keeping her eyes open. She said she had not been drinking quickly and that alcohol typically does not affect her that way. She said she

remembered thinking for a split second that something was wrong and that she needed to find her friends to take her home. After that, she said she had no memory at all until she woke up the next morning of June 10 in a bedroom at 250 Maple Street. She said she woke up with her underwear off and felt soreness throughout her genital area.

15. *What did you think about Ms. Johnson's statement?*

Based on my experience and training in investigating drug-facilitated sexual assaults, I thought it sounded like a textbook example of a drug-facilitated sexual assault.

16. *What about your experience made you think that?*

First, the symptoms she described were perfectly in line with what rohypnol does to people. Sexual predators often *spike* their victims' drinks with it, and extreme drowsiness sets in almost immediately. Then, suddenly, the victim is unconscious. If Ms. Johnson had been drugged with rohypnol, she would not have had the time nor ability to seek help from friends. Another symptom Ms. Johnson described that is very consistent with rohypnol is the impact on her memory. A lot of people think this drug causes memory loss, but actually what it does is cause anterior grade amnesia. That means the victim's brain does not ever create new memories during the time the drug is in effect. The gap in memory Ms. Johnson described was perfectly in line with that effect of rohypnol.

It also made sense that Ms. Johnson did not appear to be intoxicated when I arrived at her house that afternoon. Rohypnol quickly exits the body. The concentration in blood and urine starts to rapidly decrease after only a few hours, and by the time approximately six hours have passed, the drug will be completely gone. If Ms. Johnson had been drugged the previous night at approximately midnight, the rohypnol would have been long gone by the time I saw her 16 hours later.

17. *What happened after you took Ms. Johnson's statement?*

I asked her whether she would consent to having a sexual assault examination performed. She agreed.

18. *Why did you want her to have an examination done?*

Even though too much time would have passed to find traces of rohypnol in Ms. Johnson's system, it was still important to document any injuries or physical evidence related to sexual assault. In a case involving a drugging, if sexual contact occurred, it would have been while the victim was unconscious and unable to consent, so it's important to have the examination performed to document whether there are any signs of sexual contact.

CHAPTER NINE (A): STALKING

Learning Objectives: Understanding Stalking

By the end of this section, the student will be able to identify and discuss the following terms, concepts, and practices as they relate to stalking:

- A. Forms of Stalking Behavior
- B. Stalking and the Use of Technology
 - 1. Internet and Computer Monitoring
 - i. Spyware and Keystroke Loggers
 - ii. Electronic Mail & Email Sniffers
 - 2. Surveillance: Cameras and Geotagging
 - i. Cameras
 - ii. EXIF Data
 - 3. Global Positioning Systems
 - 4. Phone Technology and Interception
 - i. TTYs and Relay Services
 - ii. Voice over Internet Protocol/Internet Telephony
 - iii. Mobile Phones and Text Messaging
 - iv. Interception
 - 5. Social Networking
 - i. Social Networking Sites
 - 6. Online Information and Data Brokers
- C. Victim's Response
 - 1. Victim's Coping Mechanisms
 - 2. Behaviors of Stalking Victim
 - 3. Effects on the Stalking Victim
 - 4. Long-Term Effects on a Stalking Victim
- D. The Role of Law Enforcement
 - 1. Law Enforcement's Advice for a Stalking Victim
- E. State and Federal Laws
 - 1. Texas State Laws
 - 2. Texas Stalking Cases
 - 3. Federal Laws

The crime of stalking is illegal in all 50 states and U.S. Territories, and the Uniform Code of Military Justice (UCMJ) lists stalking as an offense. Federal legislation exists to cover stalking and family violence when it crosses state lines or occurs on federal land. Yet, stalking remains a difficult crime to document and control. It is different from other crimes in three major ways:

- It involves repeated victimization;
- It is a series of incidents rather than a single criminal act; and
- It can be defined by the fear it causes in the victim or would cause a reasonable person.

Stalking can be an aspect of family violence, with a perpetrator stalking his partner during the relationship. The stakes go up immensely when the abused victim leaves the abusive relationship. Read any newspaper article about a family violence homicide. When the batterer kills the victim, the words “estranged,” “divorced,” “separated,” “tried to leave,” or “tried to end the relationship” will invariably appear. Therefore, when a criminal justice professional or other person who may be acquainted with a battered victim knows the victim is about to leave the abusive relationship, it is **vital** that the victim be warned that the most dangerous, life-threatening time will be trying to leave and stay gone. Safety planning is an essential undertaking for the victim at that time.

FORMS OF STALKING BEHAVIOR

A batterer/stalker does not always need to use physical violence to control his victim. He has some powerful psychological means to coerce and control at his disposal. One of the most common tools the stalker will use is surveillance of the victim. Many of the surveillance behaviors would not be considered crimes if each one was viewed as a solitary act. It is the totality of the actions, along with the fear experienced by the victim, that determine stalking. This type of stalking must be well-documented to establish a pattern of stalking and fear that it instills in the victim.

The stalker may do any or all the following:

- Surveillance of the victim (i.e. following the victim to and from home, work, class, etc.). This monitoring may be subtle or blatant.
- Showing up in the same public places where the victim may be spending time, such as the library, grocery store, gym, restaurant/bar, etc. After a period of this unnerving behavior, the victim’s response may be to not go out to public places anymore, which contributes to her isolation from societal contacts and help.
- Appearing unexpectedly at the victim’s residence, work, school, etc. These unsolicited and uninvited visits are part of the stalker’s desire to have continued contact with his victim and are also meant to let the victim know that he is not going to leave her alone.
- Monitoring the victim’s daily life, including knowing who all the visitors are at the victim’s residence, watching whom the victim may talk to, tracking the victim’s phone calls or voicemail box, and even knowing what the victim is wearing each day.
- Making excessive telephone calls to the victim. Sometimes these calls can number as many as one hundred or more per day and may occur at all hours, interfering with the victim’s ability to work, study, sleep, etc.
- Attempting to engage the victim in long telephone conversations. The stalker may plead with the victim for hours, telling her how he can’t live without her, life isn’t worth living, she is his everything, and he will change. He will beg for her to come back. In the next breath, he will tell her that if she doesn’t return, she has left him no choice but to hurt her, harm her, kill her, or harm those that she loves.
- Leaving notes on her car, using her email, sending mail, and conveying messages through friends or relatives.
- Causing damage to the victim’s property, especially the car (i.e. graffiti or slashed tires), so that the victim has no mobility to continue with daily routines.

- Running the victim off the road(s) or chasing after the victim down the highway(s) while in motor vehicles. The stalker may point a gun at the victim, causing the victim to swerve or take other evasive actions while driving. This behavior is difficult to prove unless there are other witnesses (the stalker will deny having done anything).
- Kidnapping or hiding their children from the victim. If there are no legal actions pending or custody determined, it may be difficult for law enforcement to do much other than to direct the victim to seek civil action. Taking the children is an attempt to force the victim to deal with the stalker.

When the stalker fails to convince the victim to return to the relationship by pleading, begging, and cajoling, the stalker may punish the victim. Stalking behaviors may then be possessive or obsessive in attempts to get the victim back. These behaviors present as incessant (i.e. phone calls at all hours) or punitive (i.e. slashing tires). The stalking behavior can be less overt, but no less damaging to the victim's safety and peace of mind, and may include:

- Posting notices, including intimate information, in public places, or mailing/emailing compromising photos or negative information about the victim to the victim's family, friends, and coworkers.
- Filing frivolous legal actions to cost the victim time and money.
- Filing for a mental health warrant to involuntarily commit the victim to a mental health facility. This false commitment can be criminally charged if it can be proven it was done maliciously.
- Giving away the victim's belongings without permission or ordering things on the victim's behalf, such as 30 pizzas to be delivered to the victim's residence or signing them up for credit cards they never wanted.
- Interrogating the victim's children about who the victim might be dating, where the victim goes, who may call the residence, and what the victim is saying about the stalker.
- Telling the victim that the stalker will get custody of the children and she will never see them again.
- In a same-sex relationship, the stalker may threaten to "out" or expose the same-sex relationship to the victim's family, coworkers, or community.

The perpetrator's physical controls can include threats, which are difficult to prove without corroborating evidence. The stalker will often threaten to harm the victim, or the victim's family, friends, children, and pets. The stalker may threaten to burn down the home while the victim is asleep. Sometimes the threats can be vague, such as, "I'm going to get you." The victim is terrified and knows what the stalker may mean, but this type of comment is easily explained away by the stalker as meaning he was going to get the victim a bouquet of flowers or gift.

It may be possible to establish that a physical assault occurred because the evidence may be visible. Another assault that can occur and go unmentioned is sexual assault. A victim, out of embarrassment, will seldom advise a law enforcement officer that she has been sexually assaulted unless the law enforcement officer asks; even then, they may not share these details. The law enforcement officer's investigation should include questions regarding any unwanted sexual behaviors and may need to be very specific about the behavior of the sexual assault. The

victim may submit to having sex, but submission is not consent and if the victim submits to survive or avoid further abuse, then it is sexual assault. It is important to get a complete picture of the victimization; a thorough investigation can bring to light additional crimes that have been perpetrated on the victim.

STALKING AND THE USE OF TECHNOLOGY¹

Technology has numerous benefits to our lives and the lives of victims of sexual assault and family violence. However, increased technology is giving stalkers opportunities to track, monitor, and contact victims in innovative ways. These new opportunities to stalk are only limited by the stalker's imagination and financial budget. Some perpetrators install Global Positioning System (GPS) devices to stalk their victim's real-time location with extraordinary accuracy, while others use phones to leave hundreds of voice or text messages in a single day. Perpetrators use online databases, electronic records, and web search engines to locate, track, and harass current or former partners. Regardless of the tool or technology used, perpetrators have the same primary goal: gaining and maintaining control over their victims.

Technology is rapidly changing with new products being developed to aide stalkers (intentionally and non-intentionally) in surveillance and harassment. Increasingly, various types of technology are merging. For example, cell phones typically include a camera, GPS, emails, and text messages, and can have access to personal records and accounts.

INTERNET AND COMPUTER MONITORING

One tool in the stalker's arsenal is the Internet or computer monitoring. Perpetrators can stalk and harass a victim in a variety of ways by using websites, applications (apps), software, and hardware. It is possible victims might be unaware of the perpetrator's actions. If computer monitoring is being used to stalk, a victim may say the following:

- "Suddenly programs opened, and my mouse moved on its own."
- "My bank account was overdrawn."
- "He knew where I was going and when."
- "He must have been getting into my email account and deleting, reading, and faking messages."
- "He gave me the laptop as a gift and used to fix it for me."
- "He works for my company's Information Technology (IT) department, for an Internet Service Provider (ISP)."

The victim may not know how tech-savvy the perpetrator is. The same skill of manipulation that some perpetrators use to hide their abuse may also mask how much they know or if they have access to technology.

¹ Safety Net: The National Safe and Strategic Technology Project, 2004

Perpetrators who have physical access to a victim's computer(s) do not need any special devices in order to gain information about a victim's computer use. A feature of all common web browsers, known as the "Internet History," shows every website that someone visits. For example, a perpetrator could see that someone had visited victim resource websites, researched apartments, or sought job applications. Alternatively, 'cookies' (which allow a website to store information on a user's machine and later retrieve it, generally for marketing purposes) stored on a computer might also indicate what website it was downloaded from. A perpetrator could view these cookies, determine the source of the cookie, and draw conclusions about the victim's activities or plans.

Perpetrators continue to identify and adapt new computer software and hardware tools that allow them to further stalk and harass their victims. They not only use low-technology monitoring options, such as viewing the website browser history or intercepting email, but also are increasingly using more sophisticated spyware software and hardware for surveillance.

SPYWARE AND KEYSTROKE LOGGERS

Computer monitoring software or "spyware" allows the installer to gather information about the user's computer activity, often without the user's knowledge or consent. Spyware is utilized by perpetrators to monitor computer and Internet activities and discover information about the user's present and future actions.

Spyware can be loaded onto the computer by having either physical access to the computer or remote access. This can be done through hacking or by sending it as an email attachment, direct message, etc. When opened, the spyware immediately installs onto the computer without notification to the user, which then sends activity reports to the perpetrator. A perpetrator can purchase legal and readily available spyware or spyware services online at low costs. The remote installation feature, offered by most, is one that perpetrators find very useful in misusing spyware to monitor victims. Once installed, perpetrators can view keystrokes typed, websites visited, applications opened, emails sent/received, chat conversations, and instant messages. Additionally, they can uncover passwords and usernames to private accounts, as well turn on connected webcams.

In addition to software programs, perpetrators can use hardware devices called "keystroke loggers" that record every key typed, including all passwords, Personal Identification Numbers (PINs), websites, and emails. Keystroke loggers can be small devices that are inserted into a USB port or between the keyboard cable and back of the computer, although they can also be embedded in entire keyboards or a mouse. There are now keystroke logging devices available for laptop computers that are placed inside the laptop, making it difficult to detect.

ELECTRONIC MAIL & EMAIL SNIFFERS

Another means of contacting a victim or accessing their communication accounts is to guess or steal a username and/or password. A perpetrator might ask a mutual acquaintance for the victim's screen name or email address. If the perpetrator knows the victim well, he might be able to guess a password and access a web-based mail system to read all the emails stored in that

account. He might also pose as the victim by sending an email from that account to friends, coworkers, or family members to embarrass, intimidate, or threaten those people. A perpetrator could also use an anonymous remailer to strip the identifying information from a harassing email before it is sent to the recipient, making the email virtually untraceable.

There are also several free and low-cost hacking tools available online that a perpetrator can use. “Sniffer” programs “sniff” through email and internet activity to identify passwords. The information gained by the perpetrator could help plan an assault, locate the victim, disrupt her support system, directly harass her, gain access to financial accounts, confront the victim with private information or communications, and otherwise disrupt the victim’s life. An incest perpetrator might seek to control a victim’s access to friends or helpers outside of the home, or make sure that the victim doesn’t tell anyone about the abuse.

Individuals can identify detailed information about the origin of an email via the “email header.” The complete email header is a record of who sent the email, which network it originated from, which email servers processed it, time/date stamps, the email client, and encoding information. It is important that a victim who is receiving harassing emails from a perpetrator keeps the emails and does not delete them. The original email will be needed to access the full header.

Email systems not using SMTP (simple mail transfer protocol) will not have the same detailed information available. An example of an email header follows:

```
Microsoft Mail Internet Headers Version 2.0
Received: from SEARCH.ORG ([64.162.18.2]) by sgisrv1.search.org with Microsoft SMTPSVC(5.0.2195.3779);
Wed, 16 Oct 2002 09:03:22 -0700
Received: from web12608.mail.yahoo.com ([216.136.173.231]) by SEARCH.ORG with SMTP (IOA-IPAD 2.54) id
3548400; Wed, 16 Oct 2002 09:08:38 -0800
Message-ID: <20021016160321.27540.qmail@web12608.mail.yahoo.com>
Received: from [207.93.64.85] by web12608.mail.yahoo.com via HTTP; Wed, 16 Oct 2002 09:03:21 PDT
Date: Wed, 16 Oct 2002 09:03:21 -0700 (PDT)
From: John Doe <johndoe@yahoo.com> Subject: Fwd: Free kittens?
To: jqs@search.org MIME-Version: 1.0
Content-Type: multipart/mixed; boundary="0-1242707647-1034784201=:26523" Return-Path:
johndoe@yahoo.com
X-OriginalArrivalTime: 16 Oct 2002 16:03:22.0330 (UTC) FILETIME=[8D3C1BA0:01C2752D]
```

Depending on the type of email service, you may be able to access different types of information. Gmail, Yahoo, and Outlook are free services, which may not be linked to financial or accurate contact information. However, some services are fee-based, so those accounts may lead you to financial and contact information. Emails sent from an employer’s system may lead you to a perpetrator’s place of employment or add another dimension to the crime (if they are not legitimately using the address or if they are violating company rules).

The goal of finding the originating address is to determine to whom the IP address is assigned. This may lead you to an Internet café, library, or other public Internet access point. That entity can then investigate their records in order to determine the identity of the person using that address at the date and time of the message.

A potential problem to tracking IP addresses is whether an IP address is **statically** or **dynamically** assigned. A **static address** is assigned to only one computer or server as is the case for some businesses, and cable and DSL subscribers. With a **dynamic address**, the user borrows an address and it may be shared among several users; for example, dial-up subscribers and organizations running DHCP (Dynamic Host Configuration Protocol). This will require user activity logs to determine the information needed for the investigation, and storage of these logs can be time limited.

Keep in mind that victims of family violence, sexual assault, and stalking may also use these tools to reach out for help, stay in contact with their support network, or communicate with the perpetrator, such as in cases of shared custody. Perpetrators can take advantage of these situations by tracking a victim's communications using spyware or a "sniffer," or by using the medium to harass, threaten, or stalk the victim.

SURVEILLANCE: CAMERAS AND GEOTAGGING

CAMERAS

The advent of digital imaging technology has created access to small, cheap still and video cameras. In addition, most mobile phones have cameras with video capability and many laptop computers have webcams installed or built into the device. Many people have immediate access to pictures of events with the ability to distribute them via the Internet or a phone with the press of a button. Consumers enjoy the ability to take pictures of parties, concerts, and special events and post online to share with others. Perpetrators can also use this technology to post and share illegal or inappropriate pictures and videos. In effect, perpetrators have unprecedented access to child pornography, rape footage, and surveillance of stalking victims.

Cameras and imaging technology have such a wide variety of uses that victims may report a similarly wide variety of experiences, including:

- "Other students were talking about seeing naked pictures of me online."
- "After I fell asleep at the party, I found out later that footage of my rape was on the web."
- "My child was molested, and the perpetrator sold pictures online."
- "My friends received an email with an attached video of us having sex."
- "After we broke up, he wouldn't give back the video we made for fun, and he's threatened to send it to my current fiancé."
- "Someone I met online offered to pay me to strip on my webcam."
- "Someone my child met online sent these really graphic images."

When investigating a case, keep in mind a perpetrator can gain access to and use cameras in the following ways:

- Purchasing surveillance equipment is getting cheaper (kits starting under \$100 and are available on websites and in stores).
- Most cell phones have camera and video capability. Photos and videos can be sent

to others via email/text message or to the Internet with the click of a button. Images that perpetrators post or distribute online might be have been taken without the consent of the victim or could be old pictures that were consensual, but the distribution of them is not and is therefore harassing to the victim.

- Many computers include webcams or cameras which can record images to be sent over the Internet. Many spyware programs allow a computer webcam to be remotely activated, allowing a perpetrator to turn the camera on and off at any time to monitor the victim.
- Perpetrators can also use small hidden cameras to monitor their victims and learn their routines. They might also be used to frighten or harass the victim by sending messages like, “I’m watching you,” or “I know what you are doing.”
- Perpetrators will also misuse publicly available images, including traffic cameras or those set up for tourism (i.e. at a university or seaside town).

EXIF DATA

Stalkers can use information available within digital photographs to identify the location where the photo was taken. The Exchangeable Image File format (EXIF) specification adds metadata to photographs, such as specifications about the photographer, camera settings, model of the camera, and location (if the camera has GPS). The process of storing location information captured via GPS (latitude and longitude) in an image’s EXIF data is called “geotagging.” Many digital cameras now have GPS capabilities (some with Wi-Fi) and most phones contain GPS locator technology and can automatically add geolocation information to the pictures at the time they are taken. As a result, individuals often share information about their location when sharing photos online, the *cloud*, or via email or text. Some social networking sites do strip this data from photographs when they are uploaded to the Internet, but many do not. Photos shared by email, text, social networking sites, and other cloud-based programs may include EXIF data. Having access to this data allows a stalker to identify the location of a photograph using an online EXIF viewer or application. This can be especially dangerous if the photographs were taken at a private location, potentially revealing a person’s home or workplace.²

GLOBAL POSITIONING SYSTEMS

Before perpetrators had access to high-tech location tracking devices, they often checked car odometers to measure mileage and monitor victims’ daily activities. Now, perpetrators can track their victims with GPS, which uses satellite receivers to provide precise real-time worldwide location. These devices vary by price, size, and appearance, from a small black box or handheld unit to a small chip in a wristband, mobile phone, or laptop computer.

If a perpetrator is using GPS to stalk, a victim may describe their situation(s) in this way:

² Vamosi, Robert (2010, September 12). What your Digital Photos Reveal About You. *PC World*. Retrieved January 11, 2012, from http://www.pcworld.com/article/205296/what_your_digital_photos_reveal_about_you.html#tk.mod_rel

- “He would call and tell me that he knew where I was.”
- “I would find “gifts” in/on the car, or the tires were slashed.”
- “I came out to find my car being towed because he had called the towing company after locating the car.”
- “He was always following me.”
- “He always knew where I was.”

There are currently two types of GPS tracking available for purchase over the Internet: “real time tracking” and “passive tracking.” **Real-time tracking** offers the opportunity for the stalker to track the victim in virtual real-time from the stalker’s computer or phone. The stalker will know exactly where the victim is at any moment. **Passive tracking** also allows a perpetrator to stalk with GPS; however, the data is collected and downloaded using product software. Passive GPS tracking records where and how long a vehicle was stopped, enabling the stalker to know where the victim was at any time and the length of time spent at the location.

The Federal Communications Commission (FCC) mandated that cell phone companies be able to locate cell phones within a few feet to facilitate locating them during a 911 call. To comply with this mandate, most phone companies have chosen to install GPS chips in the phones themselves, while other companies put GPS chips on cell phone towers. For the phones without chips, the location of a 911 caller can still be determined by measuring the strength of the signal at the three cell phone towers nearest to the phone—a process called *triangulation*.

Today, cell phone users can make use of this location technology in non-emergency situations. Many major carriers allow people to join “friends and family” location services, in which one person can find another’s cell phone location through the Internet or their own cell phone. Additionally, a variety of services on the Internet offer to locate a phone, often using illegal means, and provide this location information to anyone willing to pay a small fee.

While a victim may receive a confirmation message when an optional location service is turned on, they also may not. In addition, a perpetrator with access to the victim’s phone could accept that confirmation message without the victim’s knowledge, or the service could be added before giving the phone as a gift.

When investigating a case where GPS may be involved, keep the following in mind:

- GPS devices are often marketed as “spy” products to jealous spouses or dating partners in many cases. These devices might be installed in a car or could be given to the victim as a gift.
- GPS devices, such as “OnStar,” are installed in a vehicle before purchase and desirable to many buyers because it is a safety feature. These devices can be exploited by perpetrators who have legitimate access to a victim’s property and those who are able to convince an operator to provide access.
- GPS may also be found in laptop computers. Small receivers can be bought and installed, and newer laptops and tablets have GPS security options and applications. An abuser can install something into the victims’ laptop without their knowledge that allows them to locate the laptop at any time.

- There are many location-based applications on phones that can track a user's location.

PHONE TECHNOLOGY AND INTERCEPTION

Despite newer communication technologies, the telephone is still one of the most prevalent communication technologies. Victims may not know what kind of phone technology the perpetrator is using, but might say:

- "He always knew where I was going."
- "He threatened my friends."
- "People told me that I called them repeatedly and hung up (my number showed in their Caller ID)."
- "People told me they left me messages, but I never received them."
- "He accused me of having a relationship with someone who left a voicemail for me."
- "My Caller ID was filled with his number; he must have called every 15 minutes."
- "My phone bill was huge with international calls and numbers that I never called."
- "Even though I blocked the number, he called me back."
- "I received the phone as a gift from him last year."
- "I picked up because the Caller ID said it was my mom, but it was him."

All these scenarios are possible with relatively inexpensive, easily accessible telephone devices. While a victim may not know what devices are being used, her experiences can guide the investigation. When investigating a case, keep in mind a perpetrator can use phone technology in the following ways:

- Perpetrator may leave numerous voicemails or text messages.
- Perpetrator may remotely access a victim's voicemail to monitor the victim, gather information, or even delete calls.
- Teletypewriters (TTY) and Telecommunications Device for the Deaf (TDD) devices may be used to impersonate a victim.
- VoIP (Voice over Internet Protocol) can be used to spoof the perpetrators calling number and listen in on a conversation.
- Perpetrators can intercept calls with a scanning device.
- Perpetrators may tap a landline and eavesdrop on calls.
- Perpetrators may spoof their phone number to trick the person they are calling or hide the fact that they are the one calling.

It may be difficult to determine where the calls are coming from. Keep in mind there are ways to mask the number they are calling from so the call cannot be linked to them. Perpetrators may use calling cards and/or pre-paid wireless phones to make it more difficult to identify the caller. In addition, there are services and devices available which allow a perpetrator to mask or "spoof" the number he is calling from, thereby hiding his identity when calling. Spoofing apps can be used with VoIP or independently through other applications.

TTYs & RELAY SERVICES

Teletypewriters (TTY) and Telecommunications Devices for the Deaf (TDD) are text-based phones that people who are deaf or hard of hearing use to communicate. Individuals type messages and the person on the receiving end of the line reads the text using another TTY device. Relay Services involve an operator who facilitates a conversation between callers (those who are deaf, hard of hearing, and/or have a speech disability) and receivers. Relay calls can be made with the user who is deaf typing on a TTY or on their computer using IP Relay, or through a video relay service (VRS) using sign language. The operator voices what the caller who is deaf is saying to the hearing caller and the operator types or signs back the hearing caller's response.

As TTY devices often store some portion of recent calls in memory or a printed transcript, a perpetrator might monitor a victim's communications with the outside world by reading the history of the entire conversation. Perpetrators often try to impersonate the victim over TTYs or Relay Services to manipulate the justice system or to reinforce control or fear.

Although perpetrators can misuse TTYs to control and monitor their victims, evidence of harassing calls can also be collected by using the recorded phone conversation history in the TTY. Relay operators are third parties who might also be able to assist an investigation.

VOICE OVER INTERNET PROTOCOL/INTERNET TELEPHONY

An increasingly popular phone service known as VoIP (Voice over Internet Protocol) allows customers to make inexpensive or free calls through the Internet. Often, a regular phone can be hooked into the system, so the computer does not have to be on. One common example of VoIP is Vonage. Programs such as Skype or Google Hangouts are also VoIP but use the Internet. Perpetrators can misuse VoIP to spoof their Caller ID using three-way calling by having an accomplice first call the perpetrator, then dial the victim and connect the two lines. In this case the Caller ID would show the friend's number.

In addition, most VoIP calls are unencrypted across the Internet, making tapping easy. Although the packets of data are as unintelligible as digital cell phone data packets, there are many easily available tools online available for perpetrators to "decode" the VoIP data packets and allow them to listen in on conversations.

MOBILE PHONES AND TEXT MESSAGING

Current phones are computers in your pockets; in addition to making calls, it allows the user to:

- Browse the Internet
- Instant message
- Take photos/videos
- Find nearby restaurants
- Get directions to a location
- Email
- Listen to music
- Buy items
- Video conference
- Connect to cloud-based files

Users can install one of millions of specialty applications that cater to their interests, hobbies, and needs. Mobile device applications range from social networking to grocery shopping, prescription refills, gaming, monitoring bank accounts, and watching movies, among others. For the purposes of working on family violence, sexual assault, and stalking cases, it is important to consider the possibility that a perpetrator might make use of access to a wide range of personal information available on a victim's phone to plan an assault, harass her, or harass people she knows. This behavior can further isolate a victim, especially if the mobile device is used for work, as the behavior could impact a victim's livelihood or professional reputation.

As mentioned previously, phones are usually equipped with GPS capabilities. There are many downloadable apps that make use of the GPS feature in a phone—whether it is to locate a nearby restaurant, “check-in” to a location using a social networking app, or meet up with friends. While these applications provide people the opportunity to connect with businesses and each other, in the wrong hands, some applications could assist a perpetrator in stalking a victim by disclosing real-time identifying location information.

Potential stalkers have two primary ways they can track victims via phone. First, they can locate a victim using the information posted on social networking applications and websites. Second, if a perpetrator has access to a victim's phone, they can download spyware to the phone. This software (such as *Mobile Spy* or *FlexiSPY*) can record all text messages, GPS locations, emails, contacts, and phone calls that were accessed on that phone. There is also software available marketed with the purpose of keeping track of family members, such as teenage drivers, that can track a phone's location, speed, and direction, if traveling in a car. This software can put up a “geofence” that will alert when the phone user has left a predefined set of geographical boundaries.

There are also phone applications (Android's *Find My Device* and Apple's *Find My*) that are marketed to find your phone via GPS if lost or stolen, and for locating missing family members, but they could also be used to find a victim, if in the wrong hands. Phone trackers are configured to listen for certain text messages that alert the program to turn on, activate the GPS, and obtain a lock. Once it has GPS satellites locked, an email and/or text message is sent with a link to Google Maps with the phone's location and exact GPS coordinates. Perpetrators may send multiple harassing text messages to a victim or steal/*borrow* the victim's phone to send inappropriate or harassing messages to the victim's friends or family. Additionally, a perpetrator may also use available services to mask or spoof the number that is sending the harassing messages. Text messages can be sent via websites, either provided by cell phone carriers or various vendors, or a text message might be sent to a phone through an anonymous email account. Websites like FakeMyText.uiwap.com give users the ability to choose the number that appears on the Caller ID when they send a text message.

INTERCEPTION

Cell phones can present a risk of interception. Although digital cell phones are much harder to intercept than the older analog phones, there are still circumstances in which a victim's cell phone conversation could be intercepted. Examples of phone interception are:

Bluetooth: These chips replace cables between devices and allow wireless communication. Bluetooth wireless technology uses a globally available frequency band (2.4GHZ) and only works within 30 feet. Bluetooth technology is used to connect to your phone while driving so you can talk “hands free” and is also used in products such as speakers, headphones, keyboards, and printers.

- **Bluesnarfing:** Refers to a hacker who has gained access to data, which is stored on a Bluetooth-enabled phone. Bluesnarfing allows the hacker to make phone calls, send/receive text messages, read and write contacts, eavesdrop on phone conversations, and connect to the Internet. However, it requires advanced equipment and expertise, and requires the hacker to be within a 30-foot range.
- **Bluejacking:** Allows phone users to send business cards anonymously to one another using Bluetooth technology. These business cards usually consist of some clever message or joke. Bluejacking is used to temporarily hijack another person’s cell phone by sending it an anonymous text message.
- **Bluebugging:** Allows a hacker to access a cell phone commands using Bluetooth technology without the owner’s permission or knowledge. Bluebugging allows the hacker to make phone calls, send messages, read and write contacts and calendar events, eavesdrop on phone conversations, and connect to the Internet.

SOCIAL NETWORKING

SOCIAL NETWORKING SITES

Participation in online communities is usually free and easy to come by for victims, perpetrators, and the general public. Social networking allows individuals to create and share a profile and lists of established connections with others and to view, navigate, and interact with one’s online connections, as well as with the connections made by others in the user’s *network*.³ Social networks have always existed, but the Internet and mobile phone applications provide a way for people to take social networking to a new level. Online communities have exploded with the popularity of sites such as Facebook, Instagram, SnapChat, Twitter, and LinkedIn, as well as online gaming, Internet forums/blogs, and photo sharing websites. Social networking is a way to create a dialogue between like-minded individuals, learn about events, support social initiatives, and connect with family and friends. However, it can also be exploited by a stalking perpetrator. Increasingly, people are facing victimization online.

Perpetrators can set up blogs, websites, and social networking pages that threaten or shame victims, chronicle their plans and fantasies, or encourage others to contact, harass, or harm the victim. Some perpetrators encourage others to stalk their victim by posting erroneous and harassing information on websites (e.g., “My ex-wife enjoys *rough sex*.”).

While many perpetrators of family violence, sexual assault, and stalking tend to commit their crimes alone and not talk about what they do in person, the relative anonymity of the Internet

³ Amichai-Hamburger, Y., and Hayat, T. (2017). “Social Networking.” John Wiley & Sons, Inc. <https://doi.org/10.1002/9781118783764.wbieme0170>

has led to the creation of communities where perpetrators will detail their plans of an assault, boast about an actual assault, and share resources and tips with each other. Resources might include travel deals, suggestions about where to find victims, or how to groom victims.

Perpetrators also use online communities to locate and groom victims. The anonymity of the web allows both victims and perpetrators to misrepresent their age, location, interests, sex/gender, and other personal details. A perpetrator might make friends online with one victim, then use that victim's social network to gain access to additional victims.

For police officers, knowledge of how social networking operates, including verbiage, can be useful for gathering evidence and understanding how perpetrators use social networking sites and applications for surveillance and stalking.

The widespread use of social networking has caused many people to share personal information online, while others choose to protect their personal information from public view. There are various privacy settings for each of these social networking sites, allowing some information to be kept private and some to be shared with the public. Due to the complex security features and frequent software changes, some individuals may unknowingly be sharing personal information to the public. Therefore, the possibility of social networking sites being used for surveillance or stalking is always a possibility. Keep in mind that information gathered from social networking sites can also be useful in investigating a crime of stalking. When investigating a case, a perpetrator can use social networking websites and programs in the following ways:

- To determine a victim's location, daily routine, local hangouts, etc. by reading the victim's status updates or comments on her or another person's profile page or "newsfeed."
- To seek information, such as status updates and photographs, that can be used to stalk a victim (which can be posted by another user and not necessarily the victim).
- To use photographs posted on social networking sites to determine identifying information such as location, friends, children, workplace, etc.
- To follow victims in real-time, apps, such as Snapchat, allow users to post information to their "story" via mobile phone. The app also gives individuals the option to make their real-time location viewable to their SnapChat friends. Therefore, a perpetrator can have access to a victim via a mobile phone.
- To view "check ins." There are applications (i.e. Facebook, Instagram, etc.) that allow users to "check in" to a location which will display their location(s) via GPS on social networking sites [i.e. "(Victim's Name) is at the Texas State Capitol."]. Facebook has a "check in" feature that is widely used.
- To pull EXIF data. Photo sharing websites have emerged as social networking sites as well, and a perpetrator may have access to EXIF data if the site doesn't strip the information when uploaded.

ONLINE INFORMATION AND DATA BROKERS

In this digital age, our personal information is being shared constantly, both online and offline, with and without our knowledge. From online court records to voting and housing databases,

personal information is broadly available on the World Wide Web, or simply Web, making it increasingly difficult for survivors to protect their privacy and hide from stalkers and abusers. Information to get a neighborhood parking permit, file a family court petition, or rent a house is ending up in Internet databases that abusers are accessing to find a victim's new location and hunt her down.

With a plethora of information on the web, perpetrators can use both free and fee-based websites to track private information about their victims. Public records, such as online court databases, voter registration, and religious directories, provide a wealth of private contact information that can be used to track survivors nationwide as they attempt to relocate. Many courts are beginning to publish both indexes of court records and the full documents and case files to the Internet, often without providing any notice to citizens or options for victims to restrict web access.

VICTIM'S RESPONSE

VICTIM'S COPING MECHANISMS

The victim may learn to exist with the stalking by coping behaviors that may be passive or active. The coping behavior that the victim selects, mostly unconsciously, can immensely impact the quality of the victim's life under wearisome and trying conditions.

Passive behavior is infinitely more harmful to the victim. The victim withdraws from family, friends, and society. This withdrawal further contributes to the victim's isolation, spiraling the victim into loneliness and separation from help, possibly resulting in depression. The victim continually mulls over the situation, the hopelessness of the state of the affairs, and how no one seems to help, and may then despair over the futility of any efforts to remedy what seems to be unchangeable. Suicide may appear to be a viable option to the victim in order to escape the inescapable. The victim may not have the energy or the wherewithal to seek support. The victim, however, may be willing to accept help if offered. It is important that resources be given and to ask if it would be permissible to allow a mental health worker to get in touch with the victim.

Whereas the passive coping behavior is detrimental to the victim, the active behavior can contribute to the victim's mental and physical health. It empowers the victim to feel as if there is at least some control over the situation. This is behavior that the law enforcement officer and others should encourage. In active behavior, the victim seeks out family, friends, and other resources for emotional support. Rather than being self-focused, ruminating on the situation, it is more problem focused. The victim concentrates on seeking solutions to the problem as opposed to dwelling on the situation and feeling like nothing can be done.

BEHAVIORS OF A STALKING VICTIM

A victim of stalking may attempt changes to decrease or eliminate the stalking. This may include changing addresses multiple times per year to try hiding from the stalker to secure *normalcy*. Unfortunately, a determined stalker will *not* give up, but *will* find out where the victim moves. The victim may change jobs to avoid the stalker or after being fired because of the stalker's

harassment/disruption at her previous workplace. A victim's first response after incessant telephone calls from the stalker is to change the telephone number, yet the victim may be wiser to keep the telephone number. The phone calls can be channeled to an answering machine or call notes and an additional phone number can be acquired that is only given to a few trustworthy family and friends. If possible, the victim should save messages as possible evidence.

A stalking victim may go so far as to trade in their car and obtain a vehicle of a different color and make/model. The victim's hope is that the stalker will not recognize the new vehicle and the victim can move around unimpeded. This may work for a while until the stalker discovers the change in vehicles.

In the worst-case scenario, the victim may have to go underground. While this can be done by the victim with the help of family and friends, an even better route would be to work with family violence/sexual assault programs. The shelters will move a victim from shelter to shelter across the city, state, or if necessary, country. The State of Texas allows family violence victims to obtain different driver's licenses to hide their identity. Many laws across the country will allow a victim to assume a different identity, including a new social security number, to stay alive and avoid the stalker. Unfortunately, sometimes these changes can impose a series of other problems such as loss of credit, custody arrangements, and pending civil and criminal proceedings.

EFFECTS ON THE STALKING VICTIM

Stalking can cause terrible psychological trauma to the victim. Law enforcement officers should be aware that the stresses of stalking can simulate mental instability, so a victim that appears to have mental illness should not immediately be considered an unstable and unreliable witness. A good topic for law enforcement officers to ask the victim about is their sleeping habits. A stalking victim does not sleep well. Sleep deprivation, even in the absence of stalking, can cause a person to act abnormal. A stalking victim is almost invariably sleep-deprived. The victim may be in a state of depression, especially if the stalking behavior has been ongoing. The victim experiences intrusive thoughts about the stalker and his behavior(s), which can interfere with concentration for tasks needing to be done at home, school, or work. Any reminder of the stalking behavior, such as seeing a car that is the same make and model of the stalker's vehicle, can cause the victim to have flashbacks of the stalking behaviors.

The victim may be hypervigilant and always on guard. Along with the hypervigilant behavior will be a heightened arousal response. The victim may be easily startled or have an exaggerated response to sudden changes in the environment (i.e. loud noises, hearing her name, and being tapped on the shoulder). In more severe cases, a slammed door could cause the victim to hide under a desk. People who do not understand the effects of stalking would find this kind of behavior unacceptable at work, further isolating and creating more stresses on the victim.

As should be expected, the victim will socialize less, being caught up in the all-consuming thoughts and behaviors about the stalking. Socializing may bring the stalker to a public location where a disturbance occurs, or the victim suffers disruption of a peaceful outing. This further contributes to the victim's isolation, which then exacerbates all the other psychological ills related to stalking. The victim may feel separated, that no one else understands what she is

going through, that no one can stop the stalker's behavior, and that the situation is hopeless. The victim feels totally helpless, and at the whims and mercy of the stalker.

If the victim reaches out to law enforcement for help, it may only be a singular action if the responding officer does not handle the circumstances of the call in the best manner possible. By failing to offer the victim some tangible solutions (to include a written offense report), the law enforcement officer can contribute to the victim's despondency and feelings of helplessness and hopelessness. If the victim feels that the law enforcement officer does not see the situation as a crime or important, then the victim may not perceive the stalking as significant.

LONG-TERM EFFECTS ON A STALKING VICTIM

Research has shown that stalking behavior can cause permanent changes in the victim's personality. The longer the stalking continues the longer lasting the personality changes may be.

The victim becomes less trusting of others. A person who was outgoing and friendly may become more aloof with a withdrawn personality. The victim may be guarded, careful, watchful, and have a less open lifestyle. Every person met will be under less acceptance and greater scrutiny than in the past. Some stalking victims become aggressive, using it as a defense to keep from being harmed again.

A Dutch study of 151 women who had been stalked found that there was an average of 53 months of stalking.⁴ It seems incomprehensible that the average stalking would last for over four years. Some of the stalking events last a few months while some victims reported being stalked for up to thirty years. This study shows the tenaciousness of a stalker to continue the stalking behavior and not leave the victim alone. The stalker may even go on to other personal relationships while continuing the stalking behavior or resuming the stalking behavior between other dating relationships. The victim may not report the stalking to law enforcement, becoming resigned to the stalking behavior or coming to believe it is unchangeable and never ending.

THE ROLE OF LAW ENFORCEMENT

The response of the law enforcement officer to the stalking victim can be the deciding factor in how the victim is going to endure and look at the continuing stalking. The law enforcement officer's demeanor helps the victim to decide whether the stalking should be taken seriously or whether the victim looks at the situation as hopeless. Therefore, it is imperative that a law enforcement officer treat a harassment or stalking case significant unless and until it is proven otherwise.

The cornerstone of the law enforcement officer's response is generating an excellent, well-written offense report. This documentation of the stalking should include incidents of the stalker's repetitive behavior, a verbalization of the victim's fear, and an articulation of any

⁴ Kamphuis, J. H., Emmelkamp, P. M. G., and Bartak, A. Individual Differences In Post-Traumatic Stress Following Post-Intimate Stalking: Stalking Severity And Psychosocial Variables. British Journal of Clinical Psychology, June 2003, Vol. 42 Issue 2, p. 145.

behaviors that might not be necessarily criminal in nature (such as sending flowers every day or driving around the block at the victim's residence), but that instill fear and dread in the victim.

The title on the offense report may or may not be listed as stalking. The Texas law on stalking is ungainly, making it difficult to prove and charge stalking as a crime. There are many other criminal laws that are easier to document and file, such as Assault by Threat, Cruelty to Non-Livestock Animals, and Harassment. If the victim has a protective order (P.O.), this should be documented (as should be any violations of the P.O.). If the couple owns joint property and the stalker destroys the property, a Criminal Mischief report should be generated. Texas laws prohibit destroying property that is co-owned when another person has a proprietary interest in the property. Although it may be impossible to get criminal charges filed on the Criminal Mischief, it is imperative that the behavior be *documented*. The repetitive behavior of stalking ensures that the actions will invariably continue. Written reports are an essential part of the investigation.

Good offense reports also support any criminal charges that may be filed. It makes it easier for the prosecuting attorney to try the case. Well-written and documented reports encourage the stalker to plea bargain and help a law enforcement officer avoid having to testify in a trial. Good offense reports build good cases and serve to protect the victim.

LAW ENFORCEMENT'S ADVICE FOR A STALKING VICTIM

While an excellent offense report is the best action a law enforcement officer can take on behalf of a stalking victim, the officer can give substantial information that will offer protection and a proactive course of action for a victim.

Victims may feel ashamed and guilty about the stalking behavior. The victim may not have told family, friends, neighbors, or coworkers about what has been happening. The law enforcement officer can reassure the victim that the illegal behavior belongs to the stalker, not the victim, and encourage the victim to let everyone know about the stalking. This will serve the purpose of enlisting support from those who care about the victim and help validate to the victim that the stalker's behavior is unacceptable and criminal.

Stalking victims may continue to have contact with the stalker on a limited basis, hoping that the contact will keep the stalker at bay. The victim may be hesitant to clearly tell the stalker that the relationship is over, either out of fear or worrying about hurting the stalker's feelings. The stalker often interprets any ambivalence on the victim's behalf as hope for the restoration of the relationship. After discussing with the victim all possible resources for safety, a law enforcement officer can encourage the stalking victim to send a clear, unequivocal message to the stalker that the relationship is over.

The following is some additional advice that law enforcement officers can give stalking victims and victims' friends, families, neighbors, and coworkers:

- **Get a cell phone.** Many family violence programs offer free donated cell phones for indigent victims. Cell phones are enabled to call 911 without a cell phone provider or cost to the victim.

- ***Install an alarm system.*** This is feasible if the victim has adequate financial resources. ADT Security's AWARE Program installs an alarm at no cost to the victim when requested by the local law enforcement agency. The victim must have regular phone service and ADT Security provides a push-button panic alarm worn as a pendant around the victim's neck. This is a good resource for cases where the stalker continually breaks into the victim's home.
- ***Obtain a protective order.*** Federal law and Texas state law stipulate that the victim can obtain a protective order through the district or county attorney at no charge. There can be no charges for filing or serving the protective order unless the victim chooses to use a private server. In order to obtain a protective order, the victim must prove that there has been violence in the past and that violence is likely to occur in the future without the protective order.
- ***Record phone conversations.*** This includes keeping voicemails and recording any conversations with the stalker. The victim should be advised to not have extended phone conversations with the stalker and tell the stalker to stop calling. It is difficult to prove fear when the victim has conversations with the stalker that last 30 minutes. If the victim has no way to record the conversations, encourage the victim to borrow the equipment from friends, families, neighbors, or coworkers, if necessary.
- ***Photograph the Caller ID.*** Take pictures of the Caller ID to show the stalker's numerous phone calls, even if the calls are hang-ups.
- ***Consider a personalized ringtone.*** Rather than changing the telephone number completely, the victim may want to consider adding a personalized ringtone. This is a service provided by the telephone company where a new phone number is given to the victim that has a distinct ring from the previous number, but rings over the same phone line. The victim can give the new phone number to family and a few friends and be able to answer the phone when that number rings. The old number should be allowed to go to the answering machine. This will allow the stalker's harassing calls to be documented without the victim giving up a telephone.
- ***Turn off the cell phone when not in use.*** GPS tracking in cell phones cannot be used if the cell phone is turned off. The cell phone most likely has a location setting that can be turned to off to prevent the GPS chip from tracking.
- ***Take caution with Internet use.*** Victims should take precautions against cyberstalking by using a gender-neutral name and difficult passwords that are changed frequently, avoiding chat rooms and bulletin boards, and not using Internet Relay Chat (IRC) functions. Do not create any online biographies.
- ***Change passwords and PIN numbers.*** Victims should frequently change passwords and PIN numbers for all accounts registered to the victim, such as online banking, credit card accounts, and voicemail.⁵
- ***Use library computers.*** If a person is worried that he/ she is being cyberstalked on the home or work computer, a library computer can be used. All public libraries have Internet capabilities and allow public use.
- ***Maintain a diary.*** The stalking victim should be encouraged to keep a calendar or diary of any events that occur, or actions taken. This can be essential in documenting the

⁵ Safety Net: The National Safe and Strategic Technology Project, 2004

stalking behavior, including dates and times of all stalking. The Stalking Prevention, Awareness, and Resources Center (SPARC) has a *Stalking and Incident Behavior Log* online that can be used by victims.

- **Keep all notes, letters, and gifts.** The stalker may leave notes on the victim's car, post flyers on telephone poles about the victim, send inflammatory letters to the victim's workplace, or email the victim. Any type of written communication should be dated and kept by the victim until turned over to law enforcement. Unwanted gifts should also be kept.
- **Record the stalker driving by the home or workplace.** A video camera or a still camera can serve to document a stalker's behavior around the victim's home/workplace. The stalker will deny incessant following behavior, but it is nearly impossible to dispute the photographic evidence. All files should be dated and timed for evidentiary proof.
- **Make police reports.** The stalking victim should be encouraged to contact the police when the stalking behavior happens. The law enforcement officer should encourage the victim to obtain an incident report number for future reference to the calls and reports that were made.
- **Eliminate as much contact information as possible.** If the victim has relocated to avoid the stalker, all essential services and utilities (i.e. phone, sewer, water, electric, etc.) should be put in someone else's name. Any lease should be in someone else's name with instructions to the landlord to tell anyone who might call asking for the victim that the victim does not live at that location.
- **Obtain a mailbox or post office (P.O.) box.** This service should also be put in someone else's name.
- **Ask about records and data.** Many court systems and government agencies now publish records on the Internet. The victim should ask agencies how they protect the victim's records, and request that court, government, post office, and others seal or restrict access to files to protect their safety.⁶
- **Search for name and information on the Internet.** Search engines may have links to the victim's contact information by entering "(Victim's Full Name)" in quotation marks into a search engine, such as Yahoo or Google. Check phone directory pages for any listed contact information.
- **Change address on checks and driver's license.** This address should be an address that would do the stalker no good to track down, such as the victim's mother's address which is already known to the stalker, or a mailbox address.
- **Switch work locations.** If the victim works for a large company with various locations (such as a bank, laundromat, or chain restaurant), encourage the victim to get the employer to move the victim to a different business location. If any inquiries are made about the victim still working for the company, the company should be instructed to tell the caller that the victim no longer works for the company.
- **Transfer stalker's property to storage.** A stalker may leave property at the victim's residence, demanding it back, but failing to pick up the property. It continually gives the stalker a reason to contact the victim. The victim is frustrated, trying to get rid of the property and all contact with the stalker, and having the stalker never come get

⁶ Ibid.

the property. A solution to this issue is to have the victim rent a storage unit for the property, pay for one to three months of storage, and then inform the stalker (through an intermediary) where the property is stored and how long the storage has been paid for. The property is then in a safe location and the impetus is placed on the stalker to get the property or lose it, without involving the victim.

- ***Be aware of surroundings.*** The stalker will rely on creating an atmosphere of fear to intimidate the victim. The stalker may suddenly show up on the sidewalk, in a restaurant, or at the grocery store with the victim. The victim should always be conscious of the surroundings to avoid all contact with the stalker and eliminate the intimidation that surprise appearances cause.
- ***Know what to do when followed.*** If the stalker is following the victim when driving, advise the victim to go to the nearest police station, if possible. This means the victim should know where the police station is and how to get there. If it is not practical to go to the police station, then the victim should attempt to go to any public place where there are people, such as a fire station or a convenience store. The victim should go inside and ask that the police be called.
- ***Know that the stalker is a master at manipulation.*** The stalker may try to enlist the sympathy of the victim by crying, begging, cajoling, or threatening. It can be helpful to the victim to put the word “manipulation” on an index card kept by the telephone. If the victim is engaged in a telephone conversation with the stalker, the index card will serve as a reminder to the victim as to what the stalker is doing.
- ***Eliminate all contact with the stalker, if possible.*** The stalker will use the children, family, friends, neighbors, or co-owned property, offer support money, or do anything else as an excuse to “have” to speak with the victim. The victim should have a friend or family member who is willing to be the *middleman* to negotiate any of these issues with the stalker. The stalker may insist that personal contact with the victim is essential to resolving the situation. However, the family and/or friend should consistently deny the stalker access to the victim and assist in resolving the issues.
- ***Do not accept the blame.*** A stalker will blame the victim for the stalker’s behavior. *If the victim would “just cooperate,” the whole situation would not be occurring.* The law enforcement officer can send a clear message to the victim that it is the *stalker* who is at fault, *not* the victim.
- ***You don’t have to put up with this.*** Many victims feel that the stalking behavior is the consequence of having had a relationship with the batterer. A law enforcement officer can dispel this myth immediately and reassure the victim that this type of behavior is not typical and does not have to be tolerated.
- ***Feel encouraged to ask, “Will I be safe if...” questions:*** A victim, in order to survive and continue everyday life, will often deny the danger of the stalking situation. It is like operation of a car. If every time a person got into a car and thought, “Oh no, I could be hurt or killed driving on the roads,” it wouldn’t take long before that person would be paralyzed with fear and afraid to drive. The car driver and the stalking victim both must deny the inherent dangers to get things done. The law enforcement officer can encourage the victim to ask questions, such as, “If I go to the grocery store, will I be safe?” “If I go to church this Sunday, will I be safe?” The purpose of this exercise is to compel the victim to think of personal safety.

- ***Have a Last Will and Testament prepared.*** While this may sound like a harsh thing to ask of victims, there isn't much that a law enforcement officer can say to a stalking victim that will scare the victim. The stalker has already succeeded in doing that. Often, the victim may think about getting killed or perhaps committing suicide but hasn't thought about the children involved or the impact on other family members. Having a Last Will and Testament is a reality check for the victim, encouraging the victim to recognize the seriousness of the situation and not deny the danger.

STATE AND FEDERAL LAWS

TEXAS STATE LAWS

ONLINE IMPERSONATION

PC§ 33.07

Class A Misdemeanor or 3rd Degree Felony if the actor commits the offense with the intent to solicit a response by emergency personnel.

- (a) A person commits an offense if the person, without obtaining the other person's consent and with the intent to harm, defraud, intimidate, or threaten any person, uses the name or persona of another person to:
 - (1) create a web page on a commercial social networking site or other Internet website; or
 - (2) post or send one or more messages on or through a commercial social networking site or other Internet website, other than on or through an electronic mail program or message board program.
- (b) A person commits an offense if the person sends an electronic mail, instant message, text message, or similar communication that references a name, domain address, phone number, or other item of identifying information belonging to any person:
 - (1) without obtaining the other person's consent;
 - (2) with the intent to cause a recipient of the communication to reasonably believe that the other person authorized or transmitted the communication; and
 - (3) with the intent to harm or defraud any person.
- (c) An offense under Subsection (a) is a felony of the third degree. An offense under Subsection (b) is a Class A misdemeanor, except that the offense is a felony of the third degree if the actor commits the offense with the intent to solicit a response by emergency personnel.
- (d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.
- (e) It is a defense to prosecution under this section that the actor is any of the following entities or that the actor's conduct consisted solely of action taken as an employee of any of the following entities:
 - (1) a commercial social networking site;
 - (2) an Internet service provider;
 - (3) an interactive computer service, as defined by 47 U.S.C. Section 230;
 - (4) a telecommunications provider, as defined by Section 51.002, Utilities Code;

or

(5) a video service provider or cable service provider, as defined by Section 66.002, Utilities Code.

(f) In this section:

(1) “Commercial social networking site” means any business, organization, or other similar entity operating a website that permits persons to become registered users for the purpose of establishing personal relationships with other users through direct or real-time communication with other users or the creation of web pages or profiles available to the public or to other users. The term does not include an electronic mail program or a message board program.

(2) “Identifying information” has the meaning assigned by Section 32.51.

HARASSMENT

PC § 42.07

Class B Misdemeanor, except that the offense is a Class A Misdemeanor if the actor has previously been convicted under this section.

(a) A person commits an offense if, with intent to harass, annoy, alarm, abuse, torment, or embarrass another, the person:

- (1) initiates communication and in the course of the communication makes a comment, request, suggestion, or proposal that is obscene;
- (2) threatens, in a manner reasonably likely to alarm the person receiving the threat, to inflict bodily injury on the person or to commit a felony against the person, a member of the person's family or household, or the person's property;
- (3) conveys, in a manner reasonably likely to alarm the person receiving the report, a false report, which is known by the conveyor to be false, that another person has suffered death or serious bodily injury;
- (4) causes the telephone of another to ring repeatedly or makes repeated telephone communications anonymously or in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another;
- (5) makes a telephone call and intentionally fails to hang up or disengage the connection;
- (6) knowingly permits a telephone under the person's control to be used by another to commit an offense under this section; or
- (7) sends repeated electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another.

(b) In this section:

(1) “Electronic communication” means a transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system. The term includes:

(A) a communication initiated through the use of electronic mail, instant message, network call, a cellular or other type of telephone, a computer, a camera, text message, a social media platform or

- application, an Internet website, any other Internet-based communication tool, or facsimile machine; and
- (B) a communication made to a pager.
- (2) “Family” and “household” have the meaning assigned by Chapter 71, Family Code.
- (3) “Obscene” means containing a patently offensive description of or a solicitation to commit an ultimate sex act, including sexual intercourse, masturbation, cunnilingus, fellatio, or anilingus, or a description of an excretory function.
- (c) An offense under this section is a Class B misdemeanor, except that the offense is a Class A misdemeanor if:
 - (1) the actor has previously been convicted under this section; or
 - (2) the offense was committed under Subsection (a)(7) and:
 - (A) the offense was committed against a child under 18 years of age with the intent that the child:
 - (i) commit suicide; or
 - (ii) engage in conduct causing serious bodily injury to the child; or
 - (B) the actor has previously violated a temporary restraining order or injunction issued under Chapter 129A, Civil Practice and Remedies Code.

STALKING

PC § 42.072

3rd Degree Felony, except that the offense is a 2nd Degree Felony if the actor has previously been convicted of an offense under this section or of an offense under any of the following laws that contains elements that are substantially similar to the elements of an offense under this section:

- (a) A person commits an offense if the person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct that:
 - (1) constitutes an offense under Section 42.07 or that the actor knows or reasonably should know the other person will regard as threatening:
 - (A) bodily injury or death for the other person;
 - (B) bodily injury or death for a member of the other person’s family or household or for an individual with whom the other person has a dating relationship; or
 - (C) that an offense will be committed against the other person’s property;
 - (2) causes the other person, a member of the other person’s family or household, or an individual with whom the other person has a dating relationship to be placed in fear of bodily injury or death or in fear that an offense will be committed against the other person’s property or to feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended; and
 - (3) would cause a reasonable person to:
 - (A) fear bodily injury or death for himself or herself;
 - (B) fear bodily injury or death for a member of the person’s family or household or for an individual with whom the person has a dating

- relationship; or
- (C) fear that an offense will be committed against the person's property; or
- (D) feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended
- (b) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor has previously been convicted of an offense under this section or of an offense under any of the following laws that contains elements that are substantially similar to the elements of an offense under this section:
 - (1) the laws of another state;
 - (2) the laws of a federally recognized Indian tribe;
 - (3) the laws of a territory of the United States; or
 - (4) federal law.
- (c) For purposes of this section, a trier of fact may find that different types of conduct described by Subsection (a), if engaged in on more than one occasion, constitute conduct that is engaged in pursuant to the same scheme or course of conduct.
- (d) In this section:
 - (1) "Dating relationship," "family," "household," and "member of a household" have the meanings assigned by Chapter 71, Family Code.
 - (2) "Property" includes a pet, companion animal, or assistance animal as defined by Section 121.002 Human Resources Code.

TERRORISTIC THREAT

PC § 22.07

Class B Misdemeanor

A person commits the offense of terroristic threat if he or she threatens to commit an offense involving violence to any person or property with the intent to place a person in fear of imminent serious bodily injury. An offense under this section is a Class B misdemeanor.

CCP Art. 7A.01 – Protective Orders for Victims of Sexual Assault or Stalking

{See Chapter 5: Family Violence Laws on page 64-68.}

CCP Art. 7A.02 – Temporary Ex-Parte Order

{See Chapter 5: Family Violence Laws on page 66.}

CONFIDENTIALITY OF IDENTIFYING INFORMATION OF VICTIMS OF STALKING

CCP Art. 57A.01

- (a) The Office of the Attorney General shall develop and distribute to all law enforcement agencies of the state a *Pseudonym Form* to record the name, address, telephone number, and pseudonym of a victim.
- (b) A victim may choose a pseudonym to be used instead of the victim's name to designate the victim in all public files and records concerning the offense, including police summary reports, press releases, and records of judicial proceedings. A victim

who elects to use a pseudonym as provided by this article must complete a Pseudonym Form developed under this article and return the form to the law enforcement agency investigating the offense.

- (c) A victim who completes and returns a Pseudonym Form to the law enforcement agency investigating the offense may not be required to disclose the victim's name, address, and telephone number in connection with the investigation or prosecution of the offense.
- (d) A completed and returned Pseudonym Form is confidential and may not be disclosed to any person other than the victim identified by the Pseudonym Form, a defendant in the case, or the defendant's attorney, except on an order of a court of competent jurisdiction. The court finding required by Subsection (g) is not required to disclose the confidential pseudonym form to the victim identified by the Pseudonym Form, the defendant in the case, or the defendant's attorney.
- (e) If a victim completes and returns a Pseudonym Form to a law enforcement agency under this article, the law enforcement agency receiving the form shall:
 - (1) remove the victim's name and substitute the pseudonym for the name on all reports, files, and records in the agency's possession;
 - (2) notify the attorney for the state of the pseudonym and that the victim has elected to be designated by the pseudonym;
 - (3) provide to the victim a copy of the completed Pseudonym Form showing that the form was returned to the law enforcement agency; and
 - (4) maintain the form in a manner that protects the confidentiality of the information contained on the form.
- (f) An attorney for the state who receives notice that a victim has elected to be designated by a pseudonym shall ensure that the victim is designated by the pseudonym in all legal proceedings concerning the offense.
- (g) A court of competent jurisdiction may order the disclosure of a victim's name, address, and telephone number only if the court finds that:
 - (1) the information is essential in the trial of the defendant for the offense;
 - (2) the identity of the victim is in issue; or
 - (3) the disclosure is in the best interest of the victim.
- (h) Except as required or permitted by other law or by court order, a public servant or other person who has access to or obtains the name, address, telephone number, or other identifying information of a victim younger than 17 years of age may not release or disclose the identifying information to any person who is not assisting in the investigation, prosecution, or defense of the case. This subsection does not apply to the release or disclosure of a victim's identifying information by:
 - (1) the victim; or
 - (2) the victim's parent, conservator, or guardian, unless the victim's parent, conservator, or guardian allegedly committed the offense described by Article 57A.01(4).

OTHER RELEVANT STATUTES

UNLAWFUL USE OF CRIMINAL INSTRUMENT OR MECHANICAL SECURITY DEVICE

PC § 16.01

State Jail Felony

- (a) A person commits an offense if:
 - (1) the person possesses a criminal instrument or mechanical security device with the intent to use the instrument or device in the commission of an offense; or
 - (2) with knowledge of its character and with the intent to use a criminal instrument or mechanical security device or aid or permit another to use the instrument or device in the commission of an offense, the person manufactures, adapts, sells, installs, or sets up the instrument or device.
- (b) For the purpose of this section:
 - (1) “Criminal instrument” means anything, the possession, manufacture, or sale of which is not otherwise an offense that is specially designed, made, or adapted for use in the commission of an offense.
 - (2) “Mechanical security device” means a device designed or manufactured for use by a locksmith to perform services for a customer who seeks entry to a structure, motor vehicle, or other property.
- (c) An offense under Subsection (a)(1) is one category lower than the offense intended. An offense under Subsection (a)(2) is a state jail felony.

COMPUTER CRIMES - DEFINITIONS

PC § 33.01

In this chapter:

- (1) “Access” means to approach, instruct, communicate with, store data in, retrieve or intercept data from, alter data or computer software in, or otherwise make use of any resource of a computer, computer network, computer program, or computer system.
- (2) “Aggregate amount” means the amount of:
 - (A) any direct or indirect loss incurred by a victim, including the value of money, property, or service stolen or rendered unrecoverable by the offense; or
 - (B) any expenditure required by the victim to verify that a computer, computer network, computer program, or computer system was not altered, acquired, damaged, deleted, or disrupted by the offense.
- (3) “Communications common carrier” means a person who owns or operates a telephone system in this state that includes equipment or facilities for the conveyance, transmission, or reception of communications and who receives compensation from persons who use that system.
- (4) “Computer” means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device that performs logical, arithmetic, or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, or communication facilities that are connected or related to the device.
- (5) “Computer network” means the interconnection of two or more computers or

- computer systems by satellite, microwave, line, or other communication medium with the capability to transmit information among the computers.
- (6) “Computer program” means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data or perform specific functions.
 - (7) “Computer services” means the product of the use of a computer, the information stored in the computer, or the personnel supporting the computer, including computer time, data processing, and storage functions.
 - (8) “Computer system” means any combination of a computer or computer network with the documentation, computer software, or physical facilities supporting the computer or computer network.
 - (9) “Computer software” means a set of computer programs, procedures, and associated documentation related to the operation of a computer, computer system, or computer network.
 - (10) “Computer virus” means an unwanted computer program or other set of instructions inserted into a computer’s memory, operating system, or program that is specifically constructed with the ability to replicate itself or to affect the other programs or files in the computer by attaching a copy of the unwanted program or other set of instructions to one or more computer programs or files.
 - (10-a) “Critical infrastructure facility” means:
 - (A) a chemical manufacturing facility;
 - (B) a refinery;
 - (C) an electrical power generating facility, substation, switching station, electrical control center, or electrical transmission or distribution facility;
 - (D) a water intake structure, water treatment facility, wastewater treatment plant, or pump station;
 - (E) a natural gas transmission compressor station;
 - (F) a liquid natural gas terminal or storage facility;
 - (G) a telecommunications central switching office;
 - (H) a port, railroad switching yard, trucking terminal, or other freight transportation facility;
 - (I) a gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas;
 - (J) a transmission facility used by a federally licensed radio or television station; or
 - (K) a cable television or video service provider headend.
 - (11) “Data” means a representation of information, knowledge, facts, concepts, or instructions that is being prepared or has been prepared in a formalized manner and is intended to be stored or processed, is being stored or processed, or has been stored or processed in a computer. Data may be embodied in any form, including but not limited to computer printouts, magnetic storage media, laser storage media, and punch cards, or may be stored internally in the memory of the computer.
 - (12) “Effective consent” includes consent by a person legally authorized to act for the owner. Consent is not effective if:
 - (A) induced by deception, as defined by Section 31.01, or induced by coercion;
 - (B) given by a person the actor knows is not legally authorized to act for the owner;

- (C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable property dispositions;
- (D) given solely to detect the commission of an offense; or
- (E) used for a purpose other than that for which the consent was given.
- (13) “Electric utility” has the meaning assigned by Section 31.002, Utilities Code.
- (14) “Harm” includes partial or total alteration, damage, or erasure of stored data, interruption of computer services, introduction of a computer virus, or any other loss, disadvantage, or injury that might reasonably be suffered as a result of the actor’s conduct.
- (14-a) “Identifying information” has the meaning assigned by Section 32.51.
- (15) “Owner” means a person who:
 - (A) has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor;
 - (B) has the right to restrict access to the property; or
 - (C) is the licensee of data or computer software.
- (16) “Property” means:
 - (A) tangible or intangible personal property including a computer, computer system, computer network, computer software, or data; or
 - (B) the use of a computer, computer system, computer network, computer software, or data.

DEFENSES

PC § 33.03

It is an affirmative defense to prosecution under Section 33.02 that the actor was an officer, employee, or agent of a communications common carrier or electric utility and committed the proscribed act or acts in the course of employment while engaged in an activity that is a necessary incident to the rendition of service or to the protection of the rights or property of the communications common carrier or electric utility.

ASSISTANCE BY ATTORNEY GENERAL

PC § 33.04

The attorney general, if requested to do so by a prosecuting attorney, may assist the prosecuting attorney in the investigation or prosecution of an offense under this chapter or of any other offense involving the use of a computer.

INTERNET SERVICE PROVIDER DATABASE

Government Code Sec. 402.0281

- (a) The attorney general shall establish a computerized database containing contact information for all Internet service providers providing service in this state. The contact information must include:
 - (1) the name and physical address of the person authorized to accept service of process for the Internet service provider; and

- (2) the physical address of the Internet service provider's principal place of business in this state.
- (b) At the request of a district attorney, criminal district attorney, county attorney, law enforcement agency of this state, or local law enforcement agency, the attorney general shall allow the requestor access to the database to expedite the information-gathering process of a criminal investigation conducted by the requestor concerning an offense under Section 33.021, Penal Code.

TEXAS STALKING CASES

Corwin v. State, 870 S.W. 2d 23 (Tex. Crim. App. 1993)

Mr. Corwin's abduction, rape, and murder or attempted murder of five women in roughly the same manner over thirteen years was enough to satisfy the relatively relaxed "same scheme or course of conduct" requirements.

Gillenwaters v. State, 2005 WL 1650902 (Tex.App.-Austin)

Gillenwaters and Ortiz were married in 2000, but Ortiz filed for divorce in July of 2002. On October 22, 2002, Gillenwaters approached Ortiz in the Walmart parking lot and began yelling cursing at her. Ortiz had to be escorted into the building by a male coworker. Gillenwaters called Ortiz at the Walmart from 5AM until 1PM. Although he was repeatedly asked to stop calling, Gillenwaters called about 40 times per hour looking for Ortiz. Appellant's repeated calls made Ortiz so upset that she could not perform her duties at work. After one of her coworkers dialed 911, Ortiz complained to the police about receiving the calls. When Ortiz arrived home, she discovered that Gillenwaters also had left 10 messages on her home answering machine. In one message, Gillenwaters threatened: "A lot of people are getting ready to get hurt. You forget that I know tons of people. They're getting ready to go to work at 9 o'clock tomorrow morning. If I don't get a phone call from you to call it off, then lives are going to be ruined...I'll take 'em all down." Gillenwaters also threatened: "I'm going to bury your ass," "You don't understand what you're doing," "[Y]ou bit off more than you can chew," and "I'm gonna press it and I'm gonna kill it." Ortiz filed a written complaint with the police on October 24, after which Gillenwaters made additional calls to Walmart looking for Ortiz. At one point, he called pretending to be a private investigator and told Ortiz's coworkers to warn her that a case was being built against her for promiscuity. Gillenwaters was eventually charged with telephone harassment in information alleging that on or about October 22, 2002. A jury found Gillenwaters guilty, and the court assessed punishment at 10 days' confinement and a \$250 fine.

Olivas v. State, 2004 WL 2566607 (Tex.App.-Waco)

A jury convicted Raymond Edward Olivas of Aggravated Assault (Retaliation) by threat and of Stalking. He was sentenced to 35 years in prison and a \$5,000 fine on the Aggravated Assault charge. He was sentenced to six years in prison and received a \$1,000 fine on the Stalking charge. Kim Tunnell testified that she heard pops and thought the sounds came from rocks. It was only after the offense occurred that she discovered the bullet hole in her pickup. The court

found the evidence legally insufficient to support a crucial element of the offense, that Kim Tunnell was threatened with imminent bodily injury. See *Vodochodsky v. State*, No. 74,129, 2004 Tex. Crim. App. LEXIS 663 (Tex. Crim. App. April 21, 2004). Olivas next contends the evidence is legally and factually insufficient to support his conviction for stalking because Kim Tunnell was not placed in fear of bodily injury or death when Olivas told her in a voicemail to “count your friggin’ hours.” She also testified that she felt threatened and that physical and bodily harm was a possibility. The court finds the evidence both legally and factually sufficient to support the conviction for Stalking but reverse the Aggravated Assault charge.

Wade v. State, 2004 WL 1665905 (Tex.App.-San Antonio)

Four of the state’s five witnesses testified as to defendant’s alleged physical abuse of the complainant M.M. and his brother, S.M. In addition, three of the five witnesses testified as to defendant’s alleged stalking of M.M. and his mother. The state offered evidence revealing that defendant would “head butt” M.M. or slam his head into the wall or railings for punishment. In addition, S.M. testified that, as a form of discipline, defendant would hit him with a belt, which caused welts and bleeding. S.M. also testified the defendant would “head butt” him and bite his nose. After defendant moved out of the house, witnesses testified seeing him taking pictures of M.M. from his car while M.M. was playing outside. Defendant contends the probative value of the evidence was outweighed by its prejudicial effect because of the “sheer volume of the testimony given on the issues.” The state argued that defendant’s physical abuse towards both M.M. and S.M. and defendant’s stalking of M.M. and his mother explained why M.M. feared defendant and the actions defendant might have taken if M.M. had told someone that defendant was sexually abusing him. We agree. The evidence of defendant’s physical abuse and stalking were relevant to explain M.M.’s fear of defendant and why M.M. did not speak up earlier about the sexual abuse.

FEDERAL LAWS

As stalking has become recognized as aberrant behavior and been criminalized in all 50 states, Federal Laws have been enacted. The Federal Laws ensure that family violence and stalking laws are enforced uniformly across the country—in every state, Indian reservation, and U.S. jurisdiction, such as Puerto Rico. These laws can be found in United States Code Section 2265 under Full Faith and Credit.

Federal laws also make interstate stalking, interstate domestic violence, and interstate violation of a protective order all federal offenses. If a law enforcement officer encounters any of these violations, the local F.B.I. office or U.S. Attorney should be contacted and advised. These federal laws can be found under United States Code Sections 2261 and 2262.

Well-known to law enforcement officers are the Federal Firearms Prohibitions for those convicted of domestic violence. Since so many stalking cases evolve out of family violence situations, a law enforcement officer should check criminal histories for convictions of family violence. If the stalker possesses a gun in violation of the federal law, the stalker can be charged with a federal crime.

Federal laws also include codes on Interstate Communications (U.S.C. §875) and Harassing Telephone Calls in Interstate Communications [U.S.C. § 233(a)(1)(c)]. These laws can be used to assist the law enforcement officer in either eliminating the stalking behavior or gathering enough evidence in order to prosecute the stalker.

CONCLUSION

Stalking is different from other crimes in that there is repeated victimization, a series of incidents and acts, and it can instill dread and fear in the victim. These elements make it challenging to document and investigate, and difficult to control. Despite these impediments, the law enforcement officer can be the key element in documenting and stopping the behavior. Therefore, it cannot be emphasized enough how important the role a law enforcement officer is in addressing and documenting the crime of stalking.

CHAPTER NINE (B): VIOLENCE IN IMMIGRANT & TRIBAL COMMUNITIES

LEARNING OBJECTIVES: UNDERSTANDING VIOLENCE IN IMMIGRANT & TRIBAL COMMUNITIES

By the end of the section, the student will be able to identify and discuss the following terms, concepts, and practices as they relate to family violence in immigrant communities:

- A. The Face of Immigration Today
- B. Power and Control Wheel for Immigrant Women
- C. Barriers to Assisting Immigrant Victims of Family Violence
- D. Levels of Immigration Status
- E. Assisting Immigrant Victims of Abuse
 - 1. Language Services
 - 2. Developing Trust in the Police
 - 3. Safety Strategies
 - 4. Immigration Remedies for Victims of Abuse
- F. Violence in Tribal Communities
- G. Barriers to Assisting Native Americans
 - 1. Geographic Location
 - 2. Criminal Jurisdiction in Tribal Communities
 - 3. Lack of Legal Services
 - 4. Lack of Financial Resources
 - 5. Distrust of Law Enforcement
- H. Assisting Native American Victims of Abuse
- I. Texas Tribal Communities
- J. Resources for Native American Victims

THE FACE OF IMMIGRATION TODAY

In 2018, the Department of Homeland Security documented the apprehension of 572,566 foreign nationals illegally attempting to enter the United States.¹ That same year, Immigration and Customs Enforcement (ICE) admitted 1,096,611 legal immigrants into the United States.² These people came to the U.S. for many reasons. Some sought freedom from their country's unjust social structure. Others fled civil war, poverty, and political persecution. Many of these immigrants made Texas their home. Texas has the second largest immigrant population in the United States—nearly 5 million immigrants.³

¹ U.S. Department of Homeland Security's Office of Immigration Statistics. (October 2019). "2018 Yearbook of Immigration Statistics." Web. https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2018/yearbook_immigration_statistics_2018.pdf

² Ibid.

³ Migration Policy Institute tabulation of data from the U.S. Census Bureau's pooled 2014-2018 American Community Survey.

Most of the world's people do not enjoy the level of political, cultural, and economic freedoms we have in the United States. Civil war and political unrest plague many developing countries. The world is still a patriarchal place. Men dominate every facet of politics, religion, and culture. Many governments intentionally limit women's rights through laws and religious edicts. Weak governments, unable or unwilling to control their populaces, allow the abuse of women through inaction, turning a blind eye to physical and sexual abuse.

In 2005, the World Health Organization (WHO) conducted a 24,000-person, 15-country study examining the extent of domestic violence. Former WHO's Director-General, Dr. Lee Jong-Wook, stated:

*"This study shows that women are more at risk from violence at home than in the street. It also shows how important it is to shine a spotlight on domestic violence globally and to treat it as a major public health issue. Challenging the social norms that condone and therefore perpetuate violence against women is a responsibility for us all."*⁴

All examples of violence against women are terrifying. One has become such a prominent issue that President George W. Bush spoke on the topic. Slavery has a new name: human trafficking. In Mexico, Central America, and Asia, women are fraudulently recruited, coerced, or kidnapped and sold into slavery as prostitutes. In 2005, Amnesty International estimated that 15,000 Chinese women were forced into slavery.⁵ Many of these victims are smuggled into the U.S. to work in covert brothels. Here are recent headlines from the San Antonio area:

- "Two San Antonio women arrested in prostitution sting at Boerne massage parlor, police say"⁶
- "San Antonio woman charged with human trafficking of immigrant woman"⁷
- "Bexar Co. Sheriff's Deputy saves undocumented workers from human trafficking ring"⁸

Officers dealing with immigrant communities need to be aware that this is a growing problem. Whenever immigrants emigrate from their homeland, they bring their culture with them. This mix of cultures has been celebrated as America's "melting pot" and the source of our diversity. Yet, certain unwanted aspects of a culture make the journey too. Often, the immigrants' views of gender roles are diametrically opposed to the rights enjoyed by women in this country. This cultural friction is frequently the source of family violence in immigrant communities. It may explain why immigrant women suffer higher rates of abuse than U.S. citizens do.

⁴ WHO Multi-Country Study on Women's Health and Domestic Violence Against Women. Geneva: WHO Press, 2005.

⁵ "Violence Against Women: A Fact Sheet," Amnesty International. Web. <http://amnestyusa.org/women>.

⁶ "Two San Antonio women arrested in prostitution sting at Boerne massage parlor, police say." mySA. <https://www.mysanantonio.com/news/local/crime/article/Two-San-Antonio-women-arrested-in-prostitution-11115012.php>

⁷ "San Antonio woman charged with human trafficking of immigrant woman." KSAT. <https://www.ksat.com/news/2019/10/05/san-antonio-woman-charged-with-human-trafficking-of-immigrant-woman/>

⁸ "Bexar Co. Sheriff's Deputy saves undocumented workers from human trafficking ring." KTXS12 ABC. <https://ktxs.com/news/texas/bexar-co-sheriffs-deputy-saves-undocumented-workers-from-human-trafficking-ring>

- In New York City, 51% of murder victims killed by intimate partners were foreign-born.⁹
- In one study, 48% of Latina victims reported their abuse got worse after immigrating to the U.S.¹⁰
- In another study, 60% of Korean female immigrants admitted to being beaten by their husbands.¹¹
- 64% of all Hispanic Texans said that they or someone in their family had been a victim of domestic violence.¹²
- 39% of Hispanic women in Texas reported at least one incident of severe abuse.¹³

Most of the world's women live in a climate of inequality and systematic injustice. Their experiences, combined with the special barriers faced by victims of abuse, form a complicated dynamic that law enforcement must address in order to successfully assist this group.

INTERNATIONAL MARRIAGE BROKER REGULATION ACT OF 2005 (IMBRA)¹⁴

The United States created the International Marriage Broker Regulation Act of 2005 (IMBRA) to regulate marriage brokers who work to connect American citizens with foreign brides. IMBRA was created after several high-profile crimes occurred in which foreign women had been abused and eventually murdered by the men who had used international marriage brokers to bring them to the United States. The IMBRA is a United States federal statute that requires background checks for all marriage visa sponsors and limits serial visa applications. IMBRA also requires background checks before communication is permitted between American citizens and foreign nationals.

VAWA, U.S.C. § 831-834 (2005)

- U.S. Embassy/Consular officers abroad must provide foreign fiancées and spouses with the criminal background information obtained for U.S. clients filing visa applications for their brides [§ 833 (a)(5)(A)(iii)];
- U.S. Embassy/Consulates abroad are required to give foreign brides comprehensive pamphlets about their legal rights in the U.S., including protections available to immigrant domestic violence victims; [§ 833 (a)(5)(A)(I)]—this is important because domestic violence is still legal in some countries.
- This pamphlet is mandated to be issued in at least 14 foreign languages—those representing the highest number of fiancée visa applicants [§ 833 (a)(4)];
- International Marriage Brokers (IMBs) are precluded from recruiting and marketing children under 18 [§ 833 (d)(1)];

⁹ Family Violence Prevention Fund. (Dec. 2005). "Domestic Violence Widespread, Harms Health of Millions of Women Worldwide." Web. <http://www.endabuse.org>.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Violence Against Women and Department of Justice Reauthorization Act of 2005.

- For each U.S. client, IMBs are mandated to search state and federal sex offender registries for that person's records [§§ 833 (d)(2)(A)(1)];
- IMBs must then give all background information about the client's marital and criminal history to each of the recruited foreign women [§ 833 (d)(3)(A)];
- IMBs are required to tell women about their legal rights and resources available to domestic violence victims in the U.S. [§ 833 (d)(3)(A)(iii)(III)]; and
- IMBs are prohibited from giving a foreign woman's contact information to a U.S. client before they have received her written consent [§ 833 (d)(3)(A)(iv)].

POWER AND CONTROL WHEEL FOR IMMIGRANT WOMEN

As stated earlier, immigrants suffer higher rates of abuse than U.S. citizens. Frequently, the abuse worsens after immigrating to the U.S. America's culture is invitingly persuasive, and as émigré¹⁵ wives and daughters assimilate, they begin to think and act differently. Clinging to their home countries' traditions, immigrant abusers feel their power slip away. To maintain control in the relationship, abusers may intensify the severity of their attacks.

The acts of violence investigated by police are part of a larger dynamic involving emotional abuse and coercion. Imagine the physical violence as the tip of an iceberg. Hidden below the waterline are more abusive mechanisms being used by the batterer. It is important for officers to remember that these behaviors are abusive and constant; they are always at work in the relationship.

The *Power and Control Wheel for Immigrant Women* provides law enforcement with snapshots of these coercive behaviors. By identifying these behaviors, officers can quickly determine who the abuser in the relationship is. Immigrant victims of family violence have different psychological vulnerabilities that their abusers can exploit. The control mechanisms an abuser uses include:¹⁶

RACISM AND EMOTIONAL ABUSE

Emotional abuse for immigrant victims must be viewed in *their* culture's context. The abuse may include lying about the victim's immigration status or his ability to change her status. He can isolate her by spreading lies in the community where she lives or lying to her family so that they discontinue contact. The victim may be called racist names, belittled, or embarrassed in front of family and friends thereby causing her or her family to lose honor or "face." The abuser may attack the victim's sense of heritage by accusing her of abandoning her culture and becoming "white" or "American."

ECONOMIC ABUSE

Controlling the purse strings limits a victim's ability to flee an abusive relationship. The abuser may force her to work illegally without a work permit, or he may threaten to report her to Department of Homeland Security (DHS) if she works "under the table" to deny her financial

¹⁵ A person who migrates to another country (typically for political reasons).

¹⁶ "Power and Control Tactics Used Against Immigrant Women," *Futures Without Violence*. FuturesWithoutViolence.org (2016).

independence. She may be prevented from obtaining job training or an education. In her former country, the victim's family may be depending upon her to send money to them. The abuser may take this money away or threaten to take money from the victim's family to control her.

SEXUAL ABUSE

There are strong causative links between domestic violence and sexual abuse of intimate partners. If the victim and/or abuser come from a patriarchal culture, he may use the idea of male privilege to justify raping her whenever he wants. He may tell her that it is a "matter of law" in the U.S. that she must continue having sex with him until they are divorced.

For immigrant victims, sexual abuse may occur in other ways. The victim may have paid for passage to the U.S. with sex. She could have been raped by her smugglers while in transit. The victim may be degraded by being called a prostitute or "mail order bride." The abuser may claim the victim is a prostitute or a former prostitute on legal papers to marginalize her. He may accuse her of sleeping with other men or attempting to attract other men if she uses make up.

USING THE CHILDREN

This power and control mechanism plays upon a mother's worst fears and is a barrier to a victim of family violence leaving an abusive relationship. An abuser will threaten his victim with moving the children with him from the United States. He may threaten to report the children to immigration officials or have the victim deported, keeping the children with him here in the U.S.

In many countries, men are the legal custodians of the children. Experience with child custody laws in her former country may work against the victim in the United States. She may be convinced that seeking help from the authorities will only serve the abuser by giving him custody of the children.

COERCION AND THREATS

Direct or implied coercions and threats are constantly present. The abuser may threaten deportation. He may threaten not to file the proper immigration papers or withdraw his support of her immigration petition. Sometimes abusers will threaten the victim's family or tell her that he will harm her family.

USING CITIZENSHIP OR RESIDENCY PRIVILEGES

The fear of deportation is constant. The abuser may fail to file papers that would legalize the victim's immigration status or threaten to withdraw those papers. This controls the victim's ability to legally work in this country, and the fear of being deported may prevent her from reporting the abuse.

USING DOCUMENTS

Victim intimidation can come in many forms. The abuser may hide or destroy important papers, such as passports, identification cards, etc. He may destroy the only property she brought with her from her home country. Many times, these items, such as pictures, hold the greatest importance to the victim, as they connect her to her home country and family.

ISOLATION

Isolating the victim, both physically and socially, serves two purposes. First, it helps to conceal any signs of abuse. Second, it assists in mentally wearing down the victim so that the other control mechanisms are more effective.

He can separate her from family and friends. He can remove her from others who speak her language or have ties with her country/culture. He may prevent her from learning English or prevent her from speaking a language in which she is fluent. He can read incoming/outgoing mail and monitor her phone calls. Additionally, he can control trips outside the house and limit her exposure to the outside world by controlling access to television, radio, and print media.

{Please refer to Resources for Law Enforcement on our website, www.safvic.org, for the Immigrant Power and Control Wheel.}

BARRIERS TO ASSISTING IMMIGRANT VICTIMS OF FAMILY VIOLENCE

The following barriers to assisting an immigrant victim of family violence are intertwined together in a complex dynamic. One barrier only serves to compound another barrier's effects. Law enforcement cannot attack these issues ad hoc. Instead, police officers must devise a separation strategy for the victim that comprehensively and simultaneously addresses each of these barriers.

SEPARATION FROM FAMILY/CHILDREN

Immigrant victims fear deportation, separating them from their family, friends, and children here in the U.S. United States citizens married to immigrant abusers may not leave the relationship for fear that the abuser will go back to their country of origin with the children. Many times, immigrant abusers are from countries that limit or deny the mother any parental rights to the children.¹⁷

LANGUAGE DIFFERENCES

The inability to communicate easily with law enforcement exponentially complicates the investigative process. Important details may be lost in the translation. The abuser may speak English better and misrepresent the situation to the police. The investigating officer(s) may not be comfortable with the language barrier and may begin cutting corners to expedite the process. These difficulties only serve to assist the batterer.

¹⁷ "Barriers," *Family Violence Prevention Fund*, <http://endabuse.org> (14 Dec. 2005).

LACK OF COMMUNITY RESOURCES & ACCESS TO SERVICES

The victim may be kept so socially or physically isolated that she does not have access to any services. If she does seek help, the victim may live in a community that does not provide the services she needs. Smaller family violence programs and outreach centers may not have the training or resources needed to fully assist immigrant victims of abuse. Even if the victim is directed to an immigration agency or attorney, those professionals may not recognize the signs of domestic violence or know how to help the victim. The victim may find herself in a locale that simply does not have the physical resources to help her or the local crisis program may not be equipped to address her needs, such as providing bilingual services.

RELIGION

A victim's religious beliefs may prevent her from disobeying her abuser and seeking help. Divorce or disobedience may be seen as a sin. Often victims with deep religious convictions will seek the advice of their church's leader. These leaders may be more concerned with upholding a church's religious doctrines, such as keeping the marriage intact, than assisting a victim of violence.

CULTURAL NORMS

Immigrant women may come from cultures where domestic violence is accepted. In fact, the abuse may not be viewed as wrong. Instead, the victim's cultural norms may allow those acts, stemming from an entrenched belief of male privilege. If the victim does seek assistance, law enforcement and advocates may not address cultural issues relevant to the victim. Their suggested courses of action may not be culturally appropriate for the victim, so their advice is ignored.

LACK OF FINANCIAL RESOURCES & EDUCATION

Immigrants are often the poorest people in our country. Immigrant victims of abuse may be unaware of public benefits, work visas, or long-term housing. The victim may be unable to work due to language barriers, lack of education, illiteracy, or physical disability. They may be financially dependent on the abuser, trapping them in a cycle of abuse with no hope of escape.

DISTRUST OF LAW ENFORCEMENT

In many countries, the police are corrupt, brutal, inept or seen as "siding" with the abuser. The general population views the police with fear, contempt, and suspicion. Immigrant abusers may use these stereotypes of the police and feed their victims misinformation about U.S. laws or police deportation powers.

This can be seen in testimony provided by a victim of human trafficking to the U.S. Senate's Foreign Relations Committee in 2000. Maria was sold into slavery in Mexico and then smuggled into the U.S. to work for a brothel in Florida:

“The bosses told me that if I escaped, INS would catch me, beat me, and tie me up. This frightened me. Our captors had told us repeatedly never to tell the police of our conditions. They told us that if we told, we would find ourselves in prison for the rest of our lives. They told us that [the] INS* would rape us and kill us.”¹⁸*

INS services are provided by Department of Homeland Security (DHS)

FEAR OF DEPORTATION

Many of the other barriers already addressed play into the victim’s fear of deportation. Being deported would mean the victim is separated from her children and other family members here in the U.S. If deported, the victim might find herself back in a repressive country whose laws limit or deny women’s rights. She may find herself the target of political, religious, or cultural persecution with no financial or emotional support.

An immigrant married to a U.S. citizen or lawful permanent resident (LPR) may be dependent on her spouse to petition for her status, giving the abuser control. Abusers may threaten deportation by withdrawing support for the non-citizen victim’s immigration petition or reporting her to the authorities.¹⁹

LEVELS OF IMMIGRATION STATUS

Police officers are not expected to be immigration experts, but they are expected to know where to find people who are. Many family violence programs and legal assistance agencies have trained their staff to deal with immigration issues and provide access to immigration attorneys.

It should be noted that regardless of a person’s immigration status, all immigrants are eligible for:²⁰

- Police protection
- Emergency health and mental health services
- Access to homeless and domestic violence shelters and programs
- WIC and school lunch programs
- Public education
- Access to the Crime Victims’ Compensation Program
- Protection provided by protective orders

There are 6 levels of immigration status in the United States. They are:²¹

1. **United States Citizen.**
2. **Lawful Permanent Resident (LPRs).** This is the most secure status for non-citizens. A LPR is a “Green Card” holder; entitled to live and work permanently in this

¹⁸ “Testimony of Maria,” *The Polaris Project*, <http://www.humantrafficking.com> (14 Dec. 2005)

¹⁹ “Barriers,” *Family Violence Prevention Fund*, <http://endabuse.org> (14 Dec. 2005).

²⁰ Texas Council on Family Violence, “Assisting Immigrant Survivors of Abuse,” *2005 Texas Advocates Guide: Family Violence Laws, Policies and Protocols* (Austin: TCFV, 2005).

²¹ *Ibid.*

country. LPRs can apply for U.S. citizenship in one (for military veterans) to five years.

3. **Conditional Permanent Residents (CPRs).** Foreign nationals married to U.S. citizens are granted LPR status, but given conditional residency if the couple has been married less than two years at the time of the petition. After two years, the couple may apply jointly for removal of the conditions attached to the foreign national's LPR status. Domestic violence cases can create a barrier to having this conditional status removed. For victims of family violence who are CPRs, there are provisions in the Violence Against Women Act of 1994 that waive the need for joint filing.
4. **Asylees, Refugees, Withholding of Removal and the Convention Against Torture.** Refugees are granted asylum before coming to the United States; asylees are granted asylum after coming to the United States. In either case, an asylee's or refugee's status is granted upon a finding that the person faces a real fear of persecution in his or her home country due to race, religion, political opinion, nationality, or membership in a particular social group. Refugees and asylees are eligible to become LPRs after one year of residency in the United States. For immigrants who are not granted asylum, they may be granted *withholding of removal* status or protection under the *Convention against Torture*, but they are not eligible for LPR status.
5. **Non-Immigrant Visa Holders.** These foreign nationals have permission to be in the United States for a specific reason and a limited amount of time. "U" visas for immigrant victims of crime and "T" visas for victims of human trafficking are both non-immigrant visas.
6. **Undocumented Alien.** A foreign national can end up with an undocumented status in many ways. Typically, it is anyone who is not a U.S. citizen who has violated section 275 of the Immigration and Nationality Act. This can include:
 - Entering without permission
 - Eluding the inspection of immigration officials
 - Attempting to enter, or entering the country using false information
 - Continuing to stay in the country on an expired visa

No federal or state law requires a judge to report a person's immigration status to any federal immigration agency (ICE; CBP), even if the person entered or has remained in the U.S. illegally. Under Texas law, a judge must report an *illegal criminal alien* as required by Texas Code of Criminal Procedure Article 2.25 – Reporting Certain Aliens to Federal Government:

"A judge shall report to the United States Immigration and Naturalization Service a person who has been convicted in the judge's court of a crime or has been placed on deferred adjudication for a felony and is an illegal criminal alien as defined by Section 493.015(a), Government Code."

Immigration Detainer Request and Status Inquiry

During the 85th legislative session, the purpose behind Senate Bill 4 was to address local "sanctuary city" policies that prohibits local law enforcement personnel or agencies from inquiring about a person's immigration status. These "sanctuary city" policies have also prohibited local law enforcement from complying with U.S. Immigration and Customs

Enforcement (ICE) detainer requests and the sharing of information regarding a person's immigration status with the federal government. Senate Bill 4 amends several codes within Texas law; specifically, Government Code, Code of Criminal Procedure, Local Government Code, and Penal Code as it relates to enforcement, related duties, and liabilities within the criminal justice system; provides a civil penalty; and creates a criminal offense. Specifically, Penal Code section 39.07, Failure to Comply with Immigration Detainer Request, is added. The new section states that:

- (a) *A person who is a sheriff, chief of police, or constable or a person who otherwise has primary authority for administering a jail commits an offense if the person:*
 - (1) *has custody of a person subject to an immigration detainer request issued by United States Immigration and Customs Enforcement; and*
 - (2) *knowingly fails to comply with the detainer request.*
- (b) *An offense under this section is a Class A misdemeanor.*
- (c) *It is an exception to the application of this section that the person who was subject to an immigration detainer request described by Subsection (a)(1) had provided proof that the person is a citizen of the United States or that the person has lawful immigration status in the United States, such as a Texas driver's license or similar government-issued identification.*

According to the Texas District and County Attorneys Association (TDCAA), "a conviction for this offense constitutes official misconduct for the purposes of removing a county official from office." Additionally, at the time this legal update document is being written, there are multiple federal lawsuits in progress related to this statute. TDCAA strongly encourages officers, agencies, and officials to seek legal guidance from their city, county, or district attorney in order to best adhere to the law and any federal court decisions that may come down the pike.

According to the U.S. Immigration and Custom Enforcement website, an immigration detainer is a notice that DHS issues to federal, state, and local law enforcement agencies to inform the local agency that ICE intends to assume custody of an individual that is in the custody of a local law enforcement agency.

An immigration detainer serves three key functions:

- 1) to notify a local agency that ICE intends to assume custody of an alien that is in the custody of a local law enforcement agency once the alien is no longer subject to the local agency's detention;
- 2) to request information from a local law enforcement agency about an alien's impending release so ICE may assume custody before the alien is released from the local agency's custody; and
- 3) to request that the local law enforcement agency maintain custody of an alien who would otherwise be released for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays) to provide ICE time to assume custody.

SB 4 also amended Article 2.13, CCP. This section authorizes a peace officer, in the course of investigating an alleged criminal offense, to inquire as to the nationality or immigration status of a victim of or witness to the offense only if the officer determines that the inquiry is

necessary to investigate the offense or provide the victim or witness with information about federal visas designed to protect individuals providing assistance to law enforcement.

Officers should be mindful that if the detainee/arrestee has provided proof of residency, further inquiries about immigration status are not necessary. Officers may not engage in racial profiling regarding immigration status inquiries. If such inquiries are based on the race of the detainee/arrestee, then the agency and/or officer(s) may violate the section of the profiling prohibition. During a lawful detention or the process of arrest, officers may inquire about the detainee's immigration status.

ASSISTING IMMIGRANT VICTIMS OF ABUSE

LANGUAGE SERVICES

Many small agencies are not staffed by officers who are bilingual. Officers may need the assistance of an outside interpreter when investigating family violence cases involving immigrants who do not speak English.

Voiance is a division of CyraCom International, Inc., the leading provider of language interpreting services. Voiance bridges communication gaps for organizations that need rapid access to language assistance via phone, mobile app, written text, or in person. Voiance support hundreds of languages and operate 24/7. Voiance interpreters work in the most extensive network of large-scale interpreter contact centers: all PCI-compliant and US-based.

To Contact Voiance:

2650 E. Elvira Rd., Ste. 132
Tucson, AZ 85756
1-800-481-3289
<http://interpret.voiance.com>

LanguageLine Solutions employs interpreters in 240 different languages 24 hours a day, 7 days a week, and 365 days a year. They can be accessed from any phone. Individual officers can use this service on a case-by-case basis, provided they have a credit card, or a corporate account can be set up in advance. This way, officers can access the account by using a PIN.

To Contact LanguageLine Solutions:

LanguageLine Solutions
1 Lower Ragsdale Dr., Bldg. 2
Monterey, CA 93940
1-800-752-6096
<http://languageline.com>

DEVELOPING TRUST IN THE POLICE

Here are some positive steps police and prosecutors can take to develop trust in the criminal justice system, and encourage the reporting of domestic violence in immigrant communities:²²

- Establish practices that encourage and facilitate the reporting of family violence in immigrant families to police by:
 - Making it known in the community that immigrant victims of any type of crime have the right to report those crimes to law enforcement regardless of immigration status.
 - Assuring the victims of family violence who may be in this country illegally that you will not contact the Immigration and Customs Enforcement.
 - Giving the victim information about local agencies that can assist immigrants or victims of domestic violence.
- Employ a cooperative approach with the victim when investigating and prosecuting family violence cases:
 - Respect the victim's concerns that the batterer not be deported.
 - Explain the legal system and what to expect if she cooperates with the prosecution.
 - Work with the immigrant victim to explore his or her choices and the consequences of those choices.
 - Assist immigrant victims to access the local services that will help overcome the barriers to reporting and prosecuting family violence.

SAFETY STRATEGIES

- Officers can give immigrant victims of abuse advice on organizing a safety plan to help facilitate a quick escape:²³
 - Know where the telephone is located and different ways to leave the home.
 - Talk to your children and create a code word to signal the need to leave quickly.
 - Plan to have a place to stay with a trusted person.
- Keep the following copies or originals in a safe, accessible place in case you have to leave quickly:
 - Birth/marriage certificate(s)
 - Immigration papers
 - Social Security Number Card(s)
 - Articles of sentimental value
 - Passport(s)
 - Driver's license/identification card

²² Gail Pendelton, "Local Police Enforcement of Immigration Laws and Its Effects on Victims of Domestic Violence," ABA Commission on Domestic Violence. Retrieved at <http://www.asista.org>.

²³ Texas Council on Family Violence, "Assisting Immigrant Survivors of Abuse," *2005 Texas Advocates Guide: Family Violence Laws, Policies and Protocols* (Austin: TCFV, 2005).

- Other important items:
 - Phone numbers
 - Credit cards
 - Spare keys
 - Money
 - Insurance papers
 - Police reports
 - Pictures
 - Car title
 - Medical reports
 - Mail
 - Prescription medication(s)
 - Lone Star Card
 - Lease agreements
 - Bills
 - Mortgage papers
 - Protective orders
 - Check book
 - Paycheck stubs
- During a violent incident:
 - Call 911 if you feel you are in danger (ask for an interpreter)
 - Avoid areas with possible weapons
 - Avoid rooms with few exits (i.e. kitchen, bathroom, or garage)
 - If possible, escape through an exit and yell or make loud noises

IMMIGRATION REMEDIES FOR VICTIMS OF ABUSE

The following information is provided as an overview of the various immigration remedies open to immigrant victims of abuse. Any police officer who finds himself or herself dealing with these issues should direct the victim to the nearest family violence program or legal aid office. Immigration laws are confusing and everchanging, so expert professional assistance is necessary. Part of the Violence Against Women Act of 1994 (VAWA) was signed into law to assist immigrant victims of domestic violence. Currently, there are five remedies available depending upon the victim's immigration status.

VAWA SELF PETITION

A victim may be eligible to self-petition for relief under the Violence Against Women Act (VAWA) and obtain her lawful permanent resident (LPR) status if she is an abused spouse of a U.S. citizen or lawful permanent resident, the parent of an abused child whose other parent is a U.S. citizen (USC) or lawful permanent resident (LPR), or if she is the abused child (under 21 years old) of a USC or LPR.²⁴

In the self-petition, the victim must show:

1. That she is a spouse of a U.S. citizen or lawful permanent resident;
2. That she lived with her spouse;
3. That they were/are married in good faith (in Texas this includes common law marriage);
4. Evidence of good moral character; and
5. Evidence of suffering battery or extreme cruelty.

²⁴ Child abuse victims can self-petition up to the age of 25. Additionally, elder abuse victims of US citizens' sons or daughters (over 21 years of age) are also eligible to self-petition.

VAWA CANCELLATION OF REMOVAL

A victim who is in deportation or removal proceedings may also apply for special cancellation of removal based upon her status as an abused spouse of a USC or LPR, or the parent of an abused child whose other parent is a USC or LPR.

The applicant must show:

1. That they have lived in the U.S. continuously for 3 years before filing the application;
2. Evidence of good moral character;
3. Evidence of suffering battery or extreme cruelty; and
4. Evidence that the applicant or their child would suffer extreme hardship if deported.

BATTERED SPOUSE WAIVER

An abused conditional permanent resident (CPR) can apply to have the joint filing requirement waived and remove the conditions of their residency without the assistance of their abusive spouse.

The victim must show:

1. That the marriage was in good faith;
2. That the victim was not at fault for failing to file the joint petition; and
3. The applicant was subjected to battery or extreme cruelty.

CONTINUED PRESENCE

Continued Presence is a temporary immigration status provided to individuals identified by law enforcement as victims of human trafficking. This status allows victims of human trafficking to remain in the United States temporarily during the ongoing investigation of the human trafficking crime. Continued presence can only be requested by a federal law enforcement agency and is adjudicated by Immigration and Customs Enforcement Homeland Security Investigations.

THE TRAFFICKING VICTIMS PROTECTION ACT (TVPA) OF 2000

The Trafficking Victims Protection Act (TVPA) of 2000 provides protection and services for trafficking victims, holds traffickers accountable, and works to prevent trafficking around the world. The Act defines “severe forms of trafficking in persons” as:

- a. The recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act in which a commercial sex act is induced by force, fraud, or coercion, or in which the person forced to perform such an act is younger than age 18. A commercial sex act means any sex act on account of which anything of value is given to or received by any person. Types of sex trafficking include prostitution, pornography, stripping, live-sex shows, mail-order brides, military prostitution, and sex tourism;

- b. The recruitment, harboring, transportation, provision, or obtaining of a person for labor services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.²⁵

U VISA

An immigrant victim of abuse may apply for U Visa relief if the crime occurred against the victim in the United States. The victim must have suffered substantial physical or emotional injury as a result of the crime and possess information concerning the crime. Last, the victim must be willing to assist in the investigation or prosecution of the crime.

An individual must be a victim of one of these qualifying crimes:

- | | |
|-----------------------------|--------------------------|
| • Domestic Violence | • Incest |
| • Sexual Assault | • Prostitution |
| • Rape | • Felonious Assault |
| • Being held Hostage | • Manslaughter |
| • Peonage | • Murder |
| • Involuntary Servitude | • Blackmail |
| • Slave Trade | • Extortion |
| • Kidnapping | • Witness Tampering |
| • Abduction | • Obstruction of Justice |
| • False Imprisonment | • Perjury |
| • Female Genital Mutilation | • Attempt Conspiracy |
| • Torture | • Solicitation to Commit |
| • Trafficking | any of these Crimes |

One of the elements needed to qualify for a U Visa is Nonimmigrant Status Certification (USCIS Form I-918, Supplement B) that is completed by a law enforcement agent with investigative authority. This form certifies that the victim is a victim of a violent crime that violated the laws of the U.S., and that they were helpful in some manner in the investigation or prosecution of the crime that occurred against them.

T VISA

An immigrant victim may apply for a T Visa if they are a victim of human trafficking. To be eligible for the T Visa, victims must show that: (1) they are a victim of a severe form of trafficking; (2) have contacted law enforcement and agreed to comply with reasonable requests for assistance in investigating and prosecuting the trafficking case; and (3) would suffer extreme hardship if removed. Minors only need to be certified as trafficking victims and are not required to assist law enforcement in investigation or prosecution of the case. It is important to note that pursuing the legal remedy of the U Visa for an immigrant victim of trafficking may be more appropriate in non-federal cases and those cases in which perpetrators are being prosecuted under different crimes.

²⁵ United States Department of Justice. (2020). "Human Trafficking." Web. Justice.gov.

LAW ENFORCEMENT CERTIFICATION

Certification is a crucial step in getting long-term care for victims. In order to apply for a T or U Visa, an applicant must first obtain a law enforcement certification from a qualifying agency before filing a Petition for U Visa Nonimmigrant Status. The certification form verifies that the applicant has been a victim of a severe form of trafficking in persons and has been, is being, or is likely to be helpful to the investigation or prosecution of the trafficking crime of which he or she was a victim. Children under the age of 18 do not need to be certified nor do they have to cooperate with law enforcement to be eligible for benefits. The endorsement contains a description of the victimization, dates the trafficking occurred, and the type of trafficking. In preparing and signing a T or U visa certification, law enforcement officials are not granting lawful status to a noncitizen applicant or deciding the applicant's eligibility for a visa. Law enforcement certification is only one piece of the puzzle; the applicant must meet several other eligibility requirements.

GENDER-BASED ASYLUM

A victim may be eligible for asylum status if he/she resides in the U.S. and can prove that he/she has suffered past persecution or has a credible fear of future persecution based upon one of five protected grounds: race/ethnicity, religion, political opinion, national origin, or membership in a particular social group. An applicant must show that his/her home country is unwilling or unable to protect them from a private actor, or that the government itself is the perpetrator of the harm. There have been cases where individuals have won asylum based upon their gender.

The Texas Council on Family Violence (TCFV) has a list of family violence and sexual assault programs, as well as legal aid offices, that specialize in assisting immigrant victims of abuse and immigration law.

{For more information, visit the TCFV website at www.tcfv.org. For immigration laws, regulations, guides, services, and benefits, visit the U.S. Citizenship and Immigration Services website at www.uscis.gov.}

CONSULAR NOTIFICATION

Police officers investigating cases of human trafficking involving immigrants will inevitably have to detain or arrest a foreign national. The United States is a signing country of the Vienna Convention on Consular Relations (VCCR). As of 2020, 180 countries have signed this treaty. The Vienna Convention establishes a baseline of fundamental access to a foreign national's consulate when an individual is detained in another country. Currently, 56 countries demand immediate notification when one of their citizens has been detained or arrested. These countries include:²⁶

²⁶ "Consular Notification and Access: Fifth Edition". Office of the Legal Advisor and Bureau of Consular Affairs, U.S. Department of State, <http://travel.state.gov/law> (2018).

▪ Albania	▪ Ghana	▪ St. Lucia
▪ Algeria	▪ Grenada	▪ St. Vincent and the Grenadines
▪ Antigua and Barbuda	▪ Guyana	▪ Seychelles
▪ Armenia	▪ Hungary	▪ Sierra Leone
▪ Azerbaijan	▪ Jamaica	▪ Singapore
▪ Bahamas	▪ Kazakhstan	▪ Slovakia
▪ Barbados	▪ Kiribati	▪ Tajikistan
▪ Belarus	▪ Kuwait	▪ Tanzania
▪ Belize	▪ Kyrgyzstan	▪ Tonga
▪ Brunei	▪ Malaysia	▪ Trinidad & Tobago
▪ Bulgaria	▪ Malta	▪ Tunisia
▪ China	▪ Mauritius	▪ Turkmenistan
▪ Costa Rica	▪ Moldova	▪ Tuvalu
▪ Cyprus	▪ Nigeria	▪ Ukraine
▪ Czech Republic	▪ Philippines	▪ United Kingdom
▪ Dominica	▪ Poland	▪ Uzbekistan
▪ Fiji	▪ Romania	▪ Zambia
▪ Gambia	▪ Russia	▪ Zimbabwe
▪ Georgia	▪ St. Kitts & Nevis	

The remaining balance of the countries requires that their citizens be informed of the right to communicate with the consulate or embassy of their country of origin. The individual citizen must choose to notify their consulate or embassy of their arrest.

As a law enforcement officer, you are required to comply with the Vienna Convention. In order to comply with the convention, you should take these following steps:²⁷

1. Determine the country of origin for the detainee/arrestee. This information may be found in their passport, travel visa, or other documents.
2. If the country of origin for the detainee/arrestee is on the list of countries that must be notified:
 - a. Without delay, notify that country's nearest consular officials of their citizen's arrest/detention
 - b. Tell the foreign national that you are taking this action by giving them the following statement:
"Because of your nationality, we are required to notify your country's consular officers here in the United States that you have been arrested or detained. We will do this as soon as possible. In addition, you are entitled to communicate with your consular officers. You are not required to accept their assistance, but you consular officers may be able to help you obtain legal representation, and may contact your family and visit you in detention, among other things."
3. If the country of origin for the detainee/arrestee is not on the list of mandatory notification countries:
 - a. Without delay, offer to notify the detainee/arrestee's consular officials of his or her arrest or detention by allowing reading them this statement:
"As a non-U.S. citizen who is being arrested or detained, you are entitled to have us notify your country's consular representatives here in the United States. A consular official from your country may be able to help you obtain legal counsel and may contact your family and visit you in detention, among other things. If you want us to notify your country's consular officials, you can request this

²⁷ Ibid.

notification now, or at any time in the future. After your consular officials are notified, they may call or visit you. Do you want us to notify your consular officers at this time?"

- b. If the foreign national asks to have their consul or embassy notified, contact and notify that nation's nearest officials immediately.
4. Keep a written record of the notification and any other actions taken.

*{For more information on consular notification, including contact numbers for treaty countries and applicable forms, go to
<https://travel.state.gov/content/travel/en/consularnotification.html>.}*

Whether people immigrating to the U.S. are seeking refuge or opportunity, a large percentage of them make Texas their home. They bring with them different beliefs, languages, and practices. Sometimes, these differences conflict with our laws. The unique dynamics of immigrant family violence could pose problems for law enforcement agencies that are not trained or equipped to work efficiently with this population. Officers can find themselves in a confusing maze of immigration laws, foreign cultures and distinctive barriers inherent to immigrant communities. These differences can make a difficult job even harder. Law enforcement must strive to understand and work to overcome these barriers in order to assist immigrant victims properly.

VIOLENCE IN TRIBAL COMMUNITIES

American Indian and Alaska Native women experience violence at higher rates than any other group in the United States.²⁸ It was not until the late 1990s that data began to expose this issue. In response to the epidemic of violence perpetrated against Native American women, scholarly and congressional attention is being given to increase engagement, coordination, and action on public safety in tribal communities.

EXTENT OF VIOLENCE AGAINST NATIVE AMERICAN WOMEN

Studies indicate that Native American women experience the highest rates of sexual assault, family violence, and stalking of any ethnicity in the United States. Congress recently found that 60% of Native American women have been assaulted by their spouse and 33% of American Indian women will be raped during their lifetimes. In particular, the rate of aggravated assault among American Indians and Alaska Natives in 2000 was roughly twice that of the country (600.2 per 100,000 versus 323.6 per 100,000).²⁹ On some reservations, Native women are murdered at a rate more than 10 times the national average. According to

²⁸ There are a variety of terms used to identify this population. The federal government typically uses "American Indian and Alaska Native". Many organizations use the term "Native American." Each tribal community usually identifies by referring to itself by a traditional name (e.g., Kickapoo, Navajo, Pueblo, etc.). For the purposes of this chapter, we will use "Native American women."

²⁹ U.S. Department of Justice, Office of Justice Programs, Census of State and Local Law Enforcement Agencies, 2000 - Tribal Law Enforcement, 2000 (January 2003, NCJ 197936).

a December 2004 study by the Bureau of Justice Statistics, American Indians are twice as likely to experience sexual assault crimes compared to all other races.³⁰

Below are recent statistics on violence against Native Women:

- 34% of American Indian women reported experiencing an attempted or completed rape in their lifetime.³¹
- Native Americans are victims of rape or sexual assault at more than double the rate of other racial groups.³²
- 17% of Native American women will be stalked during their lifetimes.³³
- For Native American victims of violence, the offender was slightly more likely to be a stranger than an intimate partner, family member or acquaintance.
- Native Americans described the offender as an acquaintance in 34% of rapes/sexual assaults, and as an intimate partner or family member in 25% of sexual assaults.³⁴
- Native women are the most battered, raped, stalked, and murdered group of women in the US.³⁵
- 70% of sexual assaults, acts of domestic violence, and stalking committed on Native Americans is by non-native offenders.³⁶

There are many reasons why Native American women experience high rates of violence. One of the major factors is the failure of the American legal system to adequately address crime in Indian country.³⁷ Until recently, the federal government had restricted tribal criminal jurisdiction. For example, tribal governments lacked criminal authority over non-Indians.³⁸ This means that tribal governments had trouble holding non-Indian offenders accountable. A significant characteristic of violence against Native women is that the offender is primarily a non-native. In the United States, a non-Native within Indian jurisdiction can commit a crime against an Indian and have the highest probability of remaining free because neither the tribe nor the state can prosecute; only the U.S. Attorney can prosecute.³⁹ The Department of Justice

³⁰ Steven W Perry, *American Indians and Crime – A BJS Statistical Profile*, US Dept. of Justice, Office of Justice Programs, December 2004..

³¹ Tjaden, P., & Thoennes, N. (2006, January). “Extent, nature, and consequences of rape victimization: Findings from the National Violence Against Women Survey.” (NCJ 210346). Washington, DC: US Department of Justice.

³² Southwest Ctr. for L. and Pol’y, Statistics, (2005). Web. <http://www.swclap.org/statistics.htm>. Steven W. Perry, U.S. Dep’t of Just., NCJ 203097, *A Bureau of Justice Statistics Statistical Profile, 1992-2002: American Indians and Crime* (2004), available at <http://www.ojp.usdoj.gov/bjs/abstract/aic02.htm>

³³ Steven W. Perry, U.S. Department of Justice, NCJ 203097, *A Bureau of Justice Statistics Statistical Profile, 1992-2002: American Indians and Crime, 2004*.

³⁴ Southwest Ctr. for L. and Pol’y, Statistics (2005), <http://www.swclap.org/statistics.htm>; Steven W. Perry, U.S. Dep’t of Just., NCJ 203097, *A Bureau of Justice Statistics Statistical Profile, 1992-2002: American Indians and Crime* (2004), available at <http://www.ojp.usdoj.gov/bjs/abstract/aic02.htm>.

³⁵ Sacred Circle. *Cultural Competency and Native Women: A Guide for Non-Natives Who Advocate for Battered Women and Rape Victims*.

³⁶ Ibid.

³⁷ “Indian country” is a legal term of art that refers to land held in trust by the United States for the benefit of a tribal nation. The most common form of Indian country is an Indian reservation but can also include other types of land held in trust, such as allotments and dependent Indian communities. 18 USC 11515.

³⁸ *Oliphant v. Suquamish Indian Tribe*, 435 US 191 (1987).

³⁹ Gavin Clarkson, David DeKorte, *Unguarded Indians: The Complete Failure of the Post-Oliphant Guardian and the Dual-Edged Nature of Parens Patriae* (University of Illinois Law Review, 2010).

is therefore engaged in efforts to address the staggering rates of violence against American Indian women. In 2016, two years after Congress reauthorized the Violence Against Women Act, a provision was made that allows tribal courts to investigate and prosecute non-Native men who abuse Native women on reservations.

Additionally, tribal governments are also restricted in the length of incarceration sentences that can be imposed. Tribal governments cannot sentence an offender to more than 1 year in custody.⁴⁰ Because of these restrictions, tribal governments are often dependent on the federal and/or state governments to prosecute violent crime.

TRIBAL TRADITIONS AND VIOLENCE AGAINST WOMEN

Most scholars agree that violence against women was extremely rare in pre-colonial tribal communities because of the values and principles upon which most tribal communities are based. Native women and children were traditionally protected and supported in their communities, and violence was severely sanctioned. Because of colonization, including war, forced removal, and assimilation policies, Native people now suffer high rates of social problems. When working with tribal communities, it is important to acknowledge that Native people are survivors with rich history and lessons for non-Native communities.

BARRIERS TO ASSISTING NATIVE AMERICAN VICTIMS

Barriers to assisting Native American victims are like barriers to assisting immigrant victims of family violence. However, systemic barriers imposed by U.S. law restrict tribal communities or state governments from ensuring the safety of their citizens and adequately responding to these crimes. The new provision to VAWA hopes to alleviate some of these barriers.

GEOGRAPHIC LOCATION

The American reservation system placed Native Americans onto undesirable lands. Many reservations are in rural or geographically remote areas far from economic productivity. As with most rural areas, public transportation is typically not available and creates a significant barrier to accessing care. Rural or geographically remote areas offer few programs for victims and these programs often have high staff vacancy rates because it can be difficult to attract qualified individuals to remote areas.⁴¹ Another consequence of poverty and isolation is lack of telephones in a high percentage of American Indian households.

CRIMINAL JURISDICTION IN TRIBAL COMMUNITIES

There are many jurisdiction complexities and limitations in Tribal Communities. The confusing division of authority among tribal, federal, and state governments results in a jurisdictional maze that is complicated by the lack of tribal courts' criminal jurisdiction over non-Natives and other limitations on tribal criminal jurisdiction.

⁴⁰ The Tribal Law and Order Act, passed in 2010, allows tribal governments to sentence a convicted offender to up to 3 years if certain conditions are met.

⁴¹ Indian Health Service. (2020). *Indian Health Service Recruitment*. Web. IHS.gov

For example, prior to 2016, if the perpetrator was non-Native and the assault was committed on reservation land, there may have been jurisdictional problems because reservation authorities could not prosecute a non-Native; federal law had barred tribal authorities from prosecuting cases against non-Natives. In March of 2016, however, VAWA passed a provision in which tribes can claim jurisdiction over non-Native men who commit crimes of domestic violence or dating violence, or those who violate a protection order against a victim who lives on tribal land. For the first time, tribal law enforcement now can intervene.

There are also restrictions placed on tribal courts and the ways in which they can punish Native offenders. Federal and state authorities are often reluctant to get involved, except in the most severe reservation crimes.⁴² The difficulty of determining jurisdiction and provisions for concurrent jurisdiction of certain cases can cause conflict and confusion for law enforcement, prosecution, service providers, and crime victims in Tribal Communities. One important issue for law enforcement to know is that state governments generally have little to no authority over crimes committed in Indian country.

LACK OF LEGAL SERVICES

Access to effective civil legal services is a huge barrier for Native women who have survived sexual assault, family violence, or stalking and are seeking protective orders, divorces, custody, and support from the legal system. Many legal service organizations in Tribal Communities are overwhelmed with cases and lack the resources to assist all women who qualify for their services. Some women do not qualify for legal service because of income, but still cannot afford an attorney's regular rate. Even when legal representation is available, a lawyer untrained in federal Indian law can compromise the interest of the Native woman.⁴³

LACK OF FINANCIAL RESOURCES

Many American Indian communities suffer from high rates of unemployment and poverty due to a forced conversion to a cash economy from hunting, gathering, and farming economies.⁴⁴ Recent changes from the Indian Self-Determination and Education Assistance Act of 1975 (Public Law 93-638), which authorizes transfer of Indian Health Service (IHS) functions from federal to tribal administration, are designed to improve local input and control over health services. Although the long-term effects of these changes are likely to be positive, in the short-term they are leading to dramatic shifts and increased variability in service provision and downsizing of technical assistance, quality control, and long-range planning at the federal level.⁴⁵

⁴² Self-determination and American Indian justice: Tribal versus Federal jurisdiction on Indian lands. In D. F. Hawkins (Ed.), *Ethnicity, race, and crime: Perspectives across time and place* (pp. 310-322). Albany, NY: State University of New York Press.

⁴³ Office on Violence Against Women (2006). *Violence Against Native Women: A Guide for Practitioner Action*.

⁴⁴ Nielsen, M. O., and Silverman, R. A. (2009). *Criminal Justice in Native America*. Tuscon, AZ: The University of Arizona Press.

⁴⁵ Ibid.

DISTRUST OF LAW ENFORCEMENT

Some Native Americans can have a high level of mistrust for agencies outside their reservation. This lack of trust is not difficult to understand given the historically oppressive way that outside societies have treated Native Americans in the past. This mistrust may keep the battered victim from reaching out for help. In many cases, when battered Native American victims reach out, they may be faced with advocates and service providers who have a lack of sensitivity towards their culture and lifestyle.⁴⁶

ASSISTING NATIVE AMERICAN VICTIMS OF ABUSE

INHERENT SOVEREIGN AUTHORITY

Indian tribes, as sovereign nations, historically have inherent jurisdictional power over everything occurring within their territory. Tribal courts are courts of general jurisdiction, which continue to have broad criminal jurisdiction. Any analysis of tribal criminal jurisdiction should begin with this sovereign authority and determine whether there has been any way in which this broad sovereign authority had been reduced.⁴⁷

TEXAS STATE CRIMINAL JURISDICTION

Texas generally does not have jurisdiction over crime occurring in Indian country. State jurisdiction is limited to crimes by non-Natives against non-Natives that occur in Indian country. The state also has criminal jurisdiction over “victimless” crimes committed in Indian country.

For crimes occurring off-reservation, the same laws that apply to all people apply to Native women. A Native woman who is assaulted in Dallas, TX, for example, will be treated the same as any other woman in Dallas, TX who is assaulted.

FEDERAL CRIMINAL JURISDICTION

Federal courts are courts of limited jurisdiction. Congress has granted criminal jurisdiction in Indian country to the federal courts in certain circumstances, including the following:

- General Crimes Act (18 U.S.C. § 1152): Sometimes referred as the Indian Country Crimes Act, provides for federal court jurisdiction over crimes committed by Indians against non-Indians victims and for all crimes committed by non-Indians against Indian victims.
- Major Crimes Act (18 U.S.C. § 1153): Provides for federal criminal jurisdiction for major crimes committed by Indians in Indian country; most of these are felonies.

⁴⁶ *Barriers for Native American Victims Facing Domestic Violence*. Retrieved Montana State University, American Indian Research Opportunities: <http://www.montana.edu/wwwai/imsd/alcohol/Michele/barriers.htm>

⁴⁷ Tribal Court Clearinghouse: General Guide to Criminal Jurisdiction in Indian Country. Retrieved from the Tribal Institute: <http://www.tribal-institute.org/lists/jurisdiction.htm>.

FULL FAITH AND CREDIT PROVISION OF VAWA, 18 U.S.C. §§ 2265 – 2266 (2000)

Full faith and credit is a legal term that means a court in any jurisdiction will honor and enforce orders issued by courts in other jurisdictions. Full faith and credit is not a new concept; it is included in Article IV, Section 1 of the United States Constitution. Under VAWA, all jurisdictions must give full faith and credit to valid protection orders issued by all other jurisdictions, including states, Indian tribes, or territories on behalf of survivors of domestic violence, sexual assault, stalking, and dating violence. Therefore, a valid protection order should be enforced as if it were the order of the enforcing state, tribe, or territory.⁴⁸

INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT, PUBLIC LAW 93 – 638 (1975)

The Act provides that tribes may enter into “self-determination contracts” with the Secretary of the Interior and the Secretary of Health and Human Services to administer programs or services that otherwise would have been administered by the federal government.

The Indian Self-Determination Act affords tribes the opportunity to provide their own police departments and other institutional services through federal grants and contracts. This act is intended to increase the tribal operation and direction of Bureau Programs for tribal communities.

TRIBAL LAW AND ORDER ACT (TLOA), PUBLIC LAW 111 – 211 (2010)

Signed into law by President Obama on July 29, 2010 as part of H.R. 725, the Indian Arts and Crafts Amendment Act of 2010 address the shortfalls of investigating and prosecuting violent crimes on Indian lands. The comprehensive approach holds Federal agencies accountable for investigating and prosecuting reservation crime and provides tribes with additional tools to combat crime locally. The Act provides law enforcement officials and tribes increased evidence sharing and federal declination data recording, access to national criminal history records, improved tribal court sentencing authority, and enables deputization of either federal or tribal agents as the situation requires.

{Additional information about the Tribal Law and Order Act can be found at the National Congress of American Indians website, www.ncai.org.}

VIOLENCE AGAINST WOMEN FEDERAL AND TRIBAL PROSECUTION TASK FORCE

On January 21, 2011, Attorney General Eric Holder announced the formation and inaugural meeting of the Violence Against Women Federal and Tribal Prosecution Task Force to address the high rate of violence against American Native women. The task force is composed of six assistant U.S. Attorneys and six tribal attorneys, along with advisors and liaisons from the

⁴⁸ National Center on Protection Orders and Full Faith & Credit, “*Full Faith and Credit for Protection Orders: Assisting Survivors with Enforcement Across Jurisdictional Lines.*” Retrieved from <http://www.vaw.umn.edu/documents/fullfaithcreditprotectionorders/fullfaithcreditprotectionorderspdf.pdf>.

Justice Department's Office of Violence Against Women, health care professionals, and law enforcement officials.

TEXAS TRIBAL COMMUNITIES

As of 2010, Texas had the fourth largest Native American population in the United States.⁴⁹ There are three federally recognized American Indian Tribes in Texas: The Kickapoo Traditional Tribe of Texas, the Ysleta Del Sur Pueblo/Tigua Tribe, and the Alabama-Coushatta Tribe. The estimated enrolled members of the three tribes combined is nearly 6,200. Most Native people in Texas do not reside in Indian country. It is important to make considerable effort to provide service to Native women living in urban communities.

Kickapoo Traditional Tribe of Texas:

Eagle Pass, Texas

Enrolled members: 960

Phone: 830-773-2105

The jurisdiction of the Kickapoo Traditional Tribe of Texas shall extend to the extent permitted by federal law to all lands placed in trust for the Tribe pursuant to the Public Law 97-429, known as the Kickapoo Village, to all additional lands which may be acquired by the United States and held in trust for the Tribe, and to all other lands over which the Tribe may exercise jurisdiction under federal law.⁵⁰

Ysleta Del Sur Pueblo/Tigua Tribe:

El Paso, Texas

Enrolled members: 4,000+

Police Headquarters: 915-860-2794

Police Dispatch: 915-860-9653

The law enforcement division is maintained at the tribal government level and is overseen by the Chief of Police and the Sergeant who is second in command. Currently, police staff includes three patrol officers and administrative support. The department provides 24-hour police coverage for approximately a 15-mile radius. This includes aid in the enforcement of codes and ordinances, as well as patrolling tribal lands, conducting surveillance, and investigating crimes and/or civil infractions.⁵¹

Alabama-Coushatta Tribe of Texas:

Livingston, Texas

Enrolled members: 1,200

Emergency Line: 936-563-1200

General Information Line: 936-563-1100

⁴⁹ United States Census Bureau. *2010 Census Shows Nearly Half of American Indians and Alaska Natives Report Multiple Races*. Newsroom Archive. Web.

⁵⁰ Kickapoo Traditional Tribe of Texas: <http://www.newwebby.com/ktttribe.org/government.php>.

⁵¹ Ysleta Del Sur Pueblo: http://www.ysletadelsurpueblo.org/html_pages.sstg?id=14&sub1=81.

The Alabama-Coushatta Tribe of Texas has implemented a security system with emergency numbers for quick response and employs its own security guards who work closely with the local sheriff's office. A 24-hour dispatch program was implemented to assist both the Security and the Volunteer Fire Department in dispatching out for emergencies.⁵²

RESOURCES FOR NATIVE AMERICAN VICTIMS

Texas Organization:

Urban Inter-Tribal Center of Texas
1261 Record Crossing Rd.
Dallas, TX 75235
(214) 941-1050
www.uitct.org

National Organizations:

Southwest Center for Law and Policy
Phone: (520) 623-8192
www.swclap.org

Mending the Sacred Hoop
Phone: (218) 623-4667
www.mshoop.org

Tribal Law and Policy Institute
Phone: (323) 650-5467
www.home.tlpi.org

⁵² Alabama-Coushatta Tribe of Texas: http://www.ac-tribe.com/ac/index.php?option=com_content&task=view&id=97&Itemid=137.

CHAPTER NINE (C): SEXUAL ASSAULT AND FAMILY VIOLENCE IN THE MILITARY

Learning Objectives: Understanding Sexual Assault and Family Violence in the Military

By the end of this section, the student will be able to identify and discuss the following terms, concepts and practices as they relate to sexual assault and family violence within the military:

- A. The United States at War
- B. Injuries at War
 - 1. Posttraumatic Stress Disorder (PTSD) & Posttraumatic Stress Syndrome (PTSS)
 - 2. Traumatic Brain Injury (TBI)
- C. The Military's Response to Intimate Partner Violence
- D. Dynamics of Family Violence within the Military
- E. Resources for Victims of Family Violence
 - 1. Military OneSource
 - 2. Coast Guard Support Program
 - 3. Family Advocacy Program (FAP)
 - 4. Transitional Compensation (TC) for Abused Dependents
- F. Reporting Abuse
 - 1. Safety Planning with Victims of Family Violence
 - 2. Military Protective Orders (MPOs)
- G. Texas Laws Regarding Family Violence and the Military
- H. Sexual Assault in the Military
- I. Resources Available to Victims
- J. Continuum of Harm

Intimate partner violence (IPV) occurs within every type of family unit, including military families. It is important to understand the dynamics of military families, deployment histories, and context of violence when evaluating intimate partner violence within these relationships.

THE UNITED STATES AT WAR

The U.S. has been at war for almost two decades. In that time, there have been over 2.5 million volunteer soldiers that have served in Operation Iraqi Freedom (OIF), Operation Enduring Freedom (OEF), Operation New Dawn (OND), and Operation Freedom's Sentinel (OFS).

Texas is home to one of the largest military installations in the world: Fort Hood. As of 2016, Fort Hood is the largest armored post in the U.S. In addition, as of 2016, Texas has the second largest veteran population and is expected to have the largest veteran population in the U.S.

by 2027.¹ We must consider these statistics when speaking about and responding to family violence within our communities. Unlike previous wars where soldiers were deployed for a specific tour with an understanding that having completed this tour of duty, their war-time service was completed, OEF, OIF, and OND have had longer duration of deployments and shorter down times between deployments. The cumulative amount of time that a soldier has spent deployed has increased by an average of 28% since 2008.²

INJURIES AT WAR

Multiple deployments and serving within a combat zone can place soldiers at an increased risk for developing Posttraumatic Stress Disorder (PTSD), traumatic brain injury (TBI), depression, and anxiety. However, not all soldiers who have been deployed or served in a combat zone will develop one or any of these conditions. We will cover the differences between PTSD and TBI below to help identify how these conditions may overlap with family violence in some cases.

POSTTRAUMATIC STRESS DISORDER (PTSD) & POSTTRAUMATIC STRESS SYNDROME (PTSS)

Posttraumatic Stress Disorder (PTSD) [also referred to as Posttraumatic Stress Syndrome (PTSS)] is not exclusive to military members who have served in combat zones. People who have experienced or witnessed a traumatic event such as rape, intimate partner violence, child abuse, or natural disasters are all susceptible as well. The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) has changed the classification of PTSD from an anxiety disorder to a trauma- and stressor-related disorder. “Diagnostic criteria for PTSD include a history of exposure to a traumatic event that meets specific stipulations and symptoms from each of four symptom clusters: intrusion, avoidance, negative alterations in cognitions and mood, and alterations in arousal and reactivity.”³ These symptoms must persist for more than a month and cause significant functional impairment that is not due to medication, substance abuse, or other illness.

An assessment of behaviors that are “targeted towards a spouse or partner, are coercive and controlling, result in injury (psychological or physical) to a spouse or partner, and result in fear” can help determine when family violence intersects with PTSD.⁴ Examples of PTSD symptoms versus family violence tactics are shown in Table 1.

¹ National Center for Veterans Analysis and Statistics. (2016). “Veteran Population Projections 2017-2037.”

² Baiocchi, D. “RAND Corporation.” Measuring Army Deployments to Iraq and Afghanistan. 2013

³ American Psychiatric Association. *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*. Washington, DC, 2013.

⁴ Tinney, G., and Gerlock, A. A. “Intimate Partner Violence, Military Personnel, Veterans, and Their Families.” *Family Court Review* (2014): 16.

Table 1: PTSD Symptoms vs. IPV Tactics⁵

PTSD/PTSS Symptoms	Family Violence Tactics
Re-experiencing: Nightmare-related aggression; aggression during a dissociative flashback.	Physical/sexual assault: Occurs outside of nightmares and/or dissociative flashbacks.
Avoidance: Self-imposed social withdrawal; avoiding family/friends and social activities	Social isolation: Cuts victim off from family/friends; isolates victim from support network.
Negative cognitions and mood: Negative beliefs about self and others; negative emotions (e.g., anger; inability to experience happiness and loving feelings)	Emotional abuse: Suspicious and jealous of victim; accuses victim of unfounded actions (e.g., having an affair); alternates between angry, threatening behavior, and demonstrations of love.
Arousal: Irritable/angry outbursts (little to no provocation); hyper-vigilance; reckless/self-destructive behavior.	Intimidation and threats: Threatens victim through displays of anger and aggression; exposes victim to reckless behaviors (e.g., reckless driving); uses tactics of stalking and surveillance of victim; justifies anger through righteous rage (e.g. “you owe me”).

TRAUMATIC BRAIN INJURY (TBI)

Traumatic brain injury is an injury that disrupts the normal function of the brain. It can be caused by a bump, blow, or jolt to the head or a penetrating head injury.⁶ Explosive blasts can also cause TBI, particularly among those who serve in the U.S. military. Just like PTSD, TBIs are not exclusive to the military. Based on the symptoms of the person, a TBI can be classified as mild, moderate, or severe. Observing one of the signs below could constitute a TBI:

- Any period of loss of or decreased consciousness;
- Any loss of memory for events immediately before (retrograde amnesia) or after the injury (post-traumatic amnesia);
- Neurologic deficits such as muscle weakness, loss of balance and coordination, disruption of vision, change in speech and language, or sensory loss; and/or
- Any alteration in mental state at the time of the injury such as confusion, disorientation, slowed thinking, or difficulty with concentration.

Symptoms can last anywhere from a couple of hours for mild cases to a lifetime in severe cases. These symptoms include loss of consciousness, impaired attention, anxiety, irritability, rage aggression, and seizures. As with PTSD, it is important to assess and establish if there is a pattern of behaviors that place a victim in fear for safety.

⁵ Tinney, Glenna, Sponsler-Garcia and April Gerlock. BWJP Webinar: Intimate Partner Violence: Risk, Danger, Military Personnel, and Veterans. 10 October 2013.

⁶ U.S. Department of Health and Human Services. Centers for Disease Control and Prevention. *Traumatic Brain Injury and Concussion*. Web. 2020. www.CDC.gov

THE MILITARY'S RESPONSE TO INTIMATE PARTNER VIOLENCE⁷

The military addresses intimate partner violence in the Department of Defense (DoD) Instruction Number 6400.06. This instruction outlines how the military responds to domestic abuse involving DoD military personnel and certain affiliated personnel. Military branches under the DoD include the Army, Navy, and Air Force. The Coast Guard is under the Department of Homeland Security. This instruction outlines how commanders will respond to allegations of domestic abuse, training for military members, and community coordination. This instruction is only for those military members who are active duty.

DYNAMICS OF FAMILY VIOLENCE WITHIN THE MILITARY

Victims of family violence that are in the military or whose abuser is a military member face the same risks as other victims. Safety planning and danger assessments may be affected as a result of unique barriers that victims face who are in the military. For example, victims may be isolated or feel isolated because they have frequently relocated to areas where there is no family or support system. Victims may also fear that reporting the abuse will result in their abuser losing their job which would mean a loss of military benefits such as healthcare, housing, and income.

RESOURCES FOR VICTIMS OF FAMILY VIOLENCE

There are various resources that are available to victims of abuse who are in the military or whose abuser is a military member. These resources are dependent on numerous circumstances that include the branch of service and duty status. The ultimate decision about what outcome a victim wants will be up to how supported they feel throughout the process and what they are ready to do.

MILITARY ONESOURCE

Military OneSource is a free, confidential service that is available to military members and their families under the DoD. This includes all active-duty service members of the Army, Marine Corps, Navy, and Air Force, as well as members of the National Guard and Reserve Component (regardless of activation status). Help is available in person, over the phone, and online. Go to [MilitaryOneSource.mil](https://www.militaryonesource.mil) or call 800-342-9647 for more information on eligibility and services available. Military OneSource can help provide information on:

- Money management
- Education
- Childhood services
- Deployment
- Concerns of family members with special needs
- Spouse employment
- Parenting
- Relocation
- Reunion
- Relationships, stress, and grief

⁷ Department of Defense. Instruction Number 6400.06. Web. 2020. www.esd.whs.mil

COAST GUARD SUPPORT PROGRAM

The CG SUPRT Program is a free, confidential service that is available 24/7. This program is like Military OneSource for DoD members. Its purpose is to assist Coast Guard employees with a wide range of mental health and other life concerns, such as depression, relationship issues, and work stress, which may affect their ability to perform on the job and/or affect the family. More information can be found at www.dcms.uscg.mil or by calling 855-247-8778.

FAMILY ADVOCACY PROGRAM (FAP)

Each installation has a FAP that is staffed with victim advocates. These victim advocates can assist victims in finding shelter, medical care, counseling, legal services, and other resources both on and off the military installation. They will also discuss reporting options and safety planning. Victim advocates can provide information about support services, what the military command can do to protect victims, and what civilian law enforcement and courts can do in both military and civilian responses to domestic abuse. To locate the FAP nearest to you, go to www.militaryinstallations.dod.mil.

TRANSITIONAL COMPENSATION (TC) FOR ABUSED DEPENDENTS

Family members of service members separated from the service can receive temporary payments and benefits due to a dependent-abuse offense. Transitional compensation assists military family members during the financial hardship they may face when they leave an abusive relationship.

REPORTING ABUSE

Victims can choose to report restricted and later decide for the report to become unrestricted.

Restricted Reporting – Family Violence
A victim of domestic abuse who makes a restricted report may receive victim advocacy services without law enforcement notification or command involvement. Victim advocacy services include assistance in developing a safety plan to prevent further abuse, information about military and civilian protective orders, accompaniment to meetings, medical, and court appointments, and information about military and civilian medical, legal and community resources. This type of reporting is not available to victims who are in imminent risk of serious harm.
Unrestricted Reporting – Family Violence
Victims may contact the family advocacy program (FAP) on base, military police, or chain of command to make an “unrestricted report” if they want an investigation of an abuse incident and command involvement. The command can offer the victim added support and protection. An unrestricted report also gives the command the discretion to take administrative action against the offender.

SAFETY PLANNING WITH VICTIMS OF FAMILY VIOLENCE

It is important to safety plan with victims throughout each stage and action they may take. Risk assessments, like the one created by Jacquelyn Campbell⁸, can be a great tool in assessing a victim's danger. Effectiveness of intervention depends upon understanding the context in which the violence was used and ensuring that intervention efforts are focused at the appropriate party. There may be times when a protective order is not the best option for a victim. In these cases, we want to ensure that the victim remains at the center of the work that you do.

MILITARY PROTECTIVE ORDERS (MPOs)

A military protective order is like a protective order issued by a civilian court. An MPO makes it illegal for an abuser to return to the family home if they are living on the installation. An MPO is issued by a military commander and may order the service member to surrender his/her Weapons Custody Card and refrain from all forms of contact with the victim. Commanders may tailor orders to meet the specific needs of a victim. If an abusive service member violates the MPO, he/she can be disciplined under the Uniform Code of Military Justice. Depending on a few factors, a violation of an MPO may result in non-judicial punishment, court-martial proceedings, or other disciplinary measures. Military installations recognize military protective orders, while a civilian protective order is enforceable on your installation as well as in the civilian community.

TEXAS LAWS REGARDING FAMILY VIOLENCE AND THE MILITARY

Under the statute of Protective Orders, if a victim receives a protective order or modifies a protective order and the abuser is a member of the state military forces or is active duty status in the armed forces and the victim provides the clerk of the court the mailing address of the staff judge advocate or provost marshal, the clerk must send a copy of the protective order to the staff judge advocate or provost marshal with the intent that the commanding officer of the abuser will be notified.⁹

Under the Code of Criminal Procedure Article 5.05, a police officer that is responding to a family violence incident must include in the report if the suspect is a member of the state military forces or is serving in the armed forces in active duty status. In addition, if the suspect identifies as being a member of the military, the police officer shall provide written notice of the incident to the staff judge advocate at Joint Force Headquarters or the provost marshal of the military installation to which the suspect is assigned with the intent that the commanding officer will be notified.¹⁰

⁸ <https://www.dangerassessment.org/>

⁹ Texas Family Code Section 85.042. <http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.85.htm>

¹⁰ Texas Code of Criminal Procedure Article 5.05
<http://www.statutes.legis.state.tx.us/SOTWDocs/CR/htm/CR.5.htm>

Phone Number for Staff Judge Advocates and/or Victim Advocacy Services in Texas		
Military Base	Location	Staff Judge Advocate Phone Number
Ft. Hood	Ft. Hood	(254) 287-2273
Joint Base San Antonio-Sam Houston	Ft. Sam Houston	(210) 808-0169
Joint Base San Antonio-Lackland	Lackland AFB	(210) 671-3362
Joint Base San Antonio-Randolph	Randolph AFB	(210) 652-6781
Laughlin Air Force Base	Del Rio	(830) 298-4545
Camp Mabry	Austin	(512) 782-6067
Ft. Bliss	El Paso	(915) 744-6889/6887
Naval Air Station Joint Reserve Base Fort Worth	Ft. Worth	(817) 782-7991/7992
Naval Air Station Corpus Christi	Corpus Christi	(361) 961-2372

MILITARY POWER AND CONTROL WHEEL



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SEXUAL ASSAULT IN THE MILITARY

Unlike the statute on Sexual Assault, the military definition includes a broad spectrum of acts or attempted acts. *Sexual assault* is defined in the DoD Directive Number 6495.01¹¹ as:

“Intentional sexual contact characterized by use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent. The term includes a broad category of sexual offenses consisting of the following specific UCMJ offenses: rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy (forced oral or anal sex), or attempts to commit these acts.”

Just as with domestic abuse within the military, victims have the right to report either restricted or unrestricted. The difference between these two types of reporting is listed below.

Restricted Reporting – Sexual Assault
This reporting option allows victims of sexual assault to confidentially disclose the assault to a Sexual Assault Response Coordinator (SARC), Sexual Assault Prevention and Response Victim Advocate (SAPR VA), or healthcare personnel, and receive medical treatment, including emergency care, counseling, and assignment of a SARC and SAPR VA, without making an official investigation. The crime will not be reported to law enforcement or command unless the victim consents.
Unrestricted Reporting – Sexual Assault
When a victim of sexual assault does not request confidentiality or restricted reporting, the report the victim provided to the healthcare personnel, SARC, SAPR VA, or other persons is reported to law enforcement and may be used to initiate the official investigative process.

RESOURCES AVAILABLE TO VICTIMS

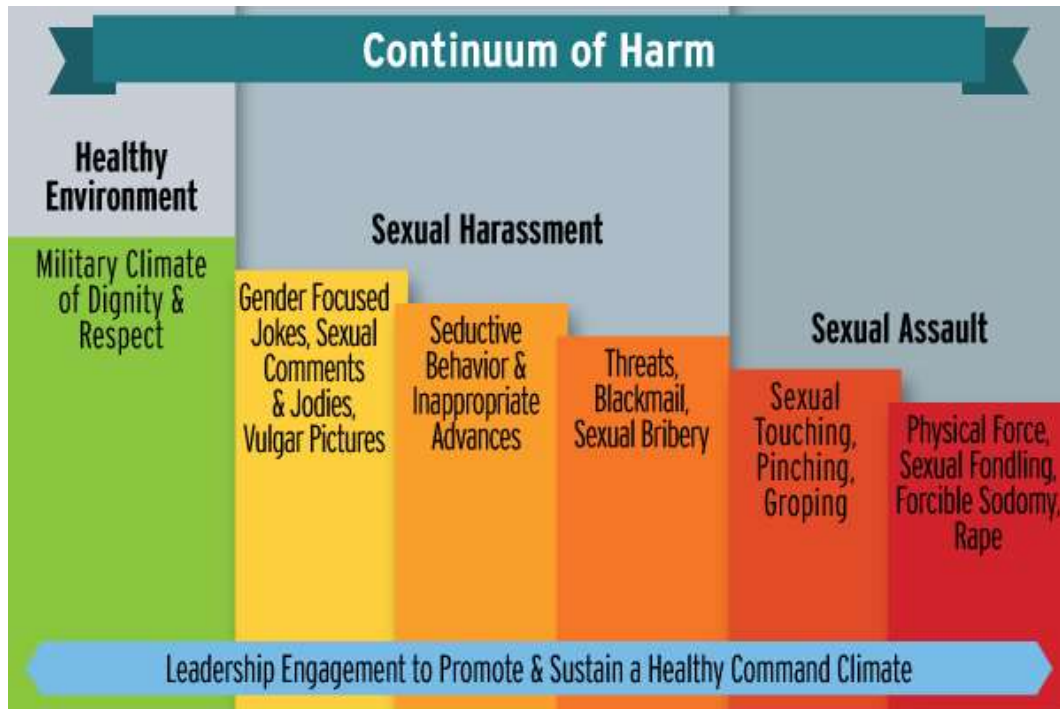
Active duty, veterans, Reserve, and National Guard members are all eligible for services provided by the military. These resources can be located at <https://safehelpline.org/reporting-option>.

Victims of sexual assault can contact the DoD Safe Helpline to speak with someone anonymously about what resources are available. There are two ways a victim can contact the DoD Safe Helpline: 1) through a live group chat service available at <https://safehelpline.org/> or 2) by calling 877-995-5247.

¹¹ <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/649501p.pdf>

CONTINUUM OF HARM

The DoD has created the figure below to represent the different types of sexual assault and sexual harassment for military members.¹²



¹² O'Reilly, H. N. (2020). "Sexual Harassment and Sexual Assault: What is the Connection?" Psychological Health Center of Excellence, Clinician's Corner Blog.

CHAPTER NINE (D): SEXUAL ASSAULT & FAMILY VIOLENCE AGAINST PEOPLE WITH DISABILITIES, DEAF INDIVIDUALS, AND/OR ADULTS IN LATER LIFE

Learning Objectives: Understanding Violence Against People with Disabilities, Deaf Individuals, and/or Adults in Later Life

By the end of this section, the student will be able to identify and discuss the following terms, concepts and practices as they relate to the violence against people with disabilities, deaf individuals, and/or adults in later life:

- A. Types of Disabilities
- B. Aging Overview
- C. Dynamics of Sexual Assault/Family Violence in the Lives of People with Disabilities, Deaf Individuals, and/or Adults in Later Life
- D. Working Collaboratively with Other Investigative Agencies
- E. Sexual Assault Investigation and Capacity to Consent
- F. Texas Laws

Texas is home to more than 3.6 million residents age 65 or older and an estimated 3.4 million people with disabilities.¹ In order to effectively respond to and investigate domestic/sexual violence crimes against persons with disabilities, deaf individuals, and/or adults in later life, law enforcement personnel need to be familiar with the following:

- Information about various types of disabilities and the physical and cognitive changes that come with the aging process;
- Dynamics of domestic and sexual violence when the crime victim has a disability, is deaf, and/or is an adult in later life; and
- Accessible responses to crime victims with disabilities, from the initial call throughout the investigation process.

TYPES OF DISABILITIES

Approximately 12% of the population lives with a disability.² As a group, people with disabilities are as varied and diverse as people without disabilities.

Disabilities can be classified as:

- Developmental: present at birth or manifests before the age of 22;
- Acquired: manifests at any age as a result of an injury, such as a car accident, severe fall, or violent crime;

¹ U.S. Census Bureau. (2019).

² Ibid.

- Visible: an outside observer can readily discern it, such as an amputated limb;
- Hidden: an outside observer might never be aware of it, such as learning disability;
- Single: presence of only one disability; and
- Multiple: diagnosis or manifestation of two or more combined disabilities. A person with multiple disabilities may have both hidden and visible disabilities, as well as acquired and developmental disabilities.

Disabilities can be categorized as: developmental-intellectual-cognitive, physical, mental illness, sensory, age-related, or hidden, as follows:³

Developmental, Intellectual, and Cognitive Disabilities

Developmental, intellectual, and cognitive disabilities are sometimes used interchangeably and although they refer to different diagnostic terms, they do share some characteristics.

Developmental disabilities are severe, chronic disabilities that are attributed to a mental and/or physical impairment. They substantially restrict the individual's functioning in several major life activities, begin before the age of 22, and are likely to be lifelong.⁴

People with developmental disabilities have considerable difficulty in three or more of the following major life activities: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and/or economic self-sufficiency.

Common physical developmental disabilities include cerebral palsy, seizure disorder, sensory disabilities, and muscular dystrophy. Developmental disabilities that have physical and mental impacts include Down syndrome and fetal alcohol syndrome.⁵

An **intellectual disability** is a developmental disability that is characterized by significant impacts on adaptive behavior and intellectual functioning. Intellectual functioning refers to general mental capacity in the areas of learning, reasoning, problem solving, planning, judgment, academic learning, and learning from experience.⁶ People with this disability may not meet the level of personal independence and social responsibility expected for their age, culture, and/or peers. An estimated 1-3% of the global population is diagnosed with an intellectual disability, which includes Autism Spectrum Disorder, Down syndrome, Fragile X syndrome, and Fetal Alcohol Spectrum Disorder (FASD).⁷

³ Robbi, N.J. and Mastroleo, C.S. (2005). *Responding to violent crimes against persons with disabilities: A manual for law enforcement, prosecutors, judges and court personnel*. Abramson, W.H. (Ed.) Austin, TX: Disability Services ASAP (A Safety Awareness Program) of SafePlace.

⁴ The Developmental Disabilities Assistance and Bill of Rights (DD Act of 2000 & American Association on Intellectual and Developmental Disabilities. (2016). Retrieved March 21, 2016 from <https://aaidd.org/intellectual-disability/definition/faqs-on-intellectual-disability#.VvAijmD2aM8>

⁵ Ibid.

⁶ Ibid.

⁷ Special Olympics. (2020). *Intellectual Disabilities*. www.SpecialOlympics.org

Unfortunately, some individuals with intellectual and/or developmental disabilities have spent a great deal of time in environments where they have been taught to comply with authority figures and are always expected to be on their best behavior. This compliance training can have a tremendous effect on the ability to report or explain crimes without fear of consequences, shame, or guilt.

Cognitive disability is sometimes used as an umbrella term to refer to brain-related disabilities that occur after the age of 18. Examples are traumatic brain injury, cerebrovascular injury, or degenerative disorder (i.e. stroke, dementia, and Alzheimer's disease). Cognitive disabilities can occur at any time across a person's lifespan and may be the result of ongoing trauma or violence (i.e. strangulation, shaking, and blows to the head). The severity of the disability is gauged on the person's adaptive functioning and can range in severity.

Physical Disabilities

Physical disabilities occur as a result of musculoskeletal or neuromotor system dysfunction. Physical disability pertains to total or partial loss of a person's bodily functions (e.g., walking, gross motor skills, and bowel/bladder control) and the body (e.g., a person with an amputation). A physical disability can be developmental (e.g., cerebral palsy or muscular dystrophy) or acquired (e.g., spinal cord injury or amputation). Some individuals may use forearm crutches, wheelchairs, prostheses, etc. Others may not require mobility aids.

Mental Illness

A mental disorder, or mental illness, is characterized by significant difficulties that occur in an individual's emotional and behavioral life. Mental health and well-being can be defined as a person's feeling that they are coping, are fairly in control of their lives, and can manage challenges and responsibilities. A person who is mentally healthy has productive activities, fulfilling relationships with other people, and the ability to adapt to change and to cope.⁸

People diagnosed with mental illness or mental disorders may have significant difficulty with thinking clearly or cognition, self-regulation, and managing their emotions, behaviors, impulses, responsibilities, and relationships.⁹ Mental health disabilities can be related to traumatic stress from childhood and/or adulthood and the accompanying neurobiological effects of trauma, or difficulties in a person's social life, job, and other critical areas of daily living. For many people, symptoms related to mental health needs can be treated with medication, therapy, and/or support services—including non-traditional therapies (i.e. yoga, mindfulness training, acupuncture, art, etc.).

The most commonly diagnosed types of mental illness are anxiety disorders (e.g., Posttraumatic Stress Disorder, Obsessive Compulsive Disorder, and Panic Disorder), mood disorders (e.g., Clinical Depression and Bipolar Disorder), psychotic disorders (e.g.,

⁸ Mental health: a report of the Surgeon General — executive summary. MD. Rockville (MD): US Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Mental Services, National Institutes of Health, National Institute of Mental Health; 1999.

⁹ American Psychiatric Association. (2013).

Schizophrenia), and eating disorders (e.g., anorexia and bulimia). Most persons with a mental illness are not violent but are actually at higher risk of being victims of crime compared to people without a mental illness. The formal classification system of various symptoms used by medical, psychiatric, and psychological professionals for the purpose of diagnosing mental health disorders are contained in the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5).¹⁰

Sensory Disabilities

Sensory disabilities are related to vision (blindness/low vision) and hearing (deafness/hard of hearing). Total blindness refers to people with very little or no functional use of vision (no light perception or only bare light perception). A person who is considered *legally blind* may be able to indistinctly see light, shapes, colors, and/or objects. Even with some functional vision and corrective lenses, the person may have difficulty with visual tasks. The ability to function visually can be increased through compensatory strategies, low vision devices, and modifications. People with visual disabilities may use adaptive devices including canes and/or crutches, magnifiers, computerized voice technology/reading machines, or may read Braille. With the easy availability of voice technology, only about 10% of children who are blind read Braille.¹¹ Some individuals rely on other people to guide or read information to them.

The medical definition of a hearing impairment (deafness and hearing loss) is partial or complete loss of hearing.¹² This loss can be slight, mild, moderate, severe, or profound depending upon how well a person can hear the loudness (intensities) and/or pitch (frequencies) of sound. It may exist in one or both ears. Hard of hearing indicates that a person has some level of hearing loss but is still able to rely on his/her ability to hear to communicate. People who are deaf do not hear well enough to rely on their hearing to process speech and language. In the U.S., most deaf people use American Sign Language (ASL) as a first and preferred language. ASL has its own grammar, syntax, semantics, and idioms, and is conveyed with signs made with the hands, facial expressions, and body language.

Hidden Disabilities

Examples of conditions that may not be readily apparent include diabetes, HIV/AIDS, cancer, seizure disorder, dyslexia, attention-deficit/hyperactivity disorder, etc. An individual in recovery from alcoholism or drug addiction may also be considered as having a disability if they experience limitations in daily activities.

¹⁰ Ibid.

¹¹ National Public Radio. (2017). *As Braille Literacy Declines, Reading Competitions Held To Boost Interest*. <https://www.npr.org/2017/03/13/519983877/as-braille-literacy-declines-reading-competitions-held-to-boost-interest>

¹² World Health Organization. (2020). *Prevention of blindness and deafness*. Web. WHO.int

AGING OVERVIEW

Law enforcement officers need to remain alert to clues that many adults in later life do not hear or see well, although they may tend to mask these changes in vision and hearing. This can disrupt the communication process and require different investigative techniques to communicate effectively.¹³ Common age-related physical and cognitive changes that impact risks of harm and the ability of victims in later life to relay crime details are described below:

Physical Changes:

- Loss of bone and muscle mass can result in more easily broken bones, weakened muscles, and loss of strength.
- Adults in later life may experience vision loss as a result of cataracts, glaucoma, and macular degeneration.
- High pitch and lower frequency hearing abilities are reduced.
- Skin becomes thin, loses elasticity, and may tear or bruise easily. Bruising can also increase with certain medications.
- The number of taste buds in adults in later life may decline, along with the sense of smell. A loss of smell also lessens sensitivity to odors related to poor care or a substandard environment.
- Changes in the digestive system include slower digestion, slower metabolizing of medications and alcohol, and a decrease in absorption of some nutrients.
- Adults in later life are more susceptible to drug toxicity. Drug reactions can cause symptoms such as depression, fatigue, incontinence, or inability to walk.

Cognitive Changes

Some slowing of thought, memory, and thinking is a normal part of aging, but a high level of mental activity can be maintained until very old age. Some short-term memory loss with age is normal, but delirium, dementia, and severe memory loss are not a normal process of aging. The following conditions will impact how law enforcement works with crime victims who are in later life:

Confusion is the inability to think with usual speed or clarity. When confused, a person has difficulty focusing attention and may feel disoriented. Confusion interferes with a person's ability to make decisions. Confusion may come on suddenly or gradually, depending on the cause. Some confused people may behave aggressively.

A confused person at a scene may not be able to accurately answer questions about the date, time of day, location, or what they did that day. A physical problem may be the cause of sudden confusion, particularly if the person has a headache, dizziness, slow or rapid breathing, clammy or cold skin, shivering, or fever. If a physical cause for the confusion is suspected, seek medical assistance. A confused person should be moved to a calm, quiet place and should not be left alone.

¹³ U.S. Department of Justice, Civil Rights Division, Disability Rights Section. (2020). *Communicating with People Who Are Deaf or Hard of Hearing: ADA Guide for Law Enforcement Officers*. Web. www.ADA.gov

Delirium is a condition of severe confusion and rapid changes in brain function. Delirium involves rapid changes between mental states (for example, from lethargy to agitation and back to lethargy) with attention disruption, disorganized thinking, disorientation, changes in sensation and perception, and other symptoms. It is usually caused by a treatable physical or mental illness. A more subtle cause of delirium, particularly in patients in later life, is reduced sensory input, caused by such things as prolonged hospital stays without glasses, hearing aid, or teeth.

A person with delirium will be unable to pay attention, have disorganized thoughts, and switch from subject to subject. Law enforcement will need to be prepared to take additional time and possibly repeat questions. This person will require a medical assessment. Recovery from delirium for an adult in later life can take up to two months.

Later life crime victims showing signs of confusion may have dementia or may have a recent and rapid onset of delirium (confusion) related to abuse or care provider neglect. Symptoms of both are similar. Asking questions about medical diagnosis and medications may help determine the cause of the confusion. For example, confusion may result if a care provider is failing to give adequate doses of medications or is giving too much medication. Asking when the last dose(s) of medication(s) was/were administered and checking against the bottle label(s) can help determine missed or excessive dosages. Checking pre-filled pillboxes can also help determine the existence of mismanaged medications.

Dementia is a loss of mental function caused by a group of conditions that gradually destroy brain cells, leading to progressive decline in language, judgment, and other modes of functioning. Dementia or memory loss can be present due to Alzheimer's in 60-80% of the cases.¹⁴ Other leading causes are clots that block blood flow to the brain (cerebrovascular disease/vascular dementia); Lewy Body disease, caused from deposits of proteins inside nerve cells in the brain; and other diseases and conditions.¹⁵ Before assuming that the crime victim has dementia, make sure they receive food, water, proper medication, and sleep.¹⁶

Signs of dementia include:

- Memory loss that disrupts daily life;
- Challenges in planning or solving problems;
- Difficulty completing familiar tasks;
- Confusion with time or place;
- Trouble understanding visual images and spatial relationships;
- New problems with words in speaking or writing;
- Misplacing things and losing the ability to retrace steps;

¹⁴ Alzheimer's Association. (2020). *What Is Alzheimer's Disease?* Web. www.alz.org

¹⁵ Alzheimer's Association. (n.d.). *Aging, memory loss and dementia: What's the difference?* www.alz.org/mnnd

¹⁶ Brandl, B. (2002). *From a web of fear and isolation to a community safety net: Cross-training on abuse in later life*. National Clearinghouse on Abuse in Later Life, Wisconsin Coalition Against Domestic Violence. Published by Pennsylvania Coalition Against Domestic Violence.

- Decreased or poor judgment;
- Withdrawal from work or social activities; and/or
- Changes in mood and personality.¹⁷

Short-term memory loss is not an indicator of serious cognitive impairment. While symptoms vary greatly, examples of dementia include:¹⁸

- Problems with short-term memory;
- Keeping track of a purse or wallet;
- Paying bills;
- Planning and preparing meals;
- Remembering appointments; and/or
- Traveling out of the neighborhood.

DYNAMICS OF SEXUAL ASSAULT/FAMILY VIOLENCE IN THE LIVES OF PEOPLE WITH DISABILITIES, DEAF INDIVIDUALS, AND/OR ADULTS IN LATER LIFE

Family members and peers with disabilities perpetrate more than half of the cases of abuse of people with disabilities. Disability professionals (e.g., paid or unpaid care providers, physical and speech therapists, doctors, nurses) are generally believed to be responsible for the remaining percentage.¹⁹ There are commonalities in the dynamics of family violence in the lives of people with and without disabilities, deaf individuals, and adults in later life. The abuser may use a pattern of physical, emotional, sexual, and/or financial tactics to gain control over the victim (primarily women, but men as well). Abuse tends to begin in subtle ways and escalate over time. In the process, the relationship develops an unequal balance of power. Officers are encouraged to look at violence in the lives of people with disabilities, deaf individuals, and adults in later life from a framework of power and control; the abuser uses violence, threats, and other tactics, such as intimidation and isolation, to maintain control over the victim's life. People with disabilities also experience unique forms of domestic or care provider violence.

Perpetrators may:

- Use the disability as an excuse for their abuse;
- Hurt the victim through rough handling while performing required daily tasks, such as bathing or transferring from wheelchair to bed;
- Leave the victim unattended for long periods of time;
- Withhold, misuse, or delay needed supports, such as using medication to sedate the person, breaking equipment, or withdrawing equipment to immobilize the person;
- Threaten institutionalization;
- Force the individual to have an abortion or to be sterilized; and/or

¹⁷ Alzheimer's Association. (2020). *10 Early Signs and Symptoms of Alzheimer's*. Web. www.alz.org

¹⁸ Alzheimer's Association. (2020). *What Is Dementia?* Web. www.alz.org

¹⁹ National Organization for Women. (2018). *The disability community and sexual violence*. Web. www.now.org

- Use seclusion and/or restraint as methods for gaining compliance or control over the victim in ways that could lead to injury, torture, or death.

Unique abusive tactics that perpetrators may use against Deaf individuals include:²⁰

- Signing very close to victim's face when angry;
- Using body language intimidation with American Sign Language (ASL);
- Making fun of victim's speech or English skills;
- Saying victim is too sensitive or too "hearing";
- Taking the person's Social Security check;
- Checking email(s) or text message(s);
- Checking videophone or Video Relay Service conversations;
- Controlling which deaf friends that the victim can talk to;
- Moving away from deaf community to isolate victim; and/or
- (*If abuser is hearing*) Leaving victim out of social situations with hearing people, putting victim down because they are deaf, and/or not allowing children to communicate with victim with ASL.

Unique abusive tactics that the perpetrator may use on adults in later life include:²¹

- Inappropriate use of drugs, restraints, or confinement towards the victim
- Terrorizing or menacing the victim
- Forcing the person to undress
- Misusing their checks, credit cards, or bank accounts
- Forging the person's signature
- Ignoring the person

Poorly trained officers may not view these tactics as criminal. They may mistakenly deem cases of abuse of adults in later life as a *civil matter* (e.g., financial abuse), *self-neglect* (claimed by a suspected care provider as self-inflicted), or death by a *natural cause*, when neglect or abuse could be the cause.

People with disabilities and adults in later life are also at increased risk of being abused by a care provider. A care provider helps with daily living activities the person would typically do for themselves, such as bathing, eating, using the toilet, dressing, managing finances, and other tasks. Care providers may be a professional working for a residential facility or home healthcare provider, intimate partner, family member, friend, or anyone who is responsible for all or part of the individual's care provider needs.

Crime victims with disabilities and adults in later life frequently do not report abuse or seek services related to abuse due to lack of familiarity with the system, embarrassment, fear, stigma, and concern about functioning without the daily assistance of the abuser. Deaf

²⁰ DeafHope. (2006). *Deaf power and control wheel*. Web. www.deaf-hope.org/domestic-violence/power-and-control-wheel/

²¹ Robinson, L., Saisan, J., and Segal, J. (2019). *Elder Abuse and Neglect*. HelpGuide. Web. www.HelpGuide.org

individuals often do not report abuse or seek services because the deaf community is close knit, which can compromise confidentiality and the victim's safety; shelters, victim services, and law enforcement lack adequate resources for deaf victims; and victims can be very isolated in the hearing world of domestic and sexual violence shelters and services.²²

Indicators of Abuse

Whether your contact with an individual with a disability, deaf individual, or adults in later life occurs because of a crime against them, or because they are a witness of a crime against another person, look for indicators of possible abuse, as you would in any other case.

Later life victims are twice as likely to suffer serious physical injury and require hospitalization over any other age group. Furthermore, the physiological process of aging brings with it a decreasing ability to heal after injury – both physically and mentally. Also, the trauma that older victims suffer can be worsened by their financial situation.²³

The following list includes additional possible indicators of abuse. Some situations may include indicators of abuse that are not listed below.

*Possible Physical Indicators of Abuse:*²⁴

- Unexplained signs of injury
- Signs of being restrained [i.e. rope marks on wrist(s)]
- Bruising around breasts and/or genitals
- Unexplained vaginal or anal bleeding
- Being left dirty or unbathed
- Suspicious changes in wills, power of attorney, titles, and policy
- Significant withdrawals from financial accounts
- Unusual weight loss or malnutrition

It may not be possible for you to notice changes in behavior if your contact with an individual is time limited. However, possible behavioral indicators of abuse are listed below.

*Possible Behavioral Indicators or Reactions to Abuse:*²⁵

- Hesitant to speak freely
- Creating implausible stories about how injuries occurred
- Isolating or withdrawing from others
- Suffering from anxiety, depression, or fear
- Trembling or cowering

²² NoMore Staff. (2015). *Gallaudet University students say NO MORE silencing Deaf voices*. NO MORE – Together We Can End Domestic Violence and Sexual Assault. Retrieved March 16, 2016, from <http://nomore.org/gallaudet-university-students-say-no-more-silencing-deaf-voices/>

²³ Snyder, D. R. (2014). *"Elder Crimes, Elder Justice."* Burlington, MA: Jones & Barlett Learning.

²⁴ Robinson, L., Saisan, J., and Segal, J. (2019). *Elder Abuse and Neglect*. HelpGuide. Web. www.HelpGuide.org

²⁵ Slate, M. (2020). *"Elder Abuse, Neglect and Exploitation."* RN. Web. www.RN.org

- Contradictory statements
- Unresponsiveness or helplessness

Disclosure of Abuse

A perpetrator of violence against a person with a disability, deaf individual, or an adult in later life may attempt to accompany the victim on any appointments or errands where the individual could have an opportunity to make an outcry. Disclosures of abuse can occur at any time. For example, an officer who responds to a call regarding an allegation of abuse at an institution may be approached by another resident who makes a disclosure that is unrelated to the current call. For many individuals with disabilities, this may be one of their first interactions with law enforcement, as well as their first safe opportunity to disclose abuse. People may not have known help was available through the criminal justice system until asked to testify for someone else.

Responding to Victims' Disclosures of Abuse:

- Make every effort to respond in ways that are consistent with the trauma-informed values of safety, trustworthiness, choice, collaboration, and empowerment.²⁶
- Let the person know that you believe them, and that whatever they are feeling is normal.
- Explain your role and what you will do with the information.
- Make referrals to appropriate medical care, domestic violence/sexual assault crisis centers, etc. Respect the individual's choice whether to follow through on referrals.
- Explore strategies to increase personal safety.
- Explore community options for immediate safety. Do not take the person to an institution (e.g., nursing home or state school) because they have a disability or because he/she has periodically been in an institution.
- Inform the victim that you are obligated by law to make a report to the agency that investigates allegations of abuse (DFPS Child/Adult Protective Services).
- Follow your agency's procedures to document the scene, photograph injuries, etc.

WORKING COLLABORATIVELY WITH OTHER INVESTIGATIVE AGENCIES

Most law enforcement agencies have standard operating procedures for responding to domestic and sexual violence, financial exploitation, and other crimes. However, many departments lack comprehensive policies and procedures for responding to and investigating crimes against persons with disabilities, deaf individuals, and adults in later life. Information in this chapter may be useful in beginning to develop such protocols.

²⁶ Fallot, R.D. and Harris, M. (2009). *Creating cultures of trauma-informed care (CCTIC): A self-assessment and planning protocol*. Community Connections, Washington, DC.

Paramount to building any case is the multi-disciplinary coordination among all stakeholders. These stakeholders include telecommunicators, emergency medical technicians and paramedics, responding law enforcement officers, social service providers, Texas Department of Family and Protective Services (DFPS) or Texas Health and Human Services case workers, prosecutors, advocates, the victim(s), and any witnesses.

Reporting Abuse

Texas statutes require mandatory reporting of suspected abuse, neglect, or exploitation of adults with disabilities or persons aged 65 and over. To make a report of suspected abuse to Texas Department of Family and Protective Services (DFPS), call their 24-hour hotline at (800) 252-5400 or report online at www.txabusehotline.org. For more information on investigation and protective services, please refer to the Human Resources Code, Chapter 48, § 48.051. A hotline reserved strictly for *law enforcement* to report both child and adult abuse is (800) 877-5300.

Adult Protective Services (APS) has two program branches. The *APS In-Home Program* investigates allegations of abuse, neglect, and exploitation of adults with disabilities or persons aged 65 and above who are residing in the community. The *APS Provider Investigations Program* investigates allegations of abuse, neglect, and exploitation of individuals receiving services in state operating and/or contracted settings that serve adults and children with mental illness or intellectual disabilities, such as state supported living centers, state hospitals, local authorities serving people with intellectual and mental health disabilities, facilities and community-based contracts, including home and community-based (HCS) and Texas Home Living Waiver programs, Intermediate Care Facilities for people with intellectual disabilities, as well as individuals receiving services through the Medicaid Home and Community-Based Services programs.

APS policy requires the APS Caseworkers immediately involve law enforcement if at any time during the investigation or service delivery the APS Caseworker suspects allegations of abuse, neglect, or financial exploitation that constitute a criminal offense. The APS Caseworker is required to cooperate with law enforcement officials, including county or district attorneys and other investigative entities during a criminal investigation, including providing case information, if requested. Upon completion of the investigation, the APS Caseworker should submit a copy of the report to the appropriate law enforcement entity.

Texas Health and Human Services (HHS) investigates abuse reports in nursing homes, assisted living centers, and day activity and health services. Again, these sites are still part of a law enforcement agency's jurisdiction. To make a report of suspected abuse to HHS, call their 24-hour hotline at (800) 458-9858. For more information, visit www.hhs.texas.gov.

Reports to both DFPS and HHS agencies are made to statewide toll-free numbers, which are then assigned to the appropriate local office. The system is structured so that initial reporting of abuse against people with disabilities and adults aged 65 and over will most likely be made to Adult Protective Services (APS) or HHS, not local law enforcement. Often, an APS or HHS Caseworker serves as first responder and investigator. Conversely, local law

enforcement officers acting as first responders will report suspected abuse to APS or HHS and may allow the investigative work to be conducted by these Caseworkers. This structure creates a need for collaborative systems to exist between APS, HHS, and local law enforcement that ensure effective communication, cooperation, case building, and intervention for crime victims.

First Responders

The first responders' role is critical, and law enforcement needs to have information and awareness of issues of importance to people with disabilities, deaf individuals, and adults in later life. Areas for consideration include:

- The possibility that a paid or unpaid personal care provider, or the person living with the crime victim, may be the abuser;
- Medical and/or behavioral emergencies related to some disabilities or age;
- The differences between indicators of abuse, common characteristics of certain disabilities, and medication side effects; and
- Physical and/or cognitive changes due to the aging process.

Officers may not have training to recognize or respond to hidden disabilities, such as autism spectrum disorder, dementia, traumatic brain injury, mental illness, and intellectual disabilities. The symptoms of some hidden disabilities can make people seem intoxicated, resistant to officer commands, angry without cause, unable to make eye contact, and many other behaviors. When uncertain about the cause of a person's conduct, find out as much as you can from others at the scene whenever possible, and approach the person in a calm and nonthreatening manner.

Interviewing, Investigating, Collecting Evidence, and Writing Reports

Unfortunately, people with disabilities have traditionally not been seen as credible witnesses to their own abuse. However, officers can do much to dispel that misconception and build the case by believing the victim, assessing the situation, conducting a solid investigation, and corroborating the victim's story with other people who are in the victim's daily life.

Victims of traumatic crimes may remember slowly and need more time to process information. Be aware of the possibility of memory loss or memory fragmentation. Research over the past few decades has provided some evidence that distortions in human memory do occur and there is potential for inaccuracy in eyewitness testimony. It should not be surprising if the victim makes errors or inconsistencies in remembering. Memories can become more distorted over time and with retelling, particularly as people age.²⁷ In cases of sexual assault and/or victims of other severe trauma, research also provides evidence that the victim's memory of events is likely to improve after several days, rather than deteriorate;

²⁷ Lacy, J. W., & Stark, C. E. L. (2013). The neuroscience of memory: Implications for the courtroom. *Nature Reviews Neuroscience*, 14(9):649 – 658. doi: 10.1038/nrn3563

particularly after the person sleeps and gets support.²⁸ Recording a formal interview can help reduce the chance that the crime victim will have talked to other people before the statement, reducing the argument that he or she was unduly influenced.²⁹

In addition to disability-related difficulties with memory, it's also helpful to understand how the brain, nervous system, memory, and behavior are interrelated for crime victims during the traumatic event. When victimized, a person's natural neurobiological protective response to danger is activated and releases powerful neurotransmitters (chemicals and hormones) that prepare and support the person to defend against danger. This traumatic stress response occurs when danger is perceived and the body prepares itself to fight, flight, or freeze to defend itself against the perceived danger.

When the stress response is overused through repeated victimization as in domestic violence or repeated sexual abuse/assault cases, the neurochemicals intended to help defend against danger can damage memory and rational thought, cause memory to become fragmented, which makes remembering slow and difficult, increase hypervigilance, and make it difficult for the person to distinguish typical danger signals. This natural defensive human reaction to danger is important to understand, specifically in cases of sexual assault where neurobiological responses can impair the victim's rational thought for up to four days following an assault. As a result, during this time decisions are compromised, and the survivor simply cannot think well.

If interviewed too soon after a sexual assault, the survivor is unlikely to produce all details related to the event(s). This stress-induced memory lapse can damage the victim's credibility. In addition, endogenous opioids are released during the traumatic stress response.³⁰ Although helpful in preventing or reducing pain, these opioids also inhibit memory and can cause flat affect. The impact of an assault cannot be judged by a victim's facial expressions or emotional reactions. The neurochemicals that impact affect are likely to stay elevated for about 96 hours after an assault. During that period, victims may exhibit:

- Flat affect
- Strange emotions and emotional swings
- Irritability; argumentativeness
- Difficulty concentrating
- Headaches and body pain
- Stomach and gastrointestinal distress
- Increased alcohol/drug use (self-medication)
- Compromised decision making, especially in relationships and sexuality

²⁸ End Violence Against Women International. (2013, June). Training Bulletin: When to Conduct an Exam or Interview. *Why are we prodding victims to keep them awake?* Retrieved March 15, 2016 from www.evawintl.org/Library/DocumentLibraryHandler.ashx?id=77

²⁹ D. Sobsey. (1994).

³⁰ Cuevas, K. M., Balbo, J., Duval, K., and Beverly, E. A. (2018). "Neurobiology of sexual assault and osteopathic considerations for trauma-informed care and practice." *The Journal of the American Osteopathic Association*, 118(2): e2 – e10. doi:10.7556/jaoa.2018.018

One important exception is when the assault is *drug and/or alcohol facilitated*. In those cases, the context of the assault is not encoded into memory, so sensory details are more likely to be available to the victim. When a victim had been under the influence of drugs or alcohol, it can be helpful to begin the interview or investigation by asking about sensory memories.

General Interviewing Tips

- When approaching the scene and identifying yourself, remember that the victim may be slower in processing information and have difficulty hearing and seeing. Give them extra time to view your identification.
- If you think the individual might need assistance, ask him/her. Wait for and follow the person's direction before lending aid. If your offer is refused, do not insist.
- Build rapport and trust; address the person by their first name.
- Do not pressure the person if he/she cannot remember some details. Ask the person to contact you if he/she remembers anything else and provide them with your contact information.
- Give options for frequent breaks.
- Use people-first language and refer to the disability only as necessary.
 - Focus on the individual and the crime.
 - Put the person before the disability.
 - When speaking or writing a report, use respectful language such as person who has an intellectual disability, person who uses a wheelchair, individual who is blind, person who has a mental illness, etc.
 - Avoid disempowering words like handicapped, crippled, crazy, wheelchair bound, etc.
- Inquire about any individualized needs in compliance with the Americans with Disabilities Act (ADA), regardless of whether the victim appears to have a disability. This will allow someone to disclose a hidden disability or address a visible disability to the extent that they feel comfortable.
- Be aware that the victim may not be part of the investigation by choice. Be prepared for fear, trepidation, and even hostility from the victim, as many people with disabilities who have been victimized fear being moved from their community to an institution.³¹
- People who are deaf, people with intellectual disabilities, or people who have active mental illness may not use the same syntax or sequence as others. Document all facts and observations, and the victim's statement verbatim. Be careful not to document your conclusions or assumptions.
- High or low frequency hearing loss may impact communication. Check to make sure he/she can hear and understand you. Maintain eye contact and keep your mouth visible.

³¹ Center for Child and Family Studies (2003). *Voices ignored: Sexual assault of people with developmental disabilities*. College of Social Work, University of South Carolina.

Interviewing Techniques³²

If the victim is having trouble remembering, consider using four of the following cognitive interviewing techniques. Be cautious using these tools because they can also create unnecessary trauma with victims. If you plan to use these techniques, have victim services, crisis services, or other resources available in case the victim needs support.

- Ask the victim to reconstruct the circumstances (e.g., describe the furniture and where it was placed; describe people, lighting, objects, weather, smells, etc.). Ask them to put themselves back at the scene. Reconstruct how they felt at the time and describe their reaction. This tool can be powerful in assisting memory.
- Ask the person to talk about every detail they can remember, even if it does not seem important. Do not interrupt.
- Ask the person to recall everything that happened in different orders (i.e. backwards). This technique can help people examine actual memory. People with intellectual, developmental, and/or cognitive disabilities may not be able to remember events backwards.
- Ask the person to describe what the crime would have looked like for somebody looking through a window or another perspective.

Collecting Evidence

The evidence collection process for crimes against people with disabilities, deaf individuals, and adults in later life includes assessing the crime scene for physical evidence, including broken, missing/stolen, or withheld communication or mobility devices like forearm crutches, computers, walkers, wheelchairs, telephones, or any other device that aids in independent functioning. Check your agency's procedures about securing adaptive equipment (if you need to temporarily keep a device as evidence).

Determine the extent of the abuser's obligation to care for the victim. Ask for any legal documents that would authorize the abuser to have control over financial and personal matters. When assessing for injuries, ask about the victim's medical diagnosis, obtain a list of their recent medications, find out the last time they saw the doctor, etc. Medications with bruising as a common side effect include, but are not limited to, aspirin, ibuprofen, naproxen, coumadin (Warfarin, a blood thinner), Plavix (Clopidogrel, which prevents clots and blockages), and prednisone (a steroid for inflammation). Skin changes as a person ages, and some medications can make adults in later life more prone to bruising and skin tears. Photograph injuries and return 48 – 72 hours later to take follow-up photographs of injuries because bruising worsens over time.

Writing Reports

In family violence reports, describe how the suspect used the victim's disability and/or advanced age to play into the events that happened. Did the perpetrator remove the deaf victim's computer or phone so they could not access help? Did he/she hide any mobility devices? Did the perpetrator overmedicate the victim?

³² McLeod, S. A. (2019). *Cognitive interview*. Simply Psychology. Web. <https://www.simplypsychology.org/cognitive-interview.html>

When writing the report, anticipate the potential defense strategies to discredit the testimony of a victim with a disability, deaf victim, or victim in later life. Document the person's disability and age in your report and make note of any necessary accommodations for communication, transportation, medication, interaction, and any other needs you identify. Corroborate as much as possible from other witnesses. Write exactly what the person said, did, and reported. Gather all possible evidence such as photographs, videotapes, and body maps, which can substantiate the abuse. This is especially important in cases of abuse against immigrants, since they could use such documentation to obtain Violence Against Women Act legal remedies or a U Visa [see Chapter 9, Special Topic (B) on page 263].

How a person conducting an interview or investigation thinks about a victim could be reflected in their report, which in turn, will be reflected at the trial. Be cautious about what you do and do not include in the report and *how* you write the report. Your report can either help or hinder the person's credibility. Describe specific behaviors, for instance *the victim was crying, breathing heavily, or had difficulty remembering* rather than *the victim was acting insane*.

If the person is deaf and there was no interpreter at the initial response contact, confirm and correct what was said and what happened at a follow-up meeting that includes an American Sign Language (ASL) interpreter. Make sure that any reports or statements that were made with no ASL interpreter are reviewed later when an interpreter is present with the victim. ASL interpreters have different levels of certification, and at least a Level IV certification is recommended for law enforcement domestic/family violence and abuse calls/investigations.³³

Some law enforcement agencies provide follow-up response to victims through their officers, deputies, or victim services counselors. This role allows officers to stay in contact with the victim and provide updates about case status, assist with safety planning (taking in consideration their individualized needs), and provide referrals for services such as counseling, housing/emergency shelter, or home health services.

Sexual Assault Investigation and Capacity to Consent

People with cognitive or intellectual disabilities can be forcibly assaulted and coerced or tricked into agreeing to sex. Even if the elements of force are not present, the officer must establish whether the victim has the mental capacity to understand the sexual act and its consequences. Investigations resulting in a consent defense versus a question of the assailant's identity require a totally different response from law enforcement officers.³⁴

³³ Texas Health and Human Services. (n.d.). How to Select the Right Sign Language Interpreter. Web. www.HHS.Texas.gov

³⁴ Ibid.

If the victim was forcibly assaulted and you anticipate a consent defense, focus on identifying evidence to corroborate the use of force such as an overturned table, suspect's history of preying on people with disabilities or adults in later life, victim's injuries, etc.

At times, a law enforcement officer must focus on whether an individual was able to consent under the law. There are no easy answers to this question. Some examples are:³⁵

- Does the individual possess the “knowledge” (areas such as basic knowledge of sexual activities in question, illegal sexual activities, and appropriate times/places for sexual activities present) needed to make the decision?
- Does the individual demonstrate “voluntariness” or the ability to make a decision without undue influence or coercion?
- Does the individual display a “reasoned understanding” or demonstrate an ability to consider relevant knowledge (i.e. nature of the situation) and weigh the risks and benefits of engaging in it (i.e. appreciate the potential consequences)?

In Texas, physicians and psychologists certify whether a person has capacity to consent using standardized testing. If a victim with a disability or an older adult is in jeopardy of harm and should not remain in their current living environment, they may consent to go to a safe alternative living arrangement (temporary or permanent). However, an incapacitated victim (with a disability or in later life) may refuse to leave an unsafe living environment. If there is no legal guardian to provide consent (the authority of the guardian is sometimes limited in this area), the situation will require potential removal through DFPS Adult Protective Services intervention, mental health commitment, or order of protective custody.

Capacity to consent is a complex issue that requires careful, thoughtful consideration. An individual's capacity to consent is not static—it may change with education, life experience, health, and additional factors.

Guardianship³⁶

Some people with intellectual disabilities or adults in later life may have a guardian with full or limited guardianship. Less restrictive alternatives to guardianship include accessing community supports, having a Medical Power of Attorney (MPOA), and engaging trusted others to assist with *supported decision making*. Disability or age alone is not a valid reason to declare an individual as incapacitated and in need of a guardian. Guardianship is a legal relationship between the following individuals: guardian—a competent adult—and ward—a minor or a person over the age of 18 who has a mental or physical disability that causes him/her to be considered incapacitated as determined by a court of law. A judge makes a final decision based upon the arguments of an attorney, medical evidence, and other relevant information. A guardian is usually only given the right to make specific legal decisions limited to the areas where the ward is determined to be “incapacitated,” for example to give or deny informed consent for medical treatment, deciding where the ward

³⁵ Syme, M. L., and Steele, D. (2016). Sexual consent capacity assessment with older adults. *Archives of Clinical Neuropsychology*, 31(6):495 – 505. doi:10.1093/arclin/acw046

³⁶ Texas Health and Human Services. (n.d.). A Texas guide to adult guardianship.

will live, financial management, voting, etc. In Texas, guardianship is reviewed annually by the court.

Investigations in Residential Settings

In large and small institutional residences, power is firmly in the hands of the people running the facility at both administrative and direct care levels. Often, policies developed under the guise of safety significantly limit people's ability to make choices, have personal freedoms, and be their own advocate. As a result, residents may not know how to make choices or decisions for themselves, what their rights are, or how to advocate for themselves.

People living in residential settings may also have been denied education about personal safety and sexuality. The dynamics of institutional living can be very similar to those of family violence. For example, perpetrators may:

- Say no one will believe the resident because they have a mental health disability or have been found unreliable in past reporting.
- Take away (or threaten to) benefits and privileges if the person does not comply with behavioral expectations or if they make an outcry about abuse(s).

Abusive care providers are aware of the placement of security/safety cameras and where other staff works at any given time. An abusive staff member is likely to isolate the person in their bedroom or a bathroom. Institutional abuse also happens behind closed doors.

Victim services staff may help the person develop a safety plan. A safety plan is traditionally developed by a person who is at risk for or has experienced sexual abuse, caregiver abuse, or domestic violence and wants to have a concrete plan in place to increase safety or avoid a violent confrontation. However, there are no guarantees that a person will be safe as result of safety planning.

Texas Laws

Law enforcement personnel shall be familiar with the following laws as it relates to crime victims with disabilities. Please consult the relevant codebook for the most complete information.

Hate Crime Statistics Act P.L. 101-275, 104 Stat. 140, 1994

People with disabilities were added to the list of hate crime victims.

Texas Penal Code

Title 5. Offenses Against the Person

Chapter 22. Assaultive Offenses

P.C. §22.04. Injury to a Child, Elderly Individual, or Disabled Individual

Title 9. Offenses Against Public Order and Decency

Chapter 42. Disorderly Conduct and Related Offenses

P.C. §42.091. Attack on Assistance Animal

Texas Human Resources Code

Chapter 48. Investigations and Protective Services for Elderly Persons and Persons with Disabilities

Texas Health and Safety Code

Chapter 242. Convalescent and Nursing Facilities and Related Institutions

{To see the full version of Chapter 9, Special Topic (D): Sexual Assault & Family Violence Special Topic/Violence Against People With Disabilities, Deaf Individuals, and/or Adults in Later Life, please refer to *Resources for Law Enforcement* at www.safvic.org.}

This chapter was revised in 2016 by Dianne King and Michelle Schwartz of The SAFE Alliance located in Austin, Texas. The original chapter was prepared by Cema Mastroleo, Wendie Abramson, and Dianne King of The SAFE Alliance. For additional information on this topic or to obtain more information on the “Responding to Violent Crimes Against Persons with Disabilities” resource, contact The SAFE Alliance at (512) 267-7233 or visit their website at www.safeaustin.org.

CHAPTER NINE (E): DRUG-FACILITATED SEXUAL ASSAULT

Learning Objectives: Drug-Facilitated Sexual Assault

By the end of this chapter, the student will be able to identify and discuss the following concepts as they relate to drug facilitated sexual assault:

- A. The Prevalence of Drug-Facilitated Sexual Assault
- B. Three Conditions to Describe Ingestion of an Incapacitating Substance
- C. Surreptitious Methods of Dosing Victims
- D. Substances Commonly Used in the Commission of Drug-Facilitated Sexual Assault and Their General Effects
 - 1. Ethanol (Alcohol)
 - 2. Gamma Hydroxybutyrate (GHB)
 - 3. Rohypnol (and Other Benzodiazepines)
 - 4. Ketamine
 - 5. MDMA (Ecstasy)
 - 6. Other Substances
- E. Limitations of Toxicology in Detecting Substances Used to Dose Victims

THE PREVALENCE OF DRUG-FACILITATED SEXUAL ASSAULT

Drug-facilitated sexual assault is defined as a sexual assault facilitated by subjecting the victim to a drug which, when administered to a victim, renders the victim physically incapacitated or helpless, thus incapable of giving or rescinding consent.¹ Victims may be unconscious during all or parts of the sexual assault, or have anterograde amnesia, the inability to remember ongoing events after a traumatic incident, upon gaining consciousness (similar to a patient gaining consciousness after IV sedation).² Current sexual assault data make it virtually impossible to determine how many of these attacks involved the ingestion of drugs or alcohol.³ A 2015 survey by the University of Texas at Austin, Institute on Domestic Violence & Sexual Assault concluded that 13.7% of the persons who were sexually assaulted were, at the time of the assault, incapacitated or asleep and unable to give consent.⁴

Attempting to determine the prevalence of drug-facilitated sexual assault is further complicated by the large number of unreported cases. In 2014, an estimated 413,000 Texas have experienced some form of sexual assault while only 9% of sexual assault victims reported to law enforcement.⁵

¹ Grela, A., Gautam, L., and Cole, M. D. (2018). A multifactorial critical appraisal of substances found in drug facilitated sexual assault cases. *Forensic Science International*, 292:50 – 60. doi:10.1016/j.forsciint.2018.08.034

² Ibid.

³ Busardò, F. P., Vari, M. R., di Trana, A., Malaca, S., Carlier, J., and di Luca, N. M. (2019). Drug-facilitated sexual assaults (DFSA): A serious underestimated issue. *European Review for Medical and Pharmacological Sciences*, 23(24):10577 – 10587. doi:10.26355/eurrev_201912_19753

⁴ Busch-Armendariz, N.B., Olaya, D., Kerwick, M., Wachter, K. & Sulley, C. (2015). Health and Well-Being: Texas Satewide Sexual Assault Prevalence. Austin, TX: The University of Texas at Austin, Institute on Domestic Violence & Sexual Assault.

⁵ Ibid.

Most sexual assault cases hinge on whether the victim gave consent. With cases of drug-facilitated sexual assault, whether the victim was able to give consent becomes a major determinant. A victim who is impaired to the point of being incapable of understanding what is going on or unable to appraise or control their own conduct does not have the ability to provide consent. This fact is clear regardless of the reason for the impairment. Texas law explicitly defines when a sex act is WITHOUT consent.

Title 5, Chapter 22, Section 22.011 of the Texas Penal Code states in part:

- (a) A person commits an offense if the person:
 - (1) intentionally or knowingly:
 - (A) causes the penetration of the anus or female sexual organ of another person by any means, without that person's consent;
 - (B) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or
 - (C) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or
 - (2) intentionally or knowingly:
 - (A) causes the penetration of the anus or sexual organ of a child by any means;
 - (B) causes the penetration of the mouth of a child by the sexual organ of the actor;
 - (C) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;
 - (D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor;
 - (E) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor.
- (b) A sexual assault under Subsection (a)(1) is without the **CONSENT** of the other person if:
 - (1) the actor compels the other person to submit or participate by the use of physical force or violence;
 - (2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat;
 - (3) the other person has not consented, and the actor knows the other person is unconscious or physically unable to resist;
 - (4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;
 - (5) the other person has not consented, and the actor knows the other person is unaware that the sexual assault is occurring;
 - (6) The actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge;
 - (7) the actor compels the other person to submit or participate by threatening to

- use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;
- (8) the actor is a public servant who coerces the other person to submit or participate;
 - (9) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;
 - (10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual advisor; or
 - (11) the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other.

The 85th Legislature modified the language in Penal Code section 22.021 Aggravated Sexual Assault regarding so-called "date rape" drugs. Previously, flunitrazepam, (known as rohypnol), gamma hydroxybutyrate, or ketamine were the only listed drugs that if administered or provided by the actor to the victim would meet the elements of the offense of Aggravated Sexual Assault. New language was added to this statute that states that an actor can be prosecuted by using any substance (including alcohol) to impair the victim's ability to appraise the nature of the act or to resist the act.

In 1999, Texas passed its first drug-facilitated sexual assault law which was followed shortly by a federal law signed on February 18, 2000 called the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000. It was named after two teenagers, Samantha Reid, from suburban Michigan, and Hillory Farias, from Texas, who were both killed by ingestion of Gamma Hydroxybutyrate (GHB), a drug that has a depressant effect on the brain and central nervous system, after it was surreptitiously put into their drinks. The law states that abuse of illicit GHB is an imminent hazard to the public and that it requires immediate regulatory action under the Controlled Substances Act, 21 U.S.C. 801. This law effectively outlawed GHB. More information on GHB follows.

THREE CONDITIONS TO DESCRIBE INGESTION OF AN INCAPACITATING SUBSTANCE⁶

1. **Involuntary Ingestion** - A victim unknowingly consumes a food or drink that has been dosed with a drug.
2. **Voluntary/Involuntary Ingestion** - The victim has a few drinks, and then consumes a drink that has been surreptitiously dosed with a drug.
3. **Voluntary Ingestion** - A victim voluntarily ingested a drug and was not surreptitiously dosed. However, voluntary ingestion does not equal consent.

⁶ Ohlin, J. D. (2016). Criminal law: Doctrine, application, and practice. New York City, NY: Wolters Kluwer.

SURREPTITIOUS METHODS OF DOSING VICTIMS

There are different ways in which drugs can be administered in the commission of drug-facilitated sexual assault. The most common method is to add the drug to the victim's drink. This usually happens in one of two ways: the perpetrator purchases a drink for the victim, or the perpetrator waits for the victim to leave a drink unattended. Although efforts are underway to create testing mechanisms for drinks, they are still crude and uneasy to obtain.

SUBSTANCES COMMONLY USED IN THE COMMISSION OF DRUG-FACILITATED SEXUAL ASSAULT AND THEIR GENERAL EFFECTS

There are more substances that can produce a diminished level of consciousness than imaginable. Drugs used to facilitate sexual assault have one or more of the following effects:⁷

- Nausea
- Loss of bowel or bladder control
- Feeling drunk when you have consumed little to no alcohol
- Sudden increase in dizziness, disorientation, or blurred vision
- Difficulty breathing

Any substance that can compromise the victim's ability to accurately assess the situation and/or the suspect's actions could be used in the commission of a drug-facilitated sexual assault. Alcohol is the most common drug used to facilitate sexual assault because it is widely available and may have already been willingly consumed by the victim. Other drugs commonly used are tranquilizers (Xanax) and central nervous system (CNS) depressants, all of which can cause an unconscious state. Almost any drug with even mildly sedative properties can be used by a perpetrator, especially if readily available. The substances can be acquired in the following ways:

- Over the Counter (OTC)- readily available to anyone
- Available through perpetrator's place of employment- medical, paramedical, veterinary, etc.
- Legitimate prescription- for self or family member
- Illegally bought on the street

Whether the victim voluntarily or involuntarily consumed the substance is irrelevant. The victim's level of consciousness and responsiveness is the critical issue. Was the victim capable of influencing or appraising the actions of the violator, and did the victim consent to sex?

Substances such as ketamine, scopolamine, GHB, dextromethorphan, and a host of others are also capable of causing a state of reduced consciousness that would aid the commission of a sexual assault.

⁷ U.S. Department of Justice, Drug Enforcement Administration, Office of Congressional and Public Affairs, Community Outreach and Prevention Support Section, Victim Witness Assistance Program. (2017). Drug-facilitated sexual assault.

ETHANOL (ALCOHOL)

Ethanol (ethyl alcohol), commonly known as alcohol, is the most prevalent drug in western society. The widespread use of alcohol also results in many ills for modern society, including accidental deaths, overdoses of alcoholic beverages, and cirrhosis of the liver among others. Alcohol is also the most common drug used to facilitate sexual assault, and it is estimated that approximately 90 percent of rapes on college campuses perpetrated by an acquaintance of the victim involve alcohol.⁸

Alcohol is a CNS depressant, and it generally depresses all body functions, including virtually all physiological and biochemical systems. It is similar to drugs such as tranquilizers, narcotics, sedatives, and hypnotics. As the level of alcohol in the blood increases, memory, fine motor skills, and concentration function dulls. In addition, vision and coordination become impaired. All bodily functions and abilities controlled by the brain become progressively impaired. Weakened responsiveness, loss of judgment and control, and reduction of decision-making abilities all increase the vulnerability of an individual to a potential predator.

The effects of alcohol can be greatly intensified when combined with other intoxicating substances. It is common practice in drug-facilitated sexual assault cases to administer alcohol in combination with other drugs. Combining alcohol with drugs having CNS depressants exerts a synergistic effect in which the combination is greater than the effect of each chemical individually, or the sum of the individual effects. These CNS depressant drugs include sedatives, hypnotics, anticonvulsants, antidepressants, tranquilizers, some analgesics, and opiates. The effect can be profound, and numerous sexual assaults have occurred while the victim was under the influence of both alcohol and drugs together.

Alcohol has been used throughout history in situations where a “loosening of inhibitions” is necessary. Many people hear stories and jokes at a young age that suggest alcohol can be used in this manner and, therefore, young adults become familiar with the concept of using liquor to help advance their sexual desires. Alcohol has received this reputation because it *does* ease tension and remove inhibitions. This effectiveness, combined with the fact that alcohol is socially acceptable, facilitates the process of administration. Alcohol is legal and readily available, and a predator does not have to surreptitiously dose a victim or convince them to “try” an intoxicating substance.⁹

GAMMA HYDROXYBUTYRATE (GHB)

Gamma Hydroxybutyrate (GHB) and its analogues or related chemicals 1,4-butanediol (BD) and gamma butyrolactone (GBL) have become an increasing problem not only in relation to drug-facilitated sexual assault, but in mainstream culture as well. The effects of GHB most resemble a major central nervous system depressant. It is reported to produce a euphoric high, nausea, memory loss, slowed breathing, and death.¹⁰

⁸ Alcohol.org Editorial Staff. (2020). Sexual Assaults on College Campuses Involving Alcohol. Web. www.Alcohol.org

⁹ Lebeau, M. A., and Mozayani, A. (2001). Drug Facilitated Sexual Assault. San Diego, CA: Academic Press.

¹⁰ American Addiction Centers Editorial Staff. (2019). How Long Does GHB Stay in Your System? Web.

GHB was first synthesized in Europe in the early 1960s. It was developed for use as a sedative, but its use was short-lived because it had the tendency to cause seizures. For many years GHB was sold over the counter in health food stores and pharmacies as a dietary supplement to increase muscle mass. It was reported to increase the levels of human growth hormone when taken and reportedly increased the muscle mass of the user. Even though GHB doesn't increase muscle mass, it became very popular among body builders and others who spent time in gyms. GHB was also reported to be a sleep aid that gave users better rest. While this may be true, GHB is dangerously addictive.

After deaths blamed on GHB continued to climb through the 1990s, states and the federal government began looking at GHB as a dangerous drug and started to see the need to enact legislation to stop its spread. The Hillary J. Farias and Samantha Reid Date-Rape Prevention Drug Act was signed into law on February 18, 2000, which formally made GHB a Schedule I drug federally. Before being made Schedule I in the Controlled Substances Act (CSA), GHB had been banned for sale by the U.S. Food and Drug Administration (FDA) as a dietary supplement in 1990.

With GHB increasing in popularity throughout the 1990s, the problems associated with its use increased too. These problems included overdoses, poisonings, and addictions. Only recently have emergency rooms and medical examiners begun testing patients for GHB and its analogues. Another problem in detecting the frequency of use of GHB, especially among sexual assault victims, is that it stays in the body for a very short amount of time. The maximum amount of time that GHB would be detected in the body via a urine test is up to 12 hours after ingestion.¹¹

GHB is usually found as a liquid, but may also be found as a powder, encapsulated, or in a paste. The powder version of GHB is very hygroscopic and absorbs moisture out of the air. When the powder becomes saturated, it forms a pasty substance that some users will consume.

GHB is easy to make and the recipes proliferate the Internet. All a person needs to manufacture GHB is the chemical gamma butyrolactone (GBL) and sodium hydroxide (lye). By combining these two chemicals they will form a precipitate that is GHB. The precipitate is filtered off using coffee filters or paper towels and then whatever is caught in the filter is dried, leaving the GHB. Often where GHB is being made, vinegar or muriatic acid will also be found to bring the pH of the GHB back to neutral because the sodium hydroxide is very alkaline. The sodium hydroxide that is most often used during the manufacture of GHB is *Red Hot Devil Lye*, a drain cleaner.

After GHB was made a Schedule I drug in 2000, its precursor chemical GBL was made a List I Chemical, meaning the Drug Enforcement Administration (DEA) Diversion Control Division tracks all sales of the chemical. GBL is still sold commercially as a cleaner/degreaser. With all the pressure on GHB dealers, users soon turned their attention to other drugs that would provide the same effect as GHB. They didn't have to look far, as it turns out when GBL is consumed it is converted into GHB in the body. This gives the same effect or high as taking GHB. This is also true for the chemical 1,4-butanediol (BD). When it is consumed, it converts into GHB and gives the same effect to the user. The latest analogue of GHB is a product called gamma-Valerolactone (GVL). It, too, metabolizes into GHB in the body. GVL is valeric acid, which is a natural product of

¹¹ Ibid.

valerian root, a common dietary supplement sold to help one sleep and be less anxious. No known valerian root extracts, though, have high enough concentrations of GVL to be considered dangerous.

The analogues of GHB (GBL, BD, and GVL) all metabolize into GHB in the body. All the substances look similar—usually a clear liquid. There are some differences among them. BD is a thicker liquid than GHB and gels at about 68 degrees Fahrenheit. GVL, in its pure form, has a strong disagreeable smell. All these substances can be colored by several agents.

Because of the attention given to GHB and the ability of GBL and BD to provide similar results, dealers began selling these chemicals as a replacement for GHB. They also began using other tactics to evade restrictions on the sale of these chemicals. For example, they might change the chemical name listed on the packaging. Another more troubling practice is to label the packaging with a legal chemical while having GBL or BD in the product mixture. Another method of avoiding detection is to sell GBL as a cleaning product, such as weightlifting belt cleaner. To combat this practice, officers can look for indications that the product is for human consumption. Such indicators include lack of an aftertaste and product flavoring (both would indicate that the product is not simply a cleaner).

GBL is the latest GHB analogue to be seen in stores. It has been sold in a product named “Once Removed” in several national drug chains. Once Removed was being sold as a nail polish remover. There were cases from across the country of persons purchasing multiple bottles of this product at one time; some were even buying all that the store had in stock. The GHB activist group, Project GHB, began sending letters to the companies selling this product asking them to remove it from their shelves. In this case, the companies responded by ceasing sales of Once Removed.

GHB is commonly used in conjunction with other depressants, especially alcohol, which have an additive effect. This combination is particularly dangerous because of this additive and unpredictable effect. Persons who are under the influence of GHB will exhibit reduced inhibitions, an increased level of euphoria, an extreme level of intoxication, or unconsciousness that is disproportionate to the amount of alcohol consumed. Persons under the influence of GHB frequently vomit. GHB seems to bring out sexually oriented behavior in people.

GHB has some specific effects that may assist in determining the type of intoxicant used. People who have consumed GHB will often have a “head snap.” This is where they seem to have suddenly gone to sleep or passed out and then just as suddenly, they snap their head back up and are awake again. Users will often have seizure-like movements and appear to convulse. In high doses, the severity of the head-snaps and seizure-like movements can lead to a full-blown seizure. It is not uncommon for a person who is highly intoxicated on GHB to become combative as they emerge from unconsciousness (emergence delirium). People exhibiting this state have been described “as if on PCP”. GHB, however, does not produce analgesia (an absence of pain) like PCP.

EFFECTS SPECIFIC TO GHB	
Rapid High Intoxication	3 – 5 Hours of Effects
Out-of-Body Experience	Sexually-Oriented Behavior
Head Snaps	Seizure-like Movements
Vomiting	Horizontal Gaze Nystagmus (no at low doses/yes at high doses)
Aggression	Depressed Respiration (as low as 4 – 6 per minute)
Comatose	Sudden Resolution of Symptoms
Lack of Gag Reflex	No Antidote (only life support until the body eliminates it)

There are drugs that are much more commonplace than GHB, such as cocaine, methamphetamine, and heroine. While those drugs represent most drug-related deaths, GHB certainly has a share of its own. GHB has the added risks of extremely unpredictable dosing, increased likelihood of death upon the first use, and possibility of addiction; withdrawal can be dangerous. The ease in which GHB is manufactured and concealed is also part of the drug's dangers.

ROHYPNOL (AND OTHER BENZODIAZEPINES)

Rohypnol is the trade name for the substance named flunitrazepam, which was developed and modified by F. Hoffman-La Roche Ltd. Rohypnol was introduced in 1975 for the management of insomnia and induction of anesthesia.¹² Rohypnol is not legally manufactured or sold in the United States, but is prescribed in Europe and Latin America.¹³

Rohypnol is a sedative-hypnotic that belongs to the group of drugs known as benzodiazepines. Benzodiazepines are a group of central nervous system (CNS) depressants that are chemically related. Benzodiazepines are legally used as sedative-hypnotics for the treatment of insomnia and sleep disorders, anxiety, and seizure disorders.¹⁴ They are also illicitly used for recreation, to support an addiction, and for the facilitation of rape or robbery.

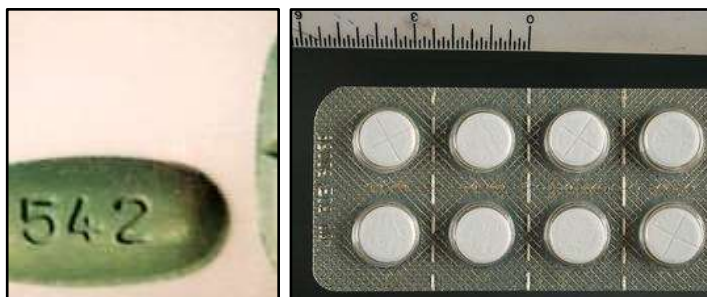


Image Credits: United States Drug Enforcement Administration

Alcohol and Valium are both well-known central nervous system depressants, but Valium, unlike alcohol, is a benzodiazepine. Rohypnol is a powerful depressant; it is approximately 10 times more potent than Valium. Rohypnol's effects can be felt within 20 minutes, with peak effects between one to two

hours. It is available in a 1 mg and .5 mg dose unit. Sedation can last from 8 – 12 hours. Because both alcohol and Rohypnol are CNS depressants, when they are taken together there is an additive effect. In other words, both drugs depress the central nervous system, so when taken together, there is a greater amount of depression, which can be deadly. Rohypnol is frequently given with alcohol as a method of covering up the drug. This is particularly hazardous not only

¹² F. Hoffmann-La Roche Ltd. (2020). *About Roche- Our History*. Web. www.Roche.com

¹³ Center for Substance Abuse Research. (2013). Flunitrazepam (Rohypnol). Web. www.CESAR.UMD.edu

¹⁴ Ibid.

because of the combined effects, but the person giving the dose doesn't always understand the potential effects or the amount of alcohol or drugs already in the victim's system.

Since benzodiazepines and alcohol are CNS depressants, their symptoms are very similar. In low doses, benzodiazepines cause sedation, drowsiness, blurred vision, fatigue, mental depression, and loss of coordination. In higher doses they can cause confusion, memory impairment, slurred speech, low blood pressure, poor reflexes, loss of consciousness, and anterograde amnesia, where events that occurred during the time the drug was in effect are forgotten. In serious overdoses, death can occur. Benzodiazepines are physically addictive, and the withdrawal symptoms can last for weeks.

Rohypnol became a popular drug of abuse in the United States during the early 1990s. At this time, the drug was already listed in the Controlled Substances Act (CSA) as Schedule IV, where it had been since 1984. In 1997 it was added to Schedule I of the U.S. Sentencing Commission's *Guidelines Manual* to increase the penalty for possession or distribution. In Texas, Rohypnol is listed as a Schedule IV controlled substance and Penalty Group I of the Health and Safety Code.

Rohypnol, when given to a potential rape victim, is generally given mixed with an alcoholic beverage. Rohypnol, in its original formulation, is colorless, tasteless, and dissolves in alcoholic drinks. Due to the amount of abuse, Roche reformulated Rohypnol from a white tablet (which dissolved tasteless, odorless, and colorless) to a green oblong pill with a speckled blue core, which when dissolved will color the drink blue and cloudy. However, generic versions may not contain the blue dye. Due to the dye, some predators who desire to use this as their drug-of-choice will put it into drinks that have a blue color to them already.

Signs of Rohypnol ingestion are like other CNS depressants and include slurred speech, impaired ability to divide attention, balance problems, horizontal gaze nystagmus, unsteady gait, etc. In high doses there may be amnesia, coma, apnea, hypothermia, hypotension, and death. Peak plasma levels after a 2 mg dose are 10 – 15 ng/mL and may be detectable for approximately three days after ingestion. In sexual assault cases, laboratories need to screen for the flunitrazepam metabolite, 7-aminoflunitrazepam, using gas chromatography and/or mass spectrometry. It is especially important to remember that many of the victims of this drug will not know what happened to them and may be slow to make the initial outreach. Because this drug is short lived in the body, time is of the essence.

KETAMINE

Ketamine is another popular drug found in clubs, raves, and other places. Ketamine is a veterinary anesthetic used in surgical procedures on cats and sub-human primates. Ketamine may also be used as an anesthetic in humans, such as in pediatric burn patients. It is not widely used in humans due to some undesirable side effects. Ketamine is a dissociative anesthetic—"separating" the mind from the body and keeping one in a dream-like state.

A Parke-Davis pharmacist named Calvin Stevens developed Ketamine in 1962.¹⁵ It was first

¹⁵ Li, L., and Visides, P. E. (2016). Ketamine: 50 years of modulating the mind. *Frontiers in Human Neuroscience*, 10:612. doi:10.3389/fnhum.2016.00612

used in human trials in 1964 and was later patented in 1966 as an anesthetic for human use. In 1999 ketamine was placed on Schedule III of the Controlled Substances Act (CSA) list of controlled substances. Ketamine's chemical structure is similar to that of PCP, but ketamine is less toxic and shorter acting than PCP.¹⁶ It has been found that people using ketamine do not seem to be as "gone" as those who use PCP, who are likely to be completely non-communicative.

Ketamine is a behavioral analogue of PCP. While their chemical structures are somewhat different, they produce similar effects. PCP tends to produce a more severe dissociation than ketamine and produces more amnesia, too. When veterinarians administer ketamine to cats, they will normally administer a tranquilizer, such as diazepam (Valium), to assist in controlling the animal because ketamine alone does not produce enough sedation.

Ketamine produces a variety of responses in the users depending on several variables. These variables may include the expectations of how the drug will affect the user, the environment in which the drug is used, the amount of the drug taken, the method of ingestion, previous experience with the drug, and other drugs taken at the same time. Users will experience dizziness, double vision, agitation, elevated vital signs, and reduced awareness of environment.¹⁷ Users may also experience nightmares, psychosis, or delirium.

After taking ketamine, the user will first feel the inability to move by their own will. There will be muscle rigidity and notable analgesia, but the user will remain conscious. The user may feel panicky and experience waves of emotions. After these feelings pass, the user may begin to experience agitation and paranoia.

This is the time that the user will most likely hallucinate or have out-of-body experiences. As the user begins to recover, he or she may continue to experience flashbacks and remain impaired.¹⁸ Ketamine will remain psychoactive from about 10 minutes to over 3 hours, depending upon the method of ingestion and the amount ingested. Snorting it will give the shortest duration and injecting it will give the longest. Ketamine may be snorted through the nose, injected, smoked, or taken orally.

An assailant will administer a high dose of the drug to ensure that the victim will enter a state where memory will be impaired. It is possible, with ketamine, to achieve a state where the victim will experience amnesia. In high doses, the victim may experience a coma or stupor. Many times, the victim will appear to be awake, but will be unresponsive. During peak effects, they may not respond to any sensory stimuli. As the effects begin to wane, they may begin acting inappropriately to sensory stimulus and be unpredictable, paranoid, overreact, or be outright violent. When dealing with a person who is impaired by ketamine, it is important to remember its primary purpose—to provide pain relief. Many police tactics that rely on pain-compliance will simply not work on a person who is intoxicated by ketamine or PCP.

¹⁶ Flemming, K. D., and Jones Jr., L. K. (2015). Mayo Clinic neurology board review: Clinical neurology for initial certification and MOC. New York City, NY: Mayo Clinic Scientific Press and Oxford University Press.

¹⁷ American Addiction Centers Editorial Staff. (2019). How Long Does GHB Stay in Your System? Web.

¹⁸ Ibid.

Some of the general effects of ketamine are a “trip” like effect, or leaving the body, going somewhere, then returning. Some will feel like they are floating or having visions, hallucinations, psychedelic visuals, and transcendental travel. Ketamine can give “near-death” and “near-birth” experiences. Near-death experiences are experiences like what have been described by people who have been clinically dead and revived. Near-birth experiences are like traveling back in time to one’s own birth. Some claim to remember their own birth under the influence of ketamine. Although ketamine will occasionally be used for the commission of drug-facilitated sexual assault, it is not as widely used for that purpose as are GHB and Rohypnol.

Ketamine is commercially manufactured in the U.S. and overseas. Ketamine is available from the manufacturer as a liquid in glass vials of 5 ml to 50 ml containing 10 mg, 50 mg, or 100 mg of ketamine per ml of liquid. Ketamine may be found in nearly all veterinary offices; as a result, it is often stolen in burglaries of veterinary hospitals. Ketamine is available as an over-the-counter medication in Mexico for less than \$10 per vial. It may be purchased in Mexico and then smuggled across the border into the U.S., where it is converted into a powder and sold.

MDMA (ECSTASY)¹⁹

MDMA (3,4-Methylenedioxymethamphetamine), also known as *ecstasy* or *Molly*, is a synthetic, psychoactive drug chemically similar to the stimulant methamphetamine and the hallucinogen mescaline. It is the single most abused drug in club drug scenes in the U.S. and is also seen on high school and college campuses. MDMA may be found as a powder but is more commonly found as little pills with a variety of colors, shapes, and logos. They are designed to look innocent and attract little attention.

Ecstasy pills may contain other substances in addition to MDMA, such as ephedrine, dextromethorphan (a cough suppressant that has PCP-like effects at high doses), ketamine, caffeine, cocaine, and methamphetamine. While the combination of MDMA with one or more of these drugs may be inherently dangerous, users might also combine them with substances such as marijuana and alcohol, putting themselves at further physical risk. MDMA users tend to be passive and obsessed with sensations. Effects from an oral dose will appear 30 to 60 minutes after ingestion and lasts up to eight hours. A quicker onset is achieved by snorting the powder of a crushed tablet. Users report feeling agitated at first with a distorted sense of time and a diminished hunger and thirst. These feelings are followed by euphoria with a sense of profound insight, intimacy, and well-being. Other effects are similar to cocaine and amphetamines, including increases in heart rate and blood pressure, muscle tension, involuntary teeth clenching, nausea, blurred vision, faintness, and chills or sweating. In high doses, MDMA can interfere with the body’s ability to regulate temperature. On rare occasions, this interference can lead to hyperthermia, a sharp increase in body temperature which can result in liver, kidney, or cardiovascular system failure, and death.

¹⁹ American Addiction Centers Editorial Staff. (2019). Molly (MDMA) Addiction and Treatment: Signs, Dangers, and Long-Term Effects. Web.

OTHER SUBSTANCES

These can include, but are not limited to:

- a. **Marijuana (Cannabis)** - A hallucinogen; effects include disorders of the thought process, disturbance of the senses, possible amnesia, mood changes, and can include hallucinations and possible delirium. This substance is illegal under U.S. federal law, but legal for medical use in most U.S. states and legal for recreational use in some U.S. states.
- b. **Carisoprodol (Soma)** - A centrally acting muscle relaxant.
- c. **Zolpidem (Ambien)** - A hypnotic/sedative and used as a sleep medication to help with insomnia.

LIMITATIONS OF TOXICOLOGY IN DETECTING SUBSTANCES USED TO DOSE VICTIMS

There are many considerations when it comes to testing victims for substances that may have been used to commit a drug-facilitated sexual assault. The first and biggest hurdle is getting the victim to come forward with their initial outcry. In addition to the normal feelings of violation, embarrassment, fear, and concern, many of the victims will feel guilty for getting “out of control” or not remembering the details of the event(s). In other words, they may self-blame for getting too drunk or high, not realizing that there was something else in what they intended to consume that was going to make them more impaired than they intended.

For some victims, by the time they realize that they have been assaulted and make the first outcry, hours or days may have passed. Since many of the substances that are used in this type of crime are very short lived in the body, it is very important to begin collecting the evidence from the victim’s body as quickly as possible. If the assault has occurred within 120 hours of the victim reporting the crime to law enforcement, a forensic exam should be conducted by a SANE (Sexual Assault Nurse Examiner). During the exam, the SANE will collect blood and urine samples.

Standard crime scene techniques and evidence collection should be used with any drug-facilitated sexual assault. It is particularly important to gather any beverage or food containers for drug analysis. Containers that have only trace amounts in them should be gathered if they are possibly related. Even if the substance has dried up, it may leave residue that can be tested for drugs that may have been used. Do not the victim shower, douche, or empty their bladder prior to the collection of evidence unless necessary.

Of the drugs discussed, the only drugs that are routinely tested for are the benzodiazepines. Tests for the remaining substances must be specifically requested from the lab. Not all laboratories are capable of testing for all the substances, thus it is important to check with the labs you normally use to see if they are capable of testing for any substances you suspect.

{For Recommended Maximum Detection Limits for Common DFSA Drugs and Metabolites in Urine Samples, refer to Resources for Law Enforcement at www.safvic.org.}

CONCLUSION

Most suspects in drug-facilitated sexual assault (DFSA) cases will claim a consent defense rather than deny that the sexual encounter occurred. When dealing with a consent defense, the question is not whether the defendant had sex with the victim, but rather the circumstances of the act and whether she was unable to consent due to her level of intoxication or lack of consciousness.

Victims of DFSA may be too confused or have too little memory of the events to realize that they were drugged and raped. It is important for law enforcement officers to be alert to potential victims of this type of crime. In the past, many of these victims were likely treated as just another drunk, and either dismissed or arrested for public intoxication, or DWI.

When dealing with victims, a DFSA should be suspected if the victim has large periods of time that are lost, has only a sketchy memory of the events, or does not remember what happened. Another indication of this type of crime is a victim who reports becoming extremely intoxicated after only one or two drinks, especially if they know how much they can normally drink without becoming that level of intoxicated. Another indicator is not knowing who they were with, how they got to where they were, or who they had sex with.

There is a myriad of drugs available to the potential sexual predator for the commission of this crime. Only a few of the most commonly used drugs were presented here. Drugs allow offenders to have easier access to the victim. For a drug to be a candidate for use in a DFSA, offenders want a drug that has a quick onset of effects (20 – 30 minutes), lasts several hours, produces either unconsciousness or amnesia, and is administered easily without the victim's knowledge.

This is an expanding crime and is becoming better recognized in both society and law enforcement. This Sexual Assault Family Violence Investigator Course (SAFVIC) only provides suggestions about how to investigate sexual assaults. It is necessary for each department to formulate a policy on how to deal with these crimes. Every complaint or suspicion of DFSA should be taken seriously. In most instances, the victim can remember little to nothing of the assault. This includes those victims who voluntarily ingested drugs/alcohol and those having the drugs administered surreptitiously.

CHAPTER TEN: COMMUNITY RESPONSE & VICTIM RESOURCES

Learning Objectives: Understanding Community Response and Victim Resources

By the end of this chapter, the student will be able to identify and discuss the following community response initiatives:

- A. A Coordinated Community Response
 - 1. The Blueprint for Safety: An Interagency Response to Domestic Violence Crimes
 - 2. The Six Foundational Principles
 - 3. Underlying Assumptions of the Blueprint for Safety
 - 4. Participants
 - 5. Implementing the Blueprint for Safety
 - 6. The Blueprint for Campus Police: Responding to Sexual Assault
- B. Domestic Violence Fatality Review Teams
 - 1. Goals
 - 2. Members' Responsibilities
 - 3. Identifying Gaps in Service
 - 4. Legislative Change
- C. Sexual Assault Response Team (SART)
 - 1. What is a SART?
 - 2. Members of a SART
 - 3. Benefits of a SART
 - 4. Developing a Plan in Your Community
 - 5. Resources
- D. National, State, and Local Resources for Victims of Domestic Violence and Sexual Assault
 - 1. Crime Victims' Rights
 - 2. Crime Victims' Compensation
 - 3. Address Confidentiality Program
 - 4. Pseudonym Form
 - 5. Lease Termination
 - 6. Local Resources
 - 7. State Resources
 - 8. Grants and Funding

In every community, law enforcement is strapped with an overwhelming call load. Due to the complexity of family violence and sexual assault cases and the amount of time needed to properly work these cases, law enforcement is left with little time to ensure that victims get the resources they need. A coordinated community response can streamline services for victims and allow law enforcement to concentrate on holding offenders accountable. This is accomplished through strengthening systemic relationships and developing formal cooperative working agreements that can increase a victim's access to services. This chapter provides a brief description of types of community responses that have proven to be successful in connecting law enforcement to criminal justice and victim service stakeholders.

A COORDINATED COMMUNITY RESPONSE

WHAT IS A COORDINATED COMMUNITY RESPONSE?¹

A Coordinated Community Response (CCR) team brings together community-wide agencies and key roles to develop strategies and procedures in the system's response to sexual assault and/or family violence. These teams seek to increase the efficacy and comprehensiveness of services provided to victims to reduce or eliminate violence from their lives. Intervention with the CCR aims to use sources of strength within the community, such as the legal system, to tell a perpetrator that the community will use its power to protect victims. Sexual assault and family violence victims come from diverse backgrounds and can be of any age, race, ability, sex, gender, or sexual orientation. Because of these different backgrounds and circumstances, victims may seek help in different places. Some may choose to go to law enforcement while some may choose to contact a crisis center without providing a report to law enforcement. The CCR has the potential to help victims receive needed services, many of which victims may not know exist or are available to them, without putting unnecessary strain and burden on victims.

THE BLUEPRINT FOR SAFETY: AN INTERAGENCY RESPONSE TO DOMESTIC VIOLENCE CRIMES²

The state of Minnesota has been at the forefront of efforts to end intimate partner violence since 1974. Over the years the innovative projects and policies of Minnesota cities have become model programs for the country. In 2007, the Minnesota Legislature awarded a grant to the City of Saint Paul to write a comprehensive plan based on over 30 years of research, demonstration projects, and practice. This plan would become a "blueprint" for agencies responding to intimate partner violence. "The Blueprint for Safety" was created and has been hailed by experts in the field as a model program for all states to follow. When the SAFVIC Program was in the process of updating this chapter of the curriculum, the staff contacted various stakeholders to see what CCR models that communities were using; they all pointed to the Minnesota models as guides. Therefore, though CCRs can take different forms, the SAFVIC Program chooses to highlight *The Saint Paul Blueprint for Safety: An Interagency Response to Domestic Violence Crimes* as an example of an innovative and successful model for communities to follow.

The Blueprint is anchored on six foundational principles of intervention that have been identified to maximize safety for victims of intimate partner violence and holds offenders accountable while offering them opportunities for change.

¹ Shorey, R. C., Tirone, V., and Stuart, G. L. (2014). Coordinated community response components for victims of intimate partner violence: A review of the literature. *Aggression and Violent Behavior, 19*(4):363 – 371. doi:10.1016/j.avb.2014.06.001

² Praxis International. (2015). *A Guide to Becoming a Blueprint Community: An Interagency Response to Battering and Domestic Violence Crimes*.

THE SIX FOUNDATIONAL PRINCIPLES³

1. ADHERE TO AN INTERAGENCY APPROACH AND COLLECTIVE INTERVENTION GOALS

Processing a family violence case involves different levels of government, many agencies, and many individuals who handle these cases daily. An effective response requires coordination and accountability. While practitioners are committed to the mission of their agency, the interagency approach also makes them accountable to the victim, the offender, and the others intervening in the case. Each practitioner must communicate in a way that makes it possible that each person that handles the case can act with the best possible knowledge of the case. With many agencies involved in a case there will be disagreements, differences of opinions, and unmet expectations, which is not the problem; the problem arises when there is no way to resolve the conflict. The interagency approach succeeds when everyone focuses on the shared goal that is centered on the needs of the victim(s).

2. BUILD ATTENTION TO THE CONTEXT AND SEVERITY OF ABUSE INTO EACH INTERVENTION

The challenge is to uncover all that can be known about the full scope of abuse in the relationship—the scope and severity of the violence, how often, and under what circumstances it occurs. Additionally, it is important to assess the pattern of the abuse—is it escalating, de-escalating, potentially lethal, or unpredictable? It is important to gather information that will identify the pattern of abuse and the specific acts. Since there is not a “one size fits all” response to family violence, using this information can help the interagency response team to propose different interventions based on the circumstances, frequency, and severity of abuse.

3. RECOGNIZE THAT MOST DOMESTIC VIOLENCE IS A PATTERNED CRIME REQUIRING CONTINUING ENGAGEMENT WITH VICTIMS AND OFFENDERS

Rather than focusing on a single act of violence, understand that single acts of violence are part of a patterned use of coercion, intimidation, and the use or threat of violence. The intention of the Blueprint for Safety is to both process the “event” of the crime, as well as confront and stop the pattern of abuse and violence. The Blueprint for Safety offers the following suggestions in ways to respond that identify that the nature of family violence as a patterned offense:

- Whenever possible, minimize the victim’s need to confront the offender.
- Protect the victim from retaliation when using information that he/she has provided.
- Treat each interaction with the victim as an opportunity to build collaboration over multiple interventions (even when a victim is initially hostile to those interventions).
- Stay mindful of the complex, dangerous implications of a victim’s collaboration with interveners.
- Be aware that the fundamental purpose of violence, which characterizes most domestic violence criminal cases, is to control what the victim says, thinks, feels, and does.
- Engage in a dialogue with the victim rather than treating him/her as a data point.

³ Ibid.

- Avoid unintentionally reinforcing the abuser's actions. Offer a clear alternative to the abuser's statements that the victim is crazy, at fault, unbelievable, and unable to make decisions, and that the abuser is unstoppable.

4. ESTABLISH SURE AND SWIFT CONSEQUENCES FOR CONTINUED ABUSE

Research into family violence suggests that building sure and swift consequences into the understructure of a case can reduce recidivism in some cases and the severity of ongoing abuse in others. Offenders can push the boundaries set for them, so it is important to send clear messages that there will be consequences to battering behavior. The Blueprint for Safety outlines that use of interagency policies, protocols, case processing procedures, and information sharing can:

- Maximize the ability of the state to gain a measure of control over a domestic violence offender;
- Use that control to intervene quickly when there are new acts of violence, intimidation, and coercion; and
- Shift the burden of holding the offender accountable for the abuse from the *victim* to the *system*.

5. USE THE POWER OF THE CRIMINAL JUSTICE SYSTEM TO SEND MESSAGES OF HELP AND ACCOUNTABILITY

The single greatest obstacle to the criminal justice system's effective intervention in battering cases is the degree of psychological and physical control the abuser has over the victim. Offenders use the power that they have over the victim to prevent interventions by the legal system. The ability to work with the victim is informed by her belief that:

- the intervention will counteract that power;
- the intervening practitioner understands what it is like to live with a batterer;
- the system has a collaborative approach to working with the victim; and
- practitioners are there to help however long it takes.

6. ACT IN WAYS THAT REDUCE UNINTENDED CONSEQUENCES AND THE DISPARITY OF IMPACT ON VICTIMS AND OFFENDERS

Victims do not experience battering in the same way. They have different backgrounds, races, genders, immigration statuses, sexual orientations, ethnicities, histories, and/or social standings. An effective intervention accounts for these realities and intervening strategies must consider these differences. The strategies must consider the relationship between violence and factors such as poverty, homelessness, race, and gender. Interventions must also always focus on increasing safety for the victim.

Even though the assumption behind these legal advances is that arrest increases victim safety, CCR models take into account that additional protective measures need to be in place for her and the children because the act of intervening is always potentially dangerous for the victim, and separation can be the most dangerous time.

- For that reason, it is important that a CCR team include the provision of protective resources for victims such as:
 - Emergency housing
 - Educational and support groups
 - Advocacy in legal, medical, and welfare system
- It is also necessary for a CCR team to assure that victims can effectively access these services. This access is provided using advocates specially trained in immediate intervention who can provide valuable information to the victim; and
- Finally, for a CCR to be effective it must institutionalize ongoing feedback from advocates on the effect of any reform on the victim. Though each representative of an agency that encounters the victim can develop a sensitivity to the effects of their individual and agency actions on her, their involvement with her represents only a fraction of her journey through the system. When agency representatives interact with victims and systems, they often raise their individual awareness of the impact of the interactions upon the victim. It is also important to increase awareness that a victim's interaction with one agency, or one system, is only a small fraction of the victim's journey through the system. This assists advocates with increasing awareness and sensitivity to the individual needs of victims accessing the system.

UNDERLYING ASSUMPTIONS OF THE BLUEPRINT FOR SAFETY⁴

In any society, widespread use of violence, aggression, and coercion in families is a cultural phenomenon. Such violence is rooted in unjust social structures that the criminal justice system alone cannot unravel. However, the criminal justice system plays two important roles in reducing family violence. This includes:

1. Enforcing laws which criminalize a once accepted cultural practice; and
2. Stopping individual abusers from doing more harm.

The Blueprint for Safety states that the criminal justice system “strives to accomplish this in domestic violence cases by responding with sure and swift consequences to those whose battering makes the home a place of fear rather than a place of refuge.” In Minnesota, they saw a significant decrease in homicide rates and severe violence by using the strategy of the legal system to stop the violence. However, the abundance of family violence calls and cases shows that there is more that needs to be changed. The Blueprint for Safety offers the following assumptions, all supported by research, to determine these best practices:

- When work is coordinated across agencies and within agencies, the overall capacity to protect is increased.
- The action of one practitioner is strengthened by the cumulative effect of coordinated actions across the justice system.
- When the justice system is organized to treat a case as part of an ongoing pattern on criminal activity rather than a singular event, outcomes improve.
- Interagency coordination is strengthened when information is organized around common risk markers that are uniformly collected and shared. Not all domestic

⁴ Ibid.

violence is the same. Intervention for cases where coercion, intimidation, and control create the context for violent acts are different than when this context is absent (e.g., cases of mental illness, isolated events, victims of abuse reacting, etc.).

- Sending clear, consistent messages of offender accountability and victim safety can reduce the violence.
- Whenever possible, we must shift the burden of confrontation from the victim to the intervening practitioners.
- Danger and repeat violence from the perpetrator can be anticipated when certain actions and behaviors are visible.
- It is important for every act of aggression by the offender to be met with sure and swift consequences.
- Intervention policies and protocols should be adapted to diminish unintended consequences that adversely affect marginalized populations.

PARTICIPANTS

The Blueprint for Safety guide outlines policies and protocols for the following participants:

- 911 Emergency Communications Center
- Law Enforcement
- Sheriff's Office
- Prosecuting Attorney's Office
- Victim/Witness Services
- Probation and Bail Evaluation
- The Bench and Court Administration

IMPLEMENTING THE BLUEPRINT FOR SAFETY

The Blueprint for Safety is a template—a set of plans to assist communities to coordinate an interagency response to domestic violence. A community who wants to become a “Blueprint Community” will still need to collaborate to write each participating agency's policies and protocols but will not have to start with a blank slate. Communities can use and adapt any or all the language of the policies and protocols outlined for each agency to create their own customized version. However, the six foundational principles listed above should not be altered and are essential to the Blueprint for Safety's meaning.

{To obtain a copy of A Guide to Becoming A Blueprint Community: An Interagency Response to Battering and Domestic Violence Crimes, and additional Law Enforcement training memos and checklists, visit Praxis International at www.praxisinternational.org, or refer to Resources for Law Enforcement at www.safvic.org.}

THE BLUEPRINT FOR CAMPUS POLICE: RESPONDING TO SEXUAL ASSAULT⁵

The Blueprint for Campus Police: Responding to Sexual Assault is a partnership between researchers and the University of Texas System Director of Police (U.T. ODOP) that intends to fill gaps in current research and identify best practices in campus police response to sexual assault. The *Blueprint* is a multi-level approach to the complex problem of campus sexual assault (CSA) that builds upon the existing body of knowledge and recognizes the need for identifying emerging best practices. The guidance developed for campus police is empirically driven through in-depth interviews, field observations, and a thorough review of the policies and practices pertaining to CSA. This resource is intended to serve as a *guide* or *toolkit* for police at all levels (chief executives, investigation, and patrol) in response to sexual assault crimes with the implementation of victim-centered and trauma-informed approaches. In this way, the *Blueprint* replaces “tradition” with “science.”

{To download *The Blueprint for Campus Police: Responding to Sexual Assault*, visit www.safvic.org under Resources for Law Enforcement, or visit The University of Texas at Austin Institute on Domestic Violence & Sexual Assault at <https://sites.utexas.edu/idvsa/>.}

DOMESTIC VIOLENCE FATALITY REVIEW TEAMS⁶

Domestic Violence Fatality Review (DVFR) teams can offer communities valuable ways to examine ways in which victims and systems are impacted by violent deaths. A DVFR is a process used to identify and review deaths caused by family violence. Teams examine interventions and examine potential changes in the systemic response to determine ways to prevent such deaths in the future.

GOALS

Fatality review teams first began formally in the 1970’s and focused on child deaths. Since that time child fatality review teams have been the template upon which other teams have formed and operated. Domestic violence-related fatality teams began in earnest in the 1990’s. What started out as a small movement has now grown and fatality teams are represented in most states across the United States.

Overall, it is safe to say that the mission of the teams is to better understand their community, the systems in which domestic violence occurs, and to then use that knowledge to influence the provision of targeted services and policy development. While it is the mission of the teams to better understand their community and the reasons why domestic violence-related homicides continue, the actual goals for teams are more specific. For example, the goals of the DVFR team in Harris County, Texas are as follows:

- To conduct formal, confidential, and systematic evaluations and analyses of

⁵ Busch-Armendariz, N.B., Sulley, C., & Hill, K. (2016). *The Blueprint for campus police: Responding to sexual assault*. Austin, TX: Institute on Domestic Violence & Sexual Assault, The University of Texas at Austin.

⁶ Information provided by Donna Amsberg, LCSW, Clinical Assistant Professor, University of Houston, Graduate College of Social Work

- adjudicated cases of family violence occurring in Houston and Harris County, Texas.
- To evaluate policies, protocols, and practices to identify gaps in service.
- To build a database for analysis of aggregate population of deceased persons and perpetrators.
- To disseminate information on prevention strategies through an annual report, as required, to the Texas Department of Family and Protective Services (DFPS) and to the community at large.
- To promote cooperation, communication, and coordination among agencies involved in responding to domestic violence-related deaths.
- To develop an understanding of the causes and incidence of deaths caused by family violence in Harris County, Texas.
- To advise the legislature, appropriate state agencies, and local law enforcement agencies on changes to law, policy, or practice that will reduce the number of violent deaths.

MEMBERS' RESPONSIBILITIES

Each member of a DVFR team is responsible for a variety of duties. Specifically, he/she is responsible for providing pertinent information regarding the case from their own agency's records. Some team members bring actual case files while others prefer to transfer case information onto a generic case form, which is then presented at the time of the review.

Secondly, team members act as a liaison to their professional counterparts and often provide clarification or definitions of their professions' terminology. Each member is responsible for interpreting the policies and procedures of their agency as well as providing an explanation regarding the legal responsibilities or limitations of their profession. So, while a member's primary responsibility is to participate in the case review, he/she also acts as a liaison for their profession.

IDENTIFYING GAPS IN SERVICE

Once a review has taken place, a natural progression is toward asking the question "why?" Why did this homicide take place? Why were established services not utilized? Why did this family "fall through the cracks?" This brings us to another responsibility of DVFR teams. It is not enough to identify the facts of the case; in fact, it would be irresponsible to just stop there. DVFR teams are positioned to identify the gaps in services within a community, which may include:

- Improving access to domestic violence service providers.
- Promoting knowledge in the community that every citizen is obligated to report suspected child abuse.
- Ensuring that all hospital social workers have adequate domestic violence service provider information to distribute to victims.
- Training Texas Department of Family and Protective Services workers and private therapists to recognize signs of domestic violence and make appropriate referrals.
- Reviewing what kind of interaction probation officers have with parolees and probationers in possible domestic violence situations.

- Involving psychological services personnel from area school districts in the review process, when appropriate.
- Stopping or reducing harassing telephone calls placed by inmates in area correctional facilities.

REPORT WRITING

While it varies from state to state, each DVFR team is responsible for the writing and publishing of reports. In Texas the requirement from the state legislature is that a report be written and published every two years. Statewide reports are collected and available for review through the National Domestic Violence Fatality Review Initiative (www.ndvfri.org).

LEGISLATIVE CHANGE

Through the course of case reviews, identification of gaps within a community, and compilation of data which ultimately results in a formal report, the last piece of the process is to act toward legislative change. Members with expertise in fatality reviews are often drawn to assist in the legislative change process. Some of those changes directly affect potential victims, such as increasing the punishment of a strangulation charge from a misdemeanor to a felony (81st Texas Legislature, 2009).

Other changes may directly affect the processes of the DVFR team. For instance, in 2009, legislation was proposed and ultimately approved that allowed for a strengthening of protections for members of DVFR teams. Prior to this legislation, the protections were limited and untested, which resulted in the failure of some DVFR teams to form and other teams to have members resign.

SEXUAL ASSAULT RESPONSE TEAM (SART)⁷

WHAT IS A SART?

Sexual Assault Response Teams (SARTs) are coalitions of agencies that serve sexual assault victims. Core membership for SARTs typically includes victim advocates, law enforcement officers, forensic medical examiners, forensic scientists, and prosecutors. SARTs work together to formalize interagency guidelines that prioritize victims' needs, hold offenders accountable, and promote public safety. SARTs activate and dispatch team members in a coordinated fashion to provide integrated and immediate responses following sexual assaults.

SARTs began forming in Texas in the mid-1970s. The first reported SART in Texas began in Amarillo. As of September 2011, there are over 70 SARTs in Texas. The forensic medical component of the SART, often called Sexual Assault Nurse Examiner (SANE) or Sexual Assault Forensic Examiner (SAFE), began in the mid-1970s. Edith Rusk of Northwest Texas Healthcare System in Amarillo implemented the first SANE Program in 1974.

⁷ National Sexual Violence Resource Center. (2011). Sexual Assault Response Team Development: A Guide for Victim Service Providers.

MEMBERS OF A SART

VICTIM ADVOCATES

Victim advocates play an important role in the development and sustainability of the SART as well as provide direct services to victims. Victim advocates can:

- Explain SART member roles, including confidentiality rights and limitations, according to statute.
- Provide valuable information to the SART on unreported acts of sexual violence reported by clients during group sessions, during individual counseling sessions, while living in the shelter, and from anonymous callers on the hotline.
- Provide a continuum of care including crisis intervention, follow-up calls, and advocacy services addressing affidavits, forensic videos, transportation and accompaniment to follow up appointments with law enforcement, court proceedings medical appointments, campus police and prosecutors offices, assistance with applying for the Crime Victims' Compensation (CVC) Program, victim impact statements, registering for Victim Information Notification Everyday (VINE), enrolling in the Address Confidentiality Program (ACP), and accessing counseling and other supportive services. The Office of the Attorney General of Texas, Crime Victim Services Division administers the CVC Program, VINE, and ACP.
- Assist military victims with making connection to their Sexual Assault Response Coordinators (SARCs) to follow up with restricted versus unrestricted reporting available to active duty military victims of sexual assault.
- Introduce Texas victims to their rights as provided by the Code of Criminal Procedure, Article 56.02, and assist victims in accessing resources to obtain rights and services including:
 - the right to receive a forensic medical exam and the process in place to cover the expense of the exam compared to the expense involved with medical care prior to the exam;
 - the right to refuse any portion of the exam;
 - the right, if requested, to information regarding any evidence that was collected during the investigation of the offense;
 - the adult's right to an exam without reporting to law enforcement; and
 - the right to use a pseudonym.
- Assess victim's sense of safety at the time of medical discharge and assist with securing safe housing, lock replacement, and/or relocation if needed.
- Provide information on community resources.
- Reinforce explanations by sexual assault forensic examiners and law enforcement.
- Coordinate a victim's request for HIV/AIDS testing on the suspect.
- Serve as a liaison between the media and victim throughout the criminal justice process.
- Update family and friends in the waiting room during a forensic exam.
- Offer comfort items after the medical-legal examination is completed (e.g., toiletry items, snacks to minimize the side effects of prophylactic medications, etc.).
- Provide replacement clothing for items collected as evidence.

- Arrange for childcare, when applicable.
- Confirm that victims understand their discharge instructions, including any future appointments needed to address medical concerns.
- Provide orientation to the criminal justice system, such as photo lineups, affidavits, accompaniments to legal proceedings, and transportation to appointments related to the crime, during the initial criminal justice process through the appeals process if the offender files an appeal after conviction.
- Assist victims with landlord, employer, educator, and creditor issues when needed.

LAW ENFORCEMENT OFFICERS

The focus of law enforcement within the SART has historically been to bring the disciplines together to share details, observations, reports, discussions, and other information regarding the case with the goal of furthering the investigation. The law enforcement liaison on the SART is a central point of contact for ongoing education to their colleagues regarding information shared within the SART, including advancements in investigative methods, forensic science, legislation, and SART protocol. The law enforcement liaison can assist their organization in standardizing their response when a sexual assault is reported. When responding to sexual violence, there are multiple facets which law enforcement must consider: domestic trafficking, human trafficking, prostitution, when to authorize an exam for acute and non-acute cases, who pays for the exam, who transfers the witness/victim, and whether the officer can or should give details of the crime to the nurse prior to the exam. Most healthcare professionals only want limited information prior to getting the history from the patient/victim so that the history cannot be challenged as being slanted to match any other statements. Discussion of these issues within the SART helps to identify best practices for a community. After these protocols are determined, law enforcement, along with other SART members, can educate others in their organization on the agreed upon protocols providing a consistent response to reported cases of sexual violence.

MEDICAL FORENSIC EXAMINERS

Medical forensic examiners, including Sexual Assault Nurse Examiners (SANEs) and Sexual Assault Forensic Examiners (SAFEs), provide medical treatment and diagnosis of the patient who was sexually assaulted. The documentation of the signs and symptoms of physical and emotional trauma stated during the medical history exam can be admissible in court. Even in the absence of physical trauma or evidence, the emotional behavior can be psychological evidence. While a medical forensic examination addresses the safety and well-being of the patient and provides an opportunity to collect evidence, it does not determine whether a sexual assault has occurred. A determination of sexual assault occurs in court by either by a jury or judge.

Additional roles and responsibilities can include:⁸

- Obtaining victim's informed consent for the examination, photographs, specimens, and communication with law enforcement concerning the results of the examination.

⁸ Girardin, B., Archambault, J., and Fugno, D. (2018). County of San Diego Sexual Assault Response Team Standards of Practice.

- Working with advocates in providing crisis intervention, access to resources, assisting victims in accessing their rights, and other supportive services.
- Assessing risk and offer prophylaxes for sexually transmitted diseases, HIV/AIDS, and pregnancy.
- Providing medical treatment according to national protocol on sexual assault forensic examinations, local guidelines, and their nursing scope of practice.
- Collecting, documenting, preserving, maintaining custody of, and transferring forensic evidence to the appropriate law enforcement authority depending on if the case is reported.
- Referring victims for follow-up care, as appropriate, with written discharge instructions and health promotion information.
- Documenting interventions.
- Collaborating with advocates, rape crisis counselors, law enforcement, and prosecutors in implementing a coordinated plan of care at the SART meeting.
- Providing consultation and testimony for the prosecution or defense.

In most communities across the state, there is a requirement in the SART protocol that the SANEs be certified through the Office of the Attorney General of Texas. In addition, the SANEs must certify in both adult/adolescent and pediatric to ensure a medical forensic examination is available to all victims of sexual assault in a community.

FORENSIC SCIENTISTS

Forensic science is based in the theory of transfer. When two objects meet, some evidence of that connection can generally be established and verified later. Forensic scientists, also known as criminalists, help prove or disprove links between victims and suspects, clarify case facts, and provide toxicological reports, especially for suspected drug-facilitated assaults.

Generally, forensic scientists analyze evidence collected in sexual assault forensic examination evidence kits. This might include bite marks, fingernail scrapings, body fluids, trace materials, such as grass or dirt, and evidence found on a victim's clothing or bedding. In addition, forensic scientists may:

- Research local, state, and national DNA databases for DNA matches.
- Review crime scene photographs (including pictures of a victim's injuries).
- Communicate with prosecuting attorneys.
- Provide court testimony.
- Provide feedback to medical forensic examiners for quality assurance purposes.

Forensic scientists' roles and responsibilities vary by jurisdiction. Procedures depend on laws within the jurisdiction, SART agency protocols, and case facts.

PROSECUTORS

Prosecutors are the legal party responsible for presenting the case in a criminal trial against an individual accused of committing a sexual offense. Although prosecutors are not victims'

attorneys, they can advocate for victims' rights and proactively address victims' concerns. For example, victims may be unfamiliar with the criminal justice process and may have never been to court before. Victims may be apprehensive about seeing offenders in proximity, fear testifying about the details of their assaults, and worry about adversarial cross-examinations by defense attorneys. Prosecutors can alleviate a victim's anxiety by orienting them to the criminal justice system, providing a safe separate waiting area away from offenders and offender's families or support system, and working with advocates to help meet victims' emotional needs.

Prosecutors may also:

- Seek emergency protective orders as conditions of bail or release of offenders on their own recognizance.
- Pursue defendants who harass, threaten, or intimidate victims.
- Incorporate victims' views in bail arguments, continuances, plea negotiations, dismissals, sentencing pleadings, and restitution recommendations.
- Arrange prompt return of victims' property when it is no longer needed as evidence.
- Ensure victims are kept current on the status of their case.
- Utilize the same prosecutor throughout the criminal justice process (vertical prosecution).

As members of the SART, prosecutors advise the team on protocol which protects the investigative and evidence collection process for prosecution.

ADDITIONAL TEAM MEMBERS

Additional team members can include telecommunicators, emergency responders, medical technicians, correctional staff, culturally specific organization representatives, sex offender management professionals, policymakers, federal grant administrators, faith-based providers, tribal justice systems, and civil and victims' rights attorneys. The presence of these additional partners on the SART adds expertise and experience and allows for a more coordinated, strategic community response to sexual violence. Additionally, victim assistance coordinators with district attorney's offices and crime victim liaisons in law enforcement agencies assist victims and families with trial preparation and victim impact statements, and act as a liaison between the victim and the assigned prosecutor or detective and may serve on the SART team as well.

BENEFITS OF A SART⁹

SARTs work toward providing victim-centered, trauma-informed, culturally relevant, and community-specific services through meaningful systems change. The SART members bring foundational knowledge of topics affecting a collaborative response to sexual assault. They also promote building relationships to create open communication and have difficult conversations about problems and inconsistencies in order to improve individual, agency, and systems response to victims. Their coordination strives to better protect victim rights, increase prosecution rates, and decrease the short- and long-term costs of sexual assault on victims, systems, and communities.

⁹ National Sexual Violence Resource Center. (2018). Sexual Assault Response Team (SART) Toolkit.

Additional benefits of a SART include:

- Victims have access to supportive services during forensic medical procedures and difficult interviews.
- Victims have access to emotional support as they navigate the criminal justice system.
- Services are provided by designated facilities for forensic medical exams that make timely responses a priority and offer victims privacy.
- Victims have access to medical assessments and prophylactic treatment for sexually transmitted infections and information to address reproductive health concerns.
- Protocols ensure that medical and legal providers collect evidence effectively and follow an agreed-upon chain of custody.
- A network of community referrals to meet victims' practical, emotional, spiritual, and economic needs (e.g., temporary shelter, transportation, employment intervention, home security, assistance with restitution, and victims' compensation claims).
- Minimizes the re-traumatization of victims, often through joint or coordinated interviews, to reduce the number of times victims must tell their stories.
- Clients feel believed as studies show the more allied professionals involved with the case, the more the client reports feeling believed.
- A SART works together to offer a victim-centered standardized system that protects the victims and the integrity of the sexual assault case. The opportunity to be involved in community awareness efforts such as "Start by Believing" and prevention efforts including community-based initiatives to change the attitudes, beliefs, and behaviors that allow sexual violence to occur in the first place and ultimately to stop sexual violence.

The benefits of membership in a SART are not exclusive to victims. First responders benefit from membership in a SART in a variety of ways including:

- Decisions are informed by an understanding of cross-agency roles.
- More efficient use of limited resources.
- Improved interagency responses based on victim-identified needs and state-of-the-art investigative practices.
- Early identification of serial offenders.
- Seamless service referrals.
- Safer communities through sexual assault awareness, risk reduction, and prevention education.

Additionally, the community at large benefits using a SART. Cases that involve SARTs:

- Are reported more quickly and is the strongest predictor that charges will be filed in sexual assault.
- Yield more evidence on average than cases in which no SANE or SART intervention occurs.
- Are more likely to lead to arrest compared to cases in which there is no intervention.
- Have personnel who keep victims better informed and engaged throughout the criminal justice process.

OBJECTIVES OF A SART¹⁰

According to the Office for Victims of Crime (OVC), National Sexual Violence Resource Center's (NSVRC) *Sexual Assault Response Team (SART) Toolkit*, released in 2018, "SART goals have expanded to achieve justice and enhance community safety including, but not limited to, criminal prosecution." SARTs come together with the following goals:

- increase intra-agency and interagency collaboration and coordination when responding to sexual assault;
- identify inadequacies and limitations in and among systems;
- ensure appropriate, trauma-informed responses to support victims; and
- improve offender accountability.

DEVELOPING A PLAN IN YOUR COMMUNITY¹¹

The Sexual Assault Response Team (SART) Toolkit, developed by the Office of Victims of Crime (OVC), National Sexual Violence Resource Center (NSVRC) provides in-depth information on the development of a SART. The information can be accessed at www.nsvrc.org/sarts/toolkit. The following gives an indication of the steps in developing a SART and are included in the toolkit:

- Form a planning team
- Decide: Is your community ready for a SART?
- Define mission, vision, and goals
- Scout your agency's potential SART members
- Support local leaders
- Assess current services for victims
- Assess current resources available to the team
- Define the SART's jurisdiction (rural, urban, tribal, and multi-jurisdictions)
- Conduct a community needs assessment, collect data, and analyze the data
- Listen to focus groups, community members, and survivors

BARRIERS & OVERCOMING THEM

- Funding: SARTs note that funding is a barrier to developing and maintaining a functional SART. Resources to attend and facilitate meetings can be a challenge to SART members.
- Territorial Issues: Members can become so focused on their role that territorial and/or jurisdictional issues may occur. When territorial issues are present, duplication of services may occur and confusion over legal and professional boundaries may become a challenge. SARTs can provide the opportunity to understand member roles and discuss challenges before they result in conflicts.

¹⁰ Ibid.

¹¹ Ibid.

OTHER CONSIDERATIONS OF A SART¹²

Successful and emerging reforms in the collaborative response to sexual violence include victim-driven decisions to report or not report sexual assault to law enforcement, forensic medical exams provided without using victims' insurance, orders of protection for sexual assault cases involving ongoing relationships, increased access and understanding of victim's rights, broader terms of restitution (including court-ordered payments by offenders sentenced to prison), and collaborative responses for those victims sexually assaulted by professionals. Hundreds of ideas and recommendations for SARTs to consider are documented in *New Directions from the Field: Victims' Rights and Services for the 21st Century*, which calls on the United States to:

- Enact and enforce consistent, fundamental rights for crime victims in federal, state, juvenile, military, and tribal justice systems and administrative proceedings.
- Provide crime victims with access to comprehensive, quality services regardless of the nature of their victimization, age, race, religion, gender, ethnicity, sexual orientation, capability, or geographic location.
- Integrate crime victims' issues into all levels of the nation's educational system to ensure that justice and allied professionals and other service providers receive comprehensive training on victims' issues as part of their academic education and continuing training in the field.
- Support, improve, and replicate promising practices in victims' rights and services that are built on sound research, advanced technology, and multidisciplinary partnerships.
- Ensure that the voices of crime victims play a central role in the nation's response to violence and those victimized by crime.

With these efforts, SARTs will be called on to chart new directions that creatively address emerging issues and meet the unique needs of diverse Texas communities. Perhaps that course of action involves uniting with new allies, making a new commitment to sustain the SART by developing strategic funding streams, or formalizing a system that strengthens your response during times of change. The possibilities are as endless as the SARTs imagination.

What if...

- Victims formerly fearful of reporting begin to trust the systems in place to help them?
- Core team values look beyond individual organizational needs?
- Communities build on what has been done elsewhere and on their own unique strengths?
- Public safety goals are united with public health and educational initiatives?
- Criminal justice solutions are routinely coupled with civil legal remedies?
- Victim stigma is turned into public outrage and norms change about sexual violence?
- Success is measured by victims' experiences?

¹² U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime. (1998). *New Directions from the Field: Victims' Rights and Services for the 21st Century*.

RESOURCES

The following resources were used in the development of this document:

- Sexual Assault Response Team Development: A Guide for Victim Service Providers; National Sexual Violence Resource Center, 2011.
- Sexual Assault Response Team (SART) Toolkit; National Sexual Violence Resource Center, 2018.
- Texas Code of Criminal Procedure, Chapter 56: Rights of Crime Victims, Subchapter A: Crime Victims' Rights — Article 56.02
- For more information on how to develop a SART, or for the assistance provided by the Office of the Attorney General of Texas's Sexual Assault Prevention and Crisis Services (SAPCS), visit <https://www.texasattorneygeneral.gov/crime-victims/information-crime-victim-advocates/sexual-assault-prevention-and-crisis-services-sapcs>.

NATIONAL, STATE, AND LOCAL RESOURCES FOR VICTIMS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT

CRIME VICTIMS' RIGHTS

CCP Art. 56.02

- (a) A victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:
- (1) the right to receive from law enforcement agencies adequate protection from harm and threats of harm arising from cooperation with prosecution efforts;
 - (2) the right to have the magistrate take the safety of the victim or his family into consideration as an element in fixing the amount of bail for the accused;
 - (3) the right, if requested, to be informed:
 - (A) by the attorney representing the state of relevant court proceedings, including appellate proceedings, and to be informed if those proceedings have been canceled or rescheduled prior to the event; and
 - (B) by an appellate court of decisions of the court, after the decisions are entered but before the decisions are made public;
 - (4) the right to be informed, when requested, by a peace officer concerning the defendant's right to bail and the procedures in criminal investigations and by the district attorney's office concerning the general procedures in the criminal justice system, including general procedures in guilty plea negotiations and arrangements, restitution, and the appeals and parole process;
 - (5) the right to provide pertinent information to a probation department conducting a presentencing investigation concerning the impact of the offense on the victim and his family by testimony, written statement, or any other manner prior to any sentencing of the offender;
 - (6) the right to receive information regarding compensation to victims of crime as provided by Subchapter B, including information related to the costs that may be compensated under that subchapter and the amount of compensation,

- eligibility for compensation, and procedures for application for compensation under that subchapter, the payment for a medical examination under Article 56.06 for a victim of a sexual assault, and when requested, to referral to available social service agencies that may offer additional assistance;
- (7) the right to be informed, upon request, of parole procedures, to participate in the parole process, to be notified, if requested, of parole proceedings concerning a defendant in the victim's case, to provide to the Board of Pardons and Paroles for inclusion in the defendant's file information to be considered by the board prior to the parole of any defendant convicted of any crime subject to this subchapter, and to be notified, if requested, of the defendant's release;
 - (8) the right to be provided with a waiting area, separate or secure from other witnesses, including the offender and relatives of the offender, before testifying in any proceeding concerning the offender; if a separate waiting area is not available, other safeguards should be taken to minimize the victim's contact with the offender and the offender's relatives and witnesses, before and during court proceedings;
 - (9) the right to prompt return of any property of the victim that is held by a law enforcement agency or the attorney for the state as evidence when the property is no longer required for that purpose;
 - (10) the right to have the attorney for the state notify the employer of the victim, if requested, of the necessity of the victim's cooperation and testimony in a proceeding that may necessitate the absence of the victim from work for good cause;
 - (11) the right to request victim-offender mediation coordinated by the victim services division of the Texas Department of Criminal Justice;
 - (12) the right to be informed of the uses of a victim impact statement and the statement's purpose in the criminal justice system, to complete the victim impact statement, and to have the victim impact statement considered:
 - (A) by the attorney representing the state and the judge before sentencing or before a plea bargain agreement is accepted; and
 - (B) by the Board of Pardons and Paroles before an inmate is released on parole;
 - (13) for a victim of an assault or sexual assault who is younger than 17 years of age or whose case involves family violence, as defined by Section 71.004, Family Code, the right to have the court consider the impact on the victim of a continuance requested by the defendant; if requested by the attorney representing the state or by counsel for the defendant, the court shall state on the record the reason for granting or denying the continuance; and
 - (14) if the offense is a capital felony, the right to:
 - (A) receive by mail from the court a written explanation of defense-initiated victim outreach if the court has authorized expenditures for a defense-initiated victim outreach specialist;
 - (B) not be contacted by the victim outreach specialist unless the victim, guardian, or relative has consented to the contact by providing a written notice to the court; and

(C) designate a victim service provider to receive all communications from a victim outreach specialist acting on behalf of any person.

RIGHTS OF VICTIM OF SEXUAL ASSAULT OR ABUSE, INDECENT ASSAULT, STALKING, OR
TRAFFICKING
CCP Art. 56.021

▲ 86th Legislative Change: HB 616 moves definitions for “sexual assault examiner” and “sexual assault nurse examiner” from CCP Art. 56.065(a)(3) to this article so they apply to this entire chapter rather than just that article. This bill also amended the acute exam time from 96 to 120 hours and amends subdivision (k)(1) to authorize OAG to use crime victims’ compensation funds to reimburse a health care facility, sexual assault examiner, or sexual assault nurse examiner rather than a law enforcement agency for the cost of the sexual assault exam.

Additionally, SB 194 amended the heading of Art. 56.021 to include victims of Indecent Assault, Stalking, or Trafficking in addition to victims of Sexual Assault or Abuse. SB 20 and SB 1801 both add identical language as a new subsection (e) granting a victim of human trafficking or compelling prostitution a right to be informed about potential eligibility for an order of nondisclosure under Government Code 411.0728 (Procedure for Certain Victims of Trafficking of Persons or Compelling Prostitution). See that section for details.

There are more changes to this section that will go into effect January 1, 2021 under HB 4173 regarding rights and confidentiality of victims for specific offenses. The changes are non-substantive revisions passed for the sole purpose of reorganizing those laws in a more logical order and the laws themselves are not being altered in any meaningful way.

- (a) In addition to the rights enumerated in Article 56.02, if the offense is a sexual assault, the victim, guardian of a victim, or close relative of a deceased victim is entitled to the following rights within the criminal justice system:
 - (1) if requested, the right to a disclosure of information regarding any evidence that was collected during the investigation of the offense, unless disclosing the information would interfere with the investigation or prosecution of the offense, in which event the victim, guardian, or relative shall be informed of the estimated date on which that information is expected to be disclosed;
 - (2) if requested, the right to a disclosure of information regarding the status of any analysis being performed of any evidence that was collected during the investigation of the offense;
 - (3) if requested, the right to be notified:
 - (A) at the time a request is submitted to a crime laboratory to process and analyze any evidence that was collected during the investigation of the offense;
 - (B) at the time of the submission of a request to compare any biological evidence collected during the investigation of the offense with DNA profiles maintained in a state or federal DNA database; and

- (C) of the results of the comparison described by Paragraph (B), unless disclosing the results would interfere with the investigation or prosecution of the offense, in which event the victim, guardian, or relative shall be informed of the estimated date on which those results are expected to be disclosed;
- (4) if requested, the right to counseling regarding acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV) infection;
- (5) for the victim of the offense, testing for acquired immune deficiency syndrome (AIDS), human immunodeficiency virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS; and
- (6) to the extent provided by Articles 56.06 and 56.065, for the victim of the offense, the right to a forensic medical examination if, within 120 hours of the offense, the offense is reported to a law enforcement agency or a forensic medical examination is otherwise conducted at a health care facility.
- (b) A victim, guardian, or relative who requests to be notified under Subsection (a)(3) must provide a current address and phone number to the attorney representing the state and the law enforcement agency of any change in the address or phone number.
- (c) A victim, guardian, or relative may designate a person, including an entity that provides services to victims of sexual assault, to receive any notice requested under Subsection (a)(3).
- (d) This subsection applies only to a victim of an offense under Section 20A.02, 20A.03, 21.02, 21.11, 22.011, 22.021, 42.072, or 43.05, Penal Code. In addition to the rights enumerated in Article 56.02 and, if applicable, Subsection (a) of this article, a victim described by this subsection or a parent or guardian of the victim is entitled to the following rights within the criminal justice system:
 - (1) the right to request that the attorney representing the state, subject to the Texas Disciplinary Rules of Professional Conduct, file an application for a protective order under Article 7A.01 on behalf of the victim;
 - (2) the right to be informed:
 - (A) that the victim or the victim's parent or guardian, as applicable, may file an application for a protective order under Article 7A.01;
 - (B) of the court in which the application for a protective order may be filed; and that, on request of the victim or the victim's parent or guardian, as applicable; and
 - (C) that, on request of the victim or of the victim's parent or guardian, as applicable, and subject to the Texas Disciplinary Rules of Professional Conduct, the attorney representing the state may file the application for a protective order;
 - (3) if the victim or the victim's parent or guardian, as applicable, is present when the defendant is convicted or placed on deferred adjudication community supervision, the right to be given by the court the information described by Subdivision (2) and, if the court has jurisdiction over applications for protective orders that are filed under Article 7A.01, the right to file an application for a protective order immediately following the defendant's

- conviction or placement on deferred adjudication community supervision;
and
- (4) if the victim or the victim's parent or guardian, as applicable, is not present when the defendant is convicted or placed on deferred adjudication community supervision, the right to be given by the attorney representing the state the information described by Subdivision (2).

CRIME VICTIMS' COMPENSATION

CCP Art. 56.31

Texas's Crime Victims' Compensation (CVC) Program is administered by the Office of the Attorney General. The program is outlined and defined in the Texas Code of Criminal Procedure, Chapter 56, Subchapter B, and is referred to as the Crime Victims' Compensation Act. It is the legislature's intent that the compensation of innocent victims of violent crime encourage greater public cooperation in the successful apprehension and prosecution of criminals.

The program is not a tax-based or general revenue-funded program. Instead, funding sources include fees and fines paid by offenders, grants, donations, restitution, and subrogation-acquired monies.

Generally, the program serves as the last source of payment, by law. All other potential reimbursement sources, such as Medicaid, health insurance, Medicare, workers' compensation, and others must be utilized first. If expenses resulting from victimization are paid in full by any of these sources, then the CVC Program will not duplicate these reimbursements. The fund serves only to reimburse, not to offer "awards," since an individual has been harmed by criminal activity.

However, any individual, or a representative, who suffers physical or mental harm or death as a result of the criminally injurious conduct of another has the right to receive information about the program, and to apply for reimbursement of certain expenses.

By CVC definitions, the "claimant" and the "victim" are not required to be the same person. The claimant may be:

- An authorized individual acting on behalf of a victim;
- An individual who legally or voluntarily assumes the obligation to pay expenses;
- A dependent of a deceased victim; or
- An immediate family or household member who requires psychiatric care or counseling.

Note: An application can have multiple claimants, but only one victim.

Certain eligibility requirements must be met in order to receive compensation from the CVC Program, including:

- A Texas or U.S. Resident who becomes a victim of crime in Texas;
- A Texas resident who becomes a victim in a country with no benefits;

- A Texas resident who becomes a victim of a crime defined as an act of terrorism committed outside the United States (as of 09/01/1997); and
- Crime victims' compensation has not been designated by welfare or by immigration law as one of the "federal public benefits programs" which restrict immigrant access (CVC Program is accessible to immigrant victims of crime without regard to their immigration status).

Note: There is no requirement that a suspect be identified, apprehended, charged, or convicted for a crime victim to be eligible for the CVC Program.

The CVC Program is supported through a legislative appropriation from the Compensation to Victims of Crime Fund. The Fund receives revenue from the following sources:

- State Court Costs
- Parolee Supervision Fees - Offenders pay \$8 per month to the fund
- Donations - Jurors can donate their daily reimbursements
- Subrogation
- Federal VOCA Grant
- Restitution

Claims may be approved for benefits up to a total of \$50,000 and victims may be eligible for reimbursement for:¹³

- Medical, dental, or mental health care
- Loss of earnings
- Loss of support
- Child and dependent care
- Funeral
- Crime scene clean-up
- Travel
- Relocation
- Replacement of seized property
- Attorney fees

Losses due to property damage, theft, or other property crimes are not eligible for reimbursement by the Crime Victims' Compensation Program.

In the case of catastrophic injuries resulting in a total and permanent disability, the victim may qualify for an additional \$75,000 and may be eligible for:¹⁴

- Making a home or car accessible
- Job training or vocational rehabilitation
- Training in the use of special appliances

¹³ Office of the Attorney General of Texas, Crime Victim Services Division. (2016). Texas Crime Victims' Compensation Program Quick Reference Chart.

¹⁴ Ibid.

- Home health care
- Reimbursement for lost wages

The accompanying materials provided by the Office of the Attorney General provide a detailed overview of allowable expenses, application procedures, and specific requirements and definitions related to the CVC Program.

Officers and other responders may assist crime victims by providing information about the CVC Program, encouraging victims to apply, and assisting in completing and submitting the application.

Note: Law enforcement officers may be eligible for the CVC Program if they meet the same basic criteria as other crime victims. The Texas Code of Criminal Procedure, Article 56.542, establishes a basis for payments for certain disabled peace officers.

ADDRESS CONFIDENTIALITY PROGRAM

CCP Art. 56.82

▲ 86th Legislative Change: SB 20 Amends subsection (7) to include new Penal Code 43.031 (Online Promotion of Prostitution) and 43.041 (Aggravated Online Promotion of Prostitution) in the definitions of offenses that qualify as “trafficking of persons.”

The Attorney General established an Address Confidentiality Program (ACP) for victims of family violence, sexual assault, stalking, and trafficking. Under this program, the Office of the Attorney General will:

1. Designate a post office box in place of the participants’ true residential, business, or school address;
2. Act as an agent to receive mail on behalf of the participant and forward that mail to the participant;
3. Forward to the participant mail received by the Office of the Attorney General on behalf of the participant.

This substitute address can be used as the victim’s main address for a driver’s license, voter and school registration, and most court and government documents. Businesses, such as banks, credit unions, credit card companies, and utility companies, are not legally required to accept the ACP address.

Applicants must meet with a local domestic violence shelter, sexual assault center, law enforcement officer, or prosecution staff member to enroll in the program. An integral part of the ACP is safety planning and it is imperative that individuals seeking a confidential address also are aware of additional ways to protect their safety. Once the form and safety planning are complete, the advocate will submit the application directly to the Office of the Attorney General (OAG). The OAG will not accept applications submitted directly by victims.

{To obtain the Texas Address Confidentiality Program Application, visit <https://www.texasattorneygeneral.gov/crime-victims/services-crime-victims/address-confidentiality-program>, or contact the Office of the Attorney General, CVC Program staff at (800) 983-9933.}

PSEUDONYM FORM

CCP Arts. 57A.01, 57.02, 57B.02, and 57D.02

Victims of stalking, sexual offenses, family violence, and trafficking of persons can request a Pseudonym Form to protect their identity. This is provided by the Crime Victim Services Division (CVSD) of the Office of the Attorney General. Upon completion and return to a law enforcement agency, the agency shall:

1. Remove the victim's name and substitute the pseudonym for the name on all reports, files, and records in the agency's possession;
2. Notify the attorney for the state that the victim has elected a pseudonym;
3. Maintain the form in a manner that protects confidentiality.

{For Pseudonym Forms, refer to Resources for Law Enforcement at www.safvic.org, or visit the CVSD of the Office of the Attorney General at <https://www.texasattorneygeneral.gov/crime-victims/services-crime-victims>.}

LEASE TERMINATION

Texas Property Codes 92.016 and 92.0161

A tenant may terminate his or her rights and obligations under a lease and vacate the dwelling before the end of the lease term and avoid liability for future rent and any other sums due under the lease as a result of those actions if the tenant is the victim, or a parent or guardian of a victim, of specified sexual offenses or stalking, including attempted assault or abuse, that take place during the preceding six-month period on the premises or at any dwelling on the premises. The bill provides that a temporary ex parte protective order to protect a tenant or other occupant of a leased dwelling is a valid protective order for this purpose, and removes language limiting the use of a temporary injunction or protective order in such a situation to family violence committed by a cotenant or occupant of the dwelling. The bill requires the tenant to provide the landlord or landlord's agent with a copy of the documentation of the assault or abuse or of a protective order and requires the tenant to notify the landlord in writing about the termination of the lease and meet other notification requirements.

LOCAL RESOURCES

LAW ENFORCEMENT-BASED PROGRAMS

Law enforcement-based victim assistance programs represent one of the most critical efforts within the victim assistance profession. Advocates working within this domain are uniquely positioned to provide acute-level interventions and assistance, and are often called upon to serve in chaotic, high-intensity environments.

Among the goals of law enforcement-based providers are:

- Increase victim cooperation
- Improve investigations
- Increase convictions
- Mitigate victim trauma
- Afford victims their rights and compensation
- Avoid secondary victimization

In many communities, the services offered by law enforcement-based victim assistance providers are viewed by the departments and their communities as valuable and necessary. These mindsets have evolved from those of a few years ago when the effort was seen as a luxury or preferred service.

Among the attributes of such programs are:

- A sense of “ownership” by the department
- Well defined policies and procedures
- Greater continuity of information
- Reciprocal awareness of perspectives/priorities
- Community perceives a greater level of service

Law enforcement-based programs provide several valuable services and benefits, including:

- “Call-deferment” efforts
- Officer returns to service quicker
- Advantages of utilizing non-sworn personnel
- Internal assistance/services

Early on, many victim assistance efforts were carried out by one or two individuals who served as generalists, assisting all victims in virtually every aspect of support and advocacy. Today, many programs have grown and evolved into complete divisions within the department. Tasked with numerous duties and responsibilities, the efforts of these groups are now more specialized as the profession continues to field a better-trained, more resourceful advocate. Among the specialized services now offered by many departments are:

- Crisis Response Teams/Crisis Hotlines
- Intake and Referral Services
- Crime-Specific Victim Assistance
 - Child Abuse (often including forensic interviewers)
 - Sexual Assault
 - Homicide
 - Family Violence
 - Assault
 - Robbery

With the growing acceptance and utilization of law enforcement-based programs, advocates and law enforcement professionals alike continue to work together to broaden the scope and depth of the services offered. The beneficiaries of these collaborative efforts continue to be the victims of crime and their respective families and communities.

COMMUNITY-BASED PROGRAMS

The scope of services of community-based programs varies from one community to another. Interestingly, it is not always the size of the community that represents the primary factor as to the degree and availability of victim-oriented services and resources. In Texas, many small communities offer comprehensive programs that serve a wide array of individuals, groups, and families. In some larger communities, where one might expect to see an abundance of resources, efforts and resources may be minimal.

Over the past several years, many local providers in Texas have faced budget shortcomings, reduced funding, and other logistical and financial obstacles. As a result, various organizations have entered into collaborations and mergers that have not only bolstered their ability to provide services but have expanded their client bases. Local community-based providers include:

- Rape Crisis Centers
- Community Assistance Organizations
- Children's Advocacy Centers (CACs)
- Other Stakeholders
- Centers for Battered Women
- Faith-Based Assistance Organizations
- Child Guidance Centers

In many communities, efforts to increase the potential for professional collaborations have included offerings of workshops, the facilitation of professional summits, the development of crime-specific task forces, and others. These efforts may serve to provide greater professional insight for officers, responders, and providers, and ultimately enhance the level of services to crime victims. Officers are encouraged to consider the service providers within their respective communities and to become familiar with the services offered by these groups.

LEGAL SERVICES AND ASSISTANCE

Ideally, the support systems for crime victims should remain intact as the case transitions from the investigative phase to the prosecution of the offender. The Texas Code of Criminal Procedure defines the role of both the law enforcement-based provider (referred to as the Crime Victim Liaison) and the prosecution-based provider (referred to as the Victim Assistance Coordinator).

Victim Assistance Coordinators (VAC) provide a variety of services, including:

- Direct support services to crime victims
- Protective order assistance
- Court and trial orientation
- Court accompaniment

In addition to these duties, the VAC may, upon conviction of the offender, forward the case to the Texas Department of Criminal Justice, Victim Services Division. The crime victim will then be capable of "tracking" their offender through the system by way of the Integrated Victim Services System (IVSS).

There may also be civil aspects of any given case that are not addressed by the district or county attorneys' offices during the prosecution of the offender. Considering this, there are several

organizations that serve victims of sexual assault and domestic violence in their quest for civil remedies associated with the offense. In many communities, legal aid services are offered at little to no cost to victims of domestic violence and sexual assault. The Texas Advocacy Project is also a provider of these services.

Under the Violence Against Women Act of 2005, any immigrant victim of domestic violence, sexual assault, or trafficking may now receive services from funded agencies (legal aids) by Legal Services Corporation (LSC). Immigrant victims may receive assistance regardless of the abuser's immigration status or their marital status.

STATE RESOURCES

STATEWIDE AGENCIES

Virtually every criminal justice-oriented state agency in Texas now offers services to crime victims. In addition, several social service agencies have developed programs that provide specific services to this clientele. These services include direct assistance to crime victims, policy development efforts, and educational efforts for law enforcement, criminal justice professionals, and financial and legal assistance.

Among the agencies involved in the provision of victim assistance are:

- Office of the Attorney General of Texas – Crime Victim Services
- Texas Department of Criminal Justice – Victim Services Division and Texas Crime Victim Clearinghouse
- Texas Department of Family and Protective Services – Child Protective Services
- Texas Department of Public Safety – Victim Services
- Texas Department of Health and Human Services

STATEWIDE ORGANIZATIONS

There are several state organizations currently providing services to and on behalf of victims of sexual assault and family violence. While these organizations operate as freestanding, non-profit entities, their efforts include collaborations with any number of agencies, organizations, and departments. Among these organizations are:

- Texas Association Against Sexual Assault (TAASA): Provides referrals and other services to sexual assault victims; conducts statewide and regional workshops and conferences for law enforcement, criminal justice, and advocacy professionals (www.taasa.org).
- Texas Council on Family Violence (TCFV): Provides referral services for domestic violence victims; is actively involved in public awareness and legislation shaping efforts; assists local shelters and centers with resources and educational efforts. TCFV also operates the National Domestic Violence Hotline and the National Teen Dating Abuse Helpline. Both are 24-hour hotlines for women in crisis and their families (www.tcfv.org).
- Texas Advocacy Project: As noted on the previous page, provides civil and criminal

information, referrals and assistance to victims of family violence (www.texasadvocacyproject.org).

{For more local, state, and national resources, see Contact- Service Providers at www.safvic.org.}

GRANTS AND FUNDING

In Texas and the U.S., the two greatest sources of funding for sexual assault and family violence programs are grants derived from the Violence Against Women Act and the Victims of Crime Act, respectively. These federal funds are distributed to the various states and dispensed by a designated administrator. In Texas, the Office of the Governor (OOG) administers these grants within the Criminal Justice Division.

These funds are distributed to local providers by way of the various councils of government. State agencies receiving grant funds usually correspond directly with the OOG. Agencies and departments that wish to establish victim assistance programs, or expand current programs, are encouraged to contact the OOG (<https://gov.texas.gov/contact>) for information regarding the application process.

In addition to these funds, the Office of the Attorney General (OAG) is responsible for awarding agencies and organizations with a prescribed amount of funding for victim assistance efforts. These funds are drawn from the CVC Program and are allocated for the direct benefit of crime victims.

CLOSING REMARKS

It is the goal of the Sexual Assault Family Violence Investigator Course (SAFVIC) Program to end all forms of gender-based violence by advocating for effective response from law enforcement, telecommunicators, prosecutors, and victim services through professional training and education. The SAFVIC Program tries its best to take into account common pitfalls in responding to, investigating, and prosecuting gender-based crimes to strengthen the integrity of criminal justice professions.

The SAFVIC Student Manual has presented various challenges of investigating gender-based crimes. While the SAFVIC Student Manual provides guidance and direction, each investigation must be undertaken on a case-by-case basis. Throughout each investigation process, it is advisable to seek advice from seasoned colleagues. Always engage with community resources to better assist the victim during their healing process. Lastly, the success of each case is determined by your work and effort. The prevention of sexual assault, family violence, and all other gender-based crimes requires updated, effective techniques to create solutions.

The criminal justice system's understanding, response, investigation, and prosecution to gender-based crimes has improved throughout the past few decades. It is the SAFVIC Program's hope that the criminal justice system will continue to do so with professionals like you. Thank you for your effort in finding solutions to end sexual assault, family violence, and all other gender-based crimes.

