

LANCE KENNEDY LAW

The Assault Family Violence Book

What a Texas family violence charge really means, and exactly what to do next

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Read This First

Somewhere in the paperwork you were handed when you left jail, there is probably an order. It may be called a Magistrate's Order for Emergency Protection. It was likely signed by a judge you barely remember seeing, at a hearing you attended half-awake, hours after the worst night your family has had in a long time. That order is not a formality. It is a live court order, it is already in effect, and violating it is a new crime, separate from anything you were arrested for.

Before you do anything else, find that order and read every line of it. If it says do not communicate with the protected person, that means no calls, no texts, no messages passed through friends or family, no "just checking in." It almost certainly means this even if the protected person contacts you first, forgives you, or asks you to come home. No one, including the person the order protects, can give you permission to violate it. The order itself says so, in capital letters.

Here is the second thing you need to understand, and it is the idea this whole book is built around: a family violence arrest in Texas opens more than one case against you. There is the criminal charge. There is the protective order. And if you are married or share children with the person involved, there may soon be a third front in family court. These cases run on different tracks, in different courts, under different rules, and a mistake in one can do damage in all of them.

The third thing is the one almost nobody tells you at the jail: in a Texas family violence case, the most dangerous words are not "guilty" or "jail." They are "affirmative finding of family violence." That finding, once it attaches to your case, follows you in ways that an ordinary misdemeanor never would. It can end your right to possess a firearm under federal law for life. It can turn your next misunderstanding into a felony. It can make your record permanently public, even if the case itself is eventually dismissed. Understanding that finding, and building your defense around it, is what separates a well-handled case from a quietly ruined one.

Now the reassurance, because you need to hear it: an arrest is not a conviction. Family violence arrests routinely happen on chaotic nights, on thin information, with officers who had to make a fast decision between two upset people. Cases get dismissed. Cases get reduced. Cases get won at trial. Self-defense is real, false and exaggerated allegations are real, and the State carries the burden of proving every element beyond a reasonable doubt. None of those outcomes happens by itself, and none of them is promised, but every one of them starts with the same two steps: follow the orders that bind you today, and get a lawyer involved early. Ours is (737) 324-7540, and the case review is free.

The Night of the Arrest: Two Cases Open at Once

To make good decisions, you need to understand what actually happened to you, legally, between the 911 call and the jail door opening. More happened than you probably realize.

Why you were arrested

Most family violence cases begin with a 911 call, made by the other person, by a child, or by a neighbor. Texas law gives officers the power to arrest without a warrant when they have probable cause to believe someone has committed an assault causing bodily injury to a family or household member, and the practical reality is that once police arrive at a domestic call, someone frequently leaves in handcuffs. Officers on the scene are not judges. They make a fast credibility call based on visible injuries, who is crying, who is calm, who called, and what each person blurted out in the first minutes. Those first minutes get recorded on body cameras, and what everyone said that night, including you, will be replayed later, word for word.

This is worth saying plainly: the decision made in your living room that night was not a verdict. It was a screening decision made under pressure. The full story, including your injuries, your side, and the physical evidence that does not match the first account, gets told later, if someone goes and builds it.

Why you sat in jail longer than you expected

Texas has a special hold rule for family violence arrests. Under Article 17.291 of the Code of Criminal Procedure, even after your bond is posted, the agency holding you can keep you for four more hours if there is probable cause to believe the violence would continue if you were released immediately. A magistrate can extend that hold in writing, up to 48 hours in some circumstances involving prior arrests or a deadly weapon. If you posted bond and then sat for hours anyway, that was not a clerical delay. That was the statute working as designed.

The magistrate hearing: where the second case began

Within about 48 hours of arrest you were taken, in person or by video, before a magistrate. The magistrate read you the charge, set bail, and in a family violence case did one more thing: considered an emergency protective order. Under Article 17.292 of the Code of Criminal Procedure, the magistrate may issue that order on the magistrate's own motion, or at the request of the alleged victim, a guardian, a peace officer, or the prosecutor. If your arrest involved serious bodily injury or the use or exhibition of a deadly weapon, the magistrate was *required* to issue

one. The protected person did not have to be there, did not have to ask for it, and did not have to agree to it.

That order is the second case against you. It has its own chapter in this book because it has its own rules, its own duration, and its own criminal penalties for violations. For now, understand the shape of your situation:

	The criminal charge	The protective order	Family court (if it comes)
Who is on the other side	The State of Texas	The State, through the magistrate's order	Your spouse or co-parent
What is at stake	Jail or prison, fines, a permanent record, the family violence finding	Where you live, contact with your family, your firearms	Divorce terms, custody, support
Standard of proof	Beyond a reasonable doubt	Issued on the arrest itself	Mostly preponderance of the evidence
Can it be used against you elsewhere	Yes, heavily, in family court	Yes; violations become new crimes and new evidence	Yes; what you say there can surface in the criminal case

The columns are separate, but the rows leak into each other. That is the single most important strategic fact about your situation, and it is why the lawyer handling your criminal case needs to know about everything happening in the other columns, from day one.

Bond conditions: the quiet third set of rules

Along with the protective order, the judge setting your bail almost certainly attached conditions to your bond: no contact with the alleged victim, stay away from the home, no alcohol, sometimes a GPS monitor. These overlap with the protective order but are legally distinct. Violating a bond condition can get your bond revoked and put you back in jail while the case is pending, and violating a bond condition set in a family violence case in certain ways is itself a crime under Section 25.07 of the Penal Code. Read the bond paperwork as carefully as the protective order. Where they differ, follow the stricter one, and ask your lawyer to resolve any conflict rather than guessing.

The Affirmative Finding: What "Family Violence" Does Permanently

Texas law treats an assault between family or household members as a different animal from a bar fight, and the mechanism it uses is a single sentence entered in the court's records. This chapter explains that sentence, because it will shape every decision in your case.

Who counts as "family"

The definition is broader than most people expect. Under Chapter 71 of the Texas Family Code, family violence covers acts between people connected in any of these ways:

- **Family:** relatives by blood or marriage, former spouses, and people who are parents of the same child, whether or not they were ever married (Section 71.003).
- **Household:** people living together in the same dwelling, related or not, and people who *previously* lived together (Sections 71.005 and 71.006). Roommates count. Ex-roommates count.
- **Dating relationship:** people who have or have had a continuing romantic or intimate relationship, judged by its length, nature, and frequency of interaction (Section 71.0021). Exes count here too.

"Family violence" itself, under Section 71.004, means an act intended to result in physical harm, bodily injury, assault, or sexual assault, or a threat that reasonably places the person in fear of imminent harm, excluding defensive measures taken to protect yourself. That last clause matters: the statute itself recognizes that defending yourself is not family violence.

The finding itself

Under Article 42.013 of the Code of Criminal Procedure, if you are prosecuted for an assaultive offense and the court determines the offense involved family violence, the court *shall* make an affirmative finding of that fact and enter it in the judgment. The word is shall, not may. The judge has no discretion to leave it out as a favor, and prosecutors know exactly what the finding is worth, which is why it is often the real subject of plea negotiations, more than the jail time or the fine.

What the finding costs you

Federal firearm rights, for life. Under 18 U.S.C. 922(g)(9), a person convicted of a misdemeanor crime of domestic violence is prohibited from possessing a firearm or ammunition. There is no five-year clock, no at-home exception, and no Texas court that can lift it. Violating it is a federal felony punishable by up to 15 years in prison under 18 U.S.C. 924(a)(8). Since 2022, the federal definition reaches dating partners, not just spouses and cohabitants, though Congress created one narrow restoration path: a person whose only qualifying conviction arose from a dating relationship may regain federal firearm rights five years after completing the sentence if they stay completely clean, a path that does not exist for spouses, cohabitants, or co-parents. Texas judges are required by Article 42.0131 to warn you about the firearm ban at the time of a family violence misdemeanor conviction, which tells you how real it is.

State firearm limits that do not match the federal ones. Texas Penal Code Section 46.04(b) makes it a Class A misdemeanor to possess a firearm within five years after release from confinement or community supervision for a Class A family violence assault conviction. Many people read that statute, wait out the five years, and believe they are legal. Under Texas law, they may be. Under federal law, they are still committing a felony every time they touch a firearm. The state clock never restarts the federal one.

The cruelest trap in this entire area of law is the gap between state and federal firearm rules.

Texas law seems to hand your gun rights back after five years. Federal law never does, absent one of the narrow federal exceptions. People have followed state law in good faith and ended up prosecuted in federal court. If you have any family violence conviction in your history, get specific legal advice before you possess, borrow, transport, or even hold a firearm. The scope of some federal firearm prohibitions is being actively litigated after recent Second Amendment decisions, which is one more reason to get current advice instead of relying on a rule of thumb.

Your next case becomes a felony. Under Penal Code Section 22.01(b)(2)(A), an assault causing bodily injury against a family or household member or dating partner, which is normally a Class A misdemeanor, becomes a *third-degree felony* if you have any prior conviction for an assaultive offense against such a person. Two to ten years in prison, for conduct that would otherwise carry a maximum of one year in county jail. And as the deferred adjudication chapter explains, even a plea that never became a formal conviction can count as that prior.

Your record becomes effectively permanent. Family violence findings are largely locked out of Texas's record-sealing system, a subject important enough to get its own chapter near the end of this book.

Family court consequences. A family violence history changes custody law's default settings against you, can extend protective orders for years, can supply a fault ground in divorce, and can

even create eligibility for spousal maintenance that would not otherwise exist. The collision chapter covers this in detail.

Work, licenses, housing, immigration. A licensing board can act on a conviction that relates to the occupation under Chapter 53 of the Occupations Code. Landlords and employers see unsealed records in routine background checks. And for a noncitizen, federal law makes a conviction for a crime of domestic violence, and even a judicial finding of certain protective order violations, a ground of deportability under 8 U.S.C. 1227(a)(2)(E). If you are not a United States citizen, say so in your first conversation with your lawyer, because it changes the entire strategy. One honest caveat belongs here: we are criminal defense lawyers, not immigration lawyers. Precise advice about your immigration exposure has to come from an immigration attorney, and a careful defense team coordinates with one before any plea decision is made.

Every one of these consequences turns on how the case is resolved. That is why the goal in a family violence case is almost never just "less punishment." It is a disposition that avoids the finding, or failing that, one that limits what the finding can reach.

Emergency Protective Orders: Duration, Terms, and What Violating One Costs

The Magistrate's Order for Emergency Protection, usually called an EPO or MOEP, is the court order that took over your home life the morning after your arrest. This chapter explains what it can do, how long it lasts, how it can be changed, and exactly how expensive it is to violate.

What the order can prohibit

Under Article 17.292, the magistrate can prohibit you from:

- Committing family violence or assault against the protected person;
- Communicating with the protected person or their family or household in a threatening or harassing manner, or communicating a threat through anyone else;
- Communicating with the protected person *at all*, in any manner, if the magistrate finds good cause, except through your attorney or a person the court appoints;
- Going to or near the protected person's residence, workplace, or business, or a child's school or child care facility, with specific locations and distances spelled out;
- Possessing a firearm, with a narrow exception for certain active peace officers;
- Tracking or following the protected person, including through phone apps or tracking devices.

The magistrate is also required to suspend any Texas license to carry a handgun you hold, and can order GPS monitoring as a condition. Notice what this adds up to: if the order names your own home as the protected person's residence, you cannot go home, even if your name is on the deed or the lease, even to get your clothes. If it prohibits all communication, you cannot text your spouse about the electric bill. And if you own firearms, your possession of them became a legal problem the moment you were served.

One more feature people miss: if the order conflicts with an existing custody arrangement, the emergency order controls while it lasts. Your regular weekend possession schedule does not override a stay-away order. A later protective order issued by a family court under the Family Code, however, can supersede the emergency order, which is one of several reasons the criminal and family court tracks have to be coordinated.

How long it lasts

The Legislature lengthened these orders effective September 1, 2025, so ignore older articles and forum posts quoting 31 or 61 days. Under current Article 17.292(j):

Type of order	Minimum duration	Maximum duration
Standard emergency protective order (including the mandatory order after an arrest involving serious bodily injury)	61 days	91 days
Order issued after an arrest involving the use or exhibition of a deadly weapon during an assault	91 days	121 days

Two to four months is a long time to be out of your home. The statute does provide a path to change the order: after notice to each affected party and a hearing, the issuing court (or the court that takes over the criminal case) may modify it, but only if it finds the original order is unworkable, the change will not put the victim at greater risk, and the change will not endanger anyone the order protects. Lawyers use this provision regularly, for example to convert a total no-contact order into a no-harmful-contact order so a family can handle child logistics, or to carve out a path to retrieve belongings. That is a motion your lawyer files and argues. It is not something you accomplish by agreement over text message.

What a violation costs

Violating the order is a separate crime under Penal Code Section 25.07, and the ladder is steep:

- A violation (contacting the protected person, going to the residence, possessing a firearm, and the rest) is a **Class A misdemeanor**: up to a year in jail and a \$4,000 fine.
- Violating the order *while possessing a deadly weapon* is a **state jail felony**.
- A violation committed by an assault or by stalking, or a violation after two or more prior convictions, is a **third-degree felony**: two to ten years in prison.
- Under Section 25.072, violating the order *two or more times within 12 months* is its own **third-degree felony**, and each text message can be a violation.

On top of the new charge, a violation typically gets your bond revoked, which means you sit in jail while the original case is pending, and it hands the prosecutor fresh evidence that you cannot follow court orders. Cases that might have been defensible get lost this way, not on the original facts but on what the accused did in the weeks after the arrest.

"But she asked me to come home." This is the most common way people convert a defensible misdemeanor into a felony record. Reconciliation is normal in these cases, and the law anticipates it: Section 25.07(d) says reconciliation does not affect the validity of the order or the officer's duty to enforce it, and the order itself states that no person, *including the person protected*, can give permission to ignore it. If the protected person invites you back and you go, you committed the crime, and the invitation is not a defense. If both of you want the order changed, that is exactly what the modification hearing is for. Tell your lawyer. Do not test it yourself.

Two more things belong on your radar. Federal law separately prohibits firearm possession by a person subject to certain protective orders issued after a hearing with notice and an opportunity to participate, under 18 U.S.C. 922(g)(8), a prohibition the United States Supreme Court upheld in 2024. And this emergency order may not be the last order in your case: the protected person or the State can pursue a longer protective order under the Family Code, which is part of the family court collision covered later in this book.

The Charge Ladder: From a Class C Ticket to a First-Degree Felony

Assault family violence in Texas is not one charge. It is a ladder, and where your case sits determines the punishment range, the court, and what can ever be done about your record. Climbing down a rung, or keeping the State from climbing up one, is often what your lawyer is actually fighting about.

The rungs

Class C assault: offensive contact or threats. Under Penal Code Section 22.01(a)(3), intentionally or knowingly causing physical contact that a reasonable person would regard as offensive or provocative (a shove, a poke in the chest, grabbing a phone out of a hand) is a Class C misdemeanor, punishable by a fine of up to \$500 with no jail. A threat of imminent bodily injury under Section 22.01(a)(2) is generally Class C as well. These are ticket-level offenses, often filed in municipal or justice court, and they look harmless. They are not, for reasons explained in the callout below.

Class A assault: bodily injury. Under Section 22.01(a)(1), intentionally, knowingly, or *recklessly* causing bodily injury to a family or household member or dating partner is a Class A misdemeanor: up to one year in county jail and a fine of up to \$4,000. Understand how low the threshold is. "Bodily injury" is defined in Section 1.07 as physical pain, illness, or any impairment of physical condition. Pain alone qualifies. No bruise, no mark, no medical visit is required; testimony that a grab hurt can be legally sufficient. This is the workhorse charge, and it is the one that carries the affirmative finding into all the permanent consequences described earlier.

Felony enhancement for a prior. The same bodily-injury assault becomes a **third-degree felony** (two to ten years in prison, up to a \$10,000 fine) under Section 22.01(b)(2)(A) if you have previously been convicted of an assaultive offense (including offenses under Chapter 22, murder-chapter offenses, kidnapping, continuous family violence, or qualifying protective order violations) committed against a family or household member or dating partner. Two details make this rung wider than it looks. First, the prior can be any assaultive conviction against a qualifying person, and the statute does not require that it was a Class A; a paid-off Class C ticket can qualify. Second, under Section 22.01(f), a plea of guilty or no contest in exchange for *deferred adjudication* counts as a prior conviction here, even though it never became a conviction for most other purposes, and even if you completed it and the case was dismissed.

Continuous violence against the family. Section 25.11 makes it a **third-degree felony** to commit two or more bodily-injury assaults against family, household, or dating-relationship victims within 12 months. Neither incident needs to have resulted in an arrest or conviction, the incidents can involve different victims, and a jury does not have to agree unanimously on which specific incidents happened or when, only that two occurred within the window. Prosecutors use this statute to reach felony territory without any prior conviction at all.

Impeding breath or circulation: the strangulation charge. Under Section 22.01(b)(2)(B), a bodily-injury assault against a family or household member or dating partner committed by impeding the normal breathing or circulation of the blood by applying pressure to the throat or neck or by blocking the nose or mouth is a **third-degree felony**, first offense, no prior required. With a prior family violence conviction, Section 22.01(b-3) makes it a **second-degree felony**: two to twenty years. Prosecutors charge this aggressively, and they do not need visible injuries; strangulation often leaves no external marks, and the State frequently builds the charge on the complaining witness's account plus medical testimony about symptoms like a hoarse voice or difficulty swallowing. Defending it is equally specialized: the medical literature, the absence of expected petechiae or other findings, and the exact mechanics described all become battlegrounds. If the word "impeding" appears in your charging papers, you are in a felony case that demands a lawyer who has fought this specific charge.

Aggravated assault. Under Section 22.02, an assault that causes serious bodily injury, or in which a deadly weapon is used or exhibited, is a **second-degree felony** (two to twenty years). "Deadly weapon" is not limited to guns and knives; anything capable of causing death or serious bodily injury in the manner of its use can qualify. And if a deadly weapon is used *and* serious bodily injury results, against a family or household member or dating partner, the offense becomes a **first-degree felony**: five to 99 years or life. This is the top of the ladder, and it is reserved for family violence: the same conduct against a stranger would generally remain a second-degree felony.

The ladder at a glance

Charge	Level	Range
Assault by offensive contact or threat (22.01(a)(2), (a)(3))	Class C misdemeanor	Fine up to \$500
Assault causing bodily injury, family violence (22.01(a)(1))	Class A misdemeanor	Up to 1 year county jail; fine up to \$4,000
Assault bodily injury with a prior family violence conviction (22.01(b)(2)(A))	Third-degree felony	2 to 10 years prison; fine up to \$10,000
Continuous violence against the family, 2+ assaults in 12 months (25.11)	Third-degree felony	2 to 10 years prison; fine up to \$10,000
Assault by impeding breath or circulation (22.01(b)(2)(B))	Third-degree felony	2 to 10 years prison; fine up to \$10,000
Impeding breath or circulation with a prior family violence conviction (22.01(b-3))	Second-degree felony	2 to 20 years prison; fine up to \$10,000
Aggravated assault: serious bodily injury or deadly weapon (22.02)	Second-degree felony	2 to 20 years prison; fine up to \$10,000
Aggravated assault with deadly weapon causing serious bodily injury to a family or household member or dating partner (22.02(b)(1))	First-degree felony	5 to 99 years or life; fine up to \$10,000

The Class C trap. A Class C family violence citation looks like a traffic ticket, and people treat it like one: they pay the fine online to make it go away. Paying the fine is a conviction. That conviction can be the prior that turns your next family violence allegation, even a shaky one, into a third-degree felony, and a fine-only assault conviction involving a qualifying relationship can even count as a misdemeanor crime of domestic violence under federal firearm law, because the federal courts have held that offensive touching satisfies the physical force element. Never resolve a Class C family violence ticket without legal advice. Handled properly, often through deferred disposition and dismissal, a Class C can end with the record expunged. Paid casually, it becomes a permanent landmine.

Why the Complaining Witness Cannot Drop the Charges

Here is the phone call criminal defense lawyers get every week: "My wife told the DA she doesn't want to press charges. When will the case be dismissed?" The honest answer: possibly never, and her request, by itself, changes less than almost everyone believes.

The case is not hers to drop

Look at the style of your case: it is *The State of Texas versus you*. The complaining witness is not a party to the case. She (or he) is a witness in the State's case, and the State, through the elected district or county attorney's office, decides what gets filed, what gets reduced, and what gets dismissed. Texas law leans into this. Article 5.06 of the Code of Criminal Procedure forbids prosecutors and courts from dismissing or delaying a family violence prosecution because a related civil or divorce case is or is not pending, and many Texas prosecutor offices maintain written policies of proceeding in family violence cases regardless of the victim's wishes, precisely because recanting is so common and is sometimes the product of pressure, dependence, or fear.

Prosecutors are also trained to build these cases as if the complaining witness will never testify. That approach even has a name: evidence-based prosecution. The 911 audio, which often comes into evidence as an excited utterance even if the caller never takes the stand. The body camera footage of everyone's statements and injuries at the scene. Photographs. Medical records. Neighbors. Your own recorded statements. A case with that kind of file can go to trial without the complaining witness's cooperation at all, though the State's hand is usually weaker without her, and the rules of evidence and the constitutional right to confront witnesses give your lawyer real tools when the State tries to substitute recordings for live testimony.

What an affidavit of non-prosecution actually is

An affidavit of non-prosecution, or ANP, is a sworn written statement in which the complaining witness tells the prosecutor she does not want the case pursued. It can also correct the record: some of the most useful ANPs explain what actually happened, that the officer misunderstood, that the injury came from something else, that the affiant was the aggressor, or that the statement given that night was exaggerated in anger.

What it does. It formally documents the witness's position, which matters to prosecutors evaluating whether they can win. It can preserve a favorable account before memories shift. In a marginal case, a credible, detailed, consistent ANP can be a real factor in a reduction or dismissal.

What it does not do. It does not dismiss anything, and it does not bind the prosecutor in any way. It does not erase the 911 call, the bodycam, the photos, or the medical records. It does not prevent the State from subpoenaing the witness to trial. And this surprises almost everyone: being married to the defendant does not block that subpoena. Texas Rule of Evidence 504 gives a spouse a privilege not to be called as a witness for the State, but the privilege *does not apply* in a prosecution for a crime against the other spouse, a member of either spouse's household, or a minor child, which describes essentially every family violence case. A recanting spouse can be compelled to take the stand, and if her sworn ANP contradicts her recorded statements from that night, the State may treat her as a witness whose credibility is now in play from both directions. A carelessly drafted ANP can hurt the person who signed it, which is one reason the witness should get her own independent legal advice about signing anything.

Never ask, pressure, or even hint. Under Penal Code Section 36.05, coercing or offering any benefit to a witness to withhold testimony, avoid a subpoena, or abstain from or discontinue a prosecution is a felony, and in family violence cases the Legislature sharpened it: the offense is at least a third-degree felony, at least a second-degree felony if you have a prior family violence conviction, and committing new family violence intended to make the witness unavailable is itself defined as coercion. Prosecutors read jail calls, and "just tell them you don't want to prosecute, baby" from a jail phone is how a misdemeanor case grows a felony attached to it. If the complaining witness genuinely wants to help, she can contact your lawyer's office on her own, and your lawyer can point her to independent counsel. You stay out of it entirely.

The strategic takeaway: a supportive complaining witness is an asset, but she is not a dismissal. Your defense has to be built on the assumption that the State will push forward, and any help she offers has to flow through lawyers, on the record, in ways that cannot be twisted into tampering.

The Collision with Family Court

If you are married to, divorcing, or raising children with the person named in your case, your criminal case is about to have a second life as evidence. Family court is where the consequences of the criminal case often land hardest and longest, and the two cases influence each other in both directions.

How the criminal case becomes family court evidence

Family courts decide custody and possession under a best-interest standard, and the Texas Family Code hard-wires family violence into that analysis. Under Section 153.004:

- The court must consider evidence of intentional abusive physical force against a spouse, a parent of the child, or anyone under 18, committed within the two years before filing or during the case.
- A court *may not* appoint parents as joint managing conservators if credible evidence shows a history or pattern of physical abuse by one parent directed against the other parent, a spouse, or a child. Losing joint managing conservatorship means losing shared decision-making authority over your own children.
- With a finding of a history or pattern of family violence, the presumption flips against unsupervised access, and a court may restrict a parent to supervised visitation, or in serious cases deny access, with pathways back that typically run through supervised possession, batterer's intervention programs, and demonstrated safety.
- The statute expressly directs the family court to consider whether a protective order was rendered against you during the two years before filing or during the case. The orders from your criminal case do not stay in their lane.

The reach goes beyond custody. Cruel treatment is a fault ground for divorce under Family Code Section 6.002, and fault can influence how the community estate is divided. Under Section 8.051, a conviction *or deferred adjudication* for a family violence offense against your spouse or your spouse's child, within two years before the divorce filing or while it is pending, makes your spouse eligible to seek court-ordered spousal maintenance that otherwise might not be available. And a family court can issue its own protective order lasting up to two years, longer in cases involving felony-level family violence, serious bodily injury, or repeat orders, and if a family violence charge is pending against you, a protective order can remain in effect until two years after the criminal case finally ends, under Section 85.025.

The squeeze: talking in one case hurts you in the other

The collision creates a genuine dilemma. In family court, you will be pressed to give testimony, sit for depositions, and respond to sworn pleadings about the exact events of your criminal case, while the criminal case is still pending. Anything you say there is on the record and available to the prosecutor. Invoke the Fifth Amendment, and in a *civil* case, unlike a criminal one, the judge is generally permitted to hold that silence against you. There is no cost-free move, only a managed one: timing (which case resolves first), the scope of what gets litigated now versus later, and coordinated strategy between your criminal lawyer and your family lawyer. Those two lawyers must be talking to each other. When they are not, family lawyers make concessions that torpedo criminal defenses, and criminal lawyers take dispositions that quietly destroy custody positions.

Note the mirror image of Article 5.06 here: just as the criminal case cannot be delayed or dismissed because of the divorce, the divorce will not politely wait for the criminal case unless someone asks the family court for that sequencing and has a reason the court accepts. Deadlines in both cases run at the same time. This is a coordination problem, and it is solvable, but only if both lawyers know the whole board.

Be very careful with "agreed" protective orders. In family court it is common to be offered a deal: agree to a protective order and the applicant will not push for a contested hearing. It sounds like a cheap peace. It is not. A protective order entered against you with a family violence finding is a court finding of family violence that follows you into custody law's presumptions, firearm prohibitions under both state and federal law, and future cases, and agreeing to it can waive your one real chance to contest the allegations in a civil courtroom where the State's burden is lower than in criminal court. Sometimes an agreed order without findings, or mutual injunctions in the divorce instead, accomplishes the same peace without the permanent freight. That is a negotiation for lawyers who understand what each version costs. Never agree to any protective order without advice from a lawyer who knows about your criminal case.

Deferred Adjudication: Why the Finding Survives It

At some point, a deferred adjudication offer will probably appear in your case, and it will be described to you as the escape hatch: plead guilty or no contest, the judge does not find you guilty, you complete supervision, and the case is dismissed. No conviction. For many Texas offenses, deferred adjudication genuinely is the record-saving move. Family violence is the great exception, and misunderstanding this is the single most expensive mistake people make in these cases.

How deferred adjudication works

Under Chapter 42A of the Code of Criminal Procedure, the judge accepts your plea, finds the evidence substantiates guilt, but defers any finding of guilt and places you on community supervision (Article 42A.101). Complete it, and the judge dismisses the case and discharges you (Article 42A.111). A dismissal and discharge is not a conviction for most legal purposes, and assault family violence, unlike some offenses, is generally eligible for deferred. In a family violence case, the conditions typically include a batterer's intervention and prevention program, a \$100 payment to a family violence center, no-contact or protective conditions, and the standard supervision terms.

The catch that applies to every deferred: if the State alleges you violated a condition and the judge adjudicates you guilty, you can be sentenced anywhere in the *full punishment range* of the original offense, not some capped probated number. A deferred that collapses can end worse than the plea you turned down.

The family violence catches

Catch one: the enhancement never goes away. Under Penal Code Section 22.01(f), for the felony enhancement statutes, you are "previously convicted" if you pleaded guilty or no contest in exchange for deferred adjudication, regardless of whether you were ever sentenced and regardless of whether you successfully completed supervision and got the dismissal. Complete your deferred perfectly, and a decade later a new family violence allegation is still charged as a third-degree felony because of it. The dismissal you earned does not undo that. The plea itself is the trigger, and it is permanent.

Catch two: the record never seals. A deferred ends in dismissal, but the arrest, the charge, the plea, and the deferred order all remain public records unless sealed, and as the next chapter explains, family violence cases are locked out of sealing. For most offenses, deferred plus nondisclosure equals a functionally clean public record. For family violence, deferred equals a

permanent public record with your plea in it. This is the difference nobody explains at the plea table.

Catch three: the finding itself. Family violence determinations attach to deferred cases too. Courts routinely enter affirmative findings of family violence in deferred adjudication orders, and even where paperwork is silent, the consequences that matter (the enhancement statute, the sealing bar, the family court presumptions, federal treatment) look at the offense and the plea, not at whether a magic sentence appears in a judgment. Do not let anyone tell you a deferred "avoids the finding." What a completed deferred avoids is a final conviction, which is valuable, but it is a much narrower prize than people believe.

Catch four: federal and immigration treatment. Under federal immigration law, a plea of guilty or no contest plus a term of supervision is generally treated as a conviction, no matter what Texas calls it. A deferred that is invisible to Texas conviction statutes can still be a deportable offense for a noncitizen, which is one more reason a noncitizen's plea decision needs an immigration attorney's input first. Federal firearm law has its own technical rules about what counts as a conviction, and whether a particular Texas disposition triggers the lifetime ban under 18 U.S.C. 922(g)(9) is exactly the kind of question to put to your lawyer before you plead, not after you buy a rifle.

The honest comparison

Outcome	Conviction on your record	Counts as prior for future FV felony enhancement	Record can be sealed or destroyed
Acquittal at trial	No	No	Expunction available
Dismissal without deferred adjudication	No	No	Expunction generally available
Deferred adjudication, completed (family violence)	No final conviction	Yes, under 22.01(f)	No; nondisclosure barred
Conviction (family violence)	Yes	Yes	No

None of this means deferred adjudication is always wrong in a family violence case. Against a strong State's case, deferred may be the tool that avoids a conviction, keeps you employed, and keeps you out of jail today, and those are real things. But it should be chosen with clear eyes, as a managed retreat, after your lawyer has tested the State's evidence, priced the permanent consequences, and negotiated alternatives: a reduction to a non-family-violence offense, a Class C with deferred disposition, pretrial diversion where the county offers it, or trial. The worst reason to take a deferred is the belief that it disappears. In family violence cases, it does not.

Nondisclosure: Why Family Violence Findings Are Locked Out

Texas has two tools for cleaning up a criminal record. Expunction destroys records; it is generally reserved for arrests that ended in acquittal, dismissal without community supervision, or no charge at all. Nondisclosure seals records from public view while law enforcement retains access; it is the standard remedy after a successfully completed deferred adjudication. This chapter is about why that second tool, the one most defendants are counting on, is mostly unavailable in family violence cases.

The statutory locks

Nondisclosure lives in Chapter 411 of the Government Code, and every route through it runs through Section 411.074, which contains two independent family violence bars:

- **The offense bar.** Under Section 411.074(b)(1), no order of nondisclosure may be granted if the offense you want sealed is, among other listed offenses, a protective order violation under Penal Code 25.07 or 25.072, stalking, or *"any other offense involving family violence, as defined by Section 71.004, Family Code."* That catchall is the lock. It does not ask what the judgment says; it asks what the offense involved.
- **The finding bar.** Under Section 411.074(b)(2), nondisclosure is barred if the court makes an affirmative finding that the offense involved family violence. Courts have applied this at the nondisclosure stage itself, meaning the judge deciding your petition can find the offense involved family violence even if the old plea paperwork never said so. There is no drafting trick that reliably slips a family violence case past it.

The locks reach further than most people expect. Even the automatic nondisclosure that Texas grants for many first-time misdemeanor deferreds excludes all misdemeanors under Penal Code Chapters 22 (assault) and 25 (offenses against the family) from the automatic path, so any assault deferred requires a petition, and the petition then runs into the family violence bars above. Worse, the bars in Section 411.074(b)(1) also apply if you have *ever previously* been convicted of or placed on deferred adjudication for a listed offense, including any offense involving family violence. In plain English: a family violence conviction or deferred does not just make that case unsealable. It can disqualify you from ever sealing *any other case* on your record, including offenses that have nothing to do with family violence.

What still works

The lockout applies to sealing cases that ended in a family violence conviction or deferred. It does not reach cases that never got that far, which is why disposition strategy at the front of the case is everything:

How the case ends	What can happen to the record
Acquittal at trial	Expunction: records destroyed
Dismissal, no-bill, or charges never filed (no 42A community supervision)	Expunction generally available after any waiting period
Reduction to a Class C with deferred disposition, completed and dismissed	Expunction remains possible; Chapter 55A's community supervision bar has an exception for Class C cases
Deferred adjudication on a family violence offense, completed	Dismissed but public forever; nondisclosure barred
Family violence conviction	Public forever; also blocks sealing other offenses

Read the third row again, because it explains negotiating behavior that otherwise looks strange. Defense lawyers will sometimes fight hard to turn a Class A family violence case into a Class C ticket resolved by deferred disposition, even though the fine is small either way. They are not fighting about the fine. They are fighting for the only rung on the ladder where the record can still one day be destroyed. The difference between "Class A deferred adjudication" and "Class C deferred disposition, dismissed, expunged" is the difference between a permanent public record and, eventually, no record at all. If your case can be steered to that rung, or to an outright dismissal, the long game stays open. Once a family violence conviction or Class A deferred is entered, it mostly does not.

One caution: expunction and nondisclosure law is technical, waiting periods and eligibility details matter, and the recodified expunction statute (Chapter 55A of the Code of Criminal Procedure, effective 2025) has its own requirements. Whether a particular outcome in a particular county leaves the door open is a question for your lawyer to answer in writing before you accept any plea.

The First 72 Hours

Cases are rarely won in the first three days, but they are regularly lost there. Here is what to do, in order, starting the moment you are released.

The checklist

- **Read every document you were given.** The emergency protective order and your bond conditions are binding right now. Note exactly what is prohibited: contact, distance, locations, firearms, alcohol. Where the two documents differ, obey the stricter one until your lawyer sorts it out.
- **Have zero contact with the complaining witness.** Not to apologize, not to explain, not to ask about the kids, not to respond if she reaches out first. Every text is a potential Class A misdemeanor or worse, every call is potential evidence, and jail calls and messages are recorded and read. If she contacts you, do not reply; save the message and tell your lawyer. Communication about children or property goes through lawyers or a court-approved channel only.
- **Solve housing without going home.** If the order excludes you from your residence, arrange to stay with family, a friend, or a hotel for at least the duration of the order. To retrieve clothes, medication, tools, or work equipment, do not go yourself, and do not send a mutual friend on a handshake: ask your lawyer about a civil standby, where a law enforcement officer accompanies a retrieval at an arranged time, or a court-approved arrangement.
- **Deal with the firearms question immediately, through your lawyer.** If the order prohibits possession and there are firearms in your home or vehicle, you have a live legal problem, and so does any plan that involves you personally handling them. Ask your lawyer how to lawfully get firearms out of your possession and stored with a third party or a storage facility. Do not improvise this one; possession while under the order is a crime under state law and can violate federal law as well.
- **Write down everything, today.** A complete timeline of the incident and the 24 hours around it: what happened, in what order, who said what, who was where. Injuries you had, and how you got them. What you drank or took, and when. Every witness with a name and number. Memory degrades fast, and your notes for your lawyer are the raw material of your defense.
- **Photograph your own injuries.** Scratches, bite marks, bruises, torn clothing. Date-stamped photos, from multiple angles, retaken daily as bruises develop. If your injuries are

significant, see a doctor and say honestly how you got them; medical records documenting your injuries can be powerful evidence, especially in self-defense cases.

- **Preserve the digital record.** Do not delete anything: not texts, not photos, not call logs, not social media, even messages that embarrass you. Deleting looks like destroying evidence and can be worse than the content itself. Back up your phone. Save relevant messages from before the incident too; context about the relationship often matters.
- **Stay silent everywhere else.** No social media posts about the incident, the charge, or the complaining witness. No explaining yourself to mutual friends, family members, or coworkers; every person you talk to is a potential witness against you. The only person who gets the full story is your lawyer.
- **Hire a lawyer this week, not after your first court date.** Early counsel can send preservation letters for the 911 audio and body camera footage before routine retention periods erase them, appear at the earliest settings, start the protective order modification process if the order is unworkable, and reach the prosecutor before charging decisions harden. If a strangulation allegation or felony enhancement is in play, early intervention at the charging stage is sometimes the whole ballgame.

The questions everyone asks in the first week

She does not want to prosecute. Is this over? No. The State controls the case and often proceeds anyway. Her wishes matter, but they are one input among many, and anything she chooses to do should happen through lawyers. Reread the affidavit chapter before you so much as discuss it with her, and remember that in most situations the order forbids you to discuss anything with her at all.

Can I see my kids? Read the order. Some orders prohibit contact only with the complaining witness; others protect the children or bar you from the school and child care locations. If the order conflicts with your custody schedule, the emergency order wins while it lasts. The fix is a modification hearing or a family court order, not an informal arrangement, no matter how much both of you want one.

Will I lose my job? An arrest is a public record almost immediately, and some employers, licenses, and clearances have reporting requirements with their own deadlines. Whether and when to disclose is a strategy question; talk it through with your lawyer before you volunteer anything. What you can control is the ending, and as the record-clearing chapter explains, the ending is decided by the disposition you fight for now.

Should I just get it over with and plead at the first setting? Not in a family violence case, not before anyone has watched the video or tested the State's evidence, and above all not before

you understand exactly what a family violence finding or deferred does permanently. Speed feels like relief. In this area of law, speed is how people acquire lifetime consequences from provable-defense cases. Let a lawyer read the file first.

Choosing a Lawyer

Family violence defense is its own discipline. The lawyer you choose will be managing a criminal case, a protective order, a possible family court collision, and a set of permanent-consequence tripwires, all at once. Here is how to choose well.

What actually matters

- **Real trial capability.** Prosecutors offer their worst deals to lawyers who never try cases. You may never need a trial, but you need a lawyer the State believes will conduct one, and in family violence cases specifically: cross-examining a complaining witness credibly and humanely is a skill, and juries punish lawyers who do it badly.
- **Fluency in this charge.** Ask how the lawyer defends an impending-breath allegation, what an affidavit of non-prosecution can and cannot do in this county, and how the office handles the protective order modification. A lawyer who has fought these specific fights will answer specifically.
- **Disposition strategy, stated out loud.** Before you hire, ask: "What does a family violence finding do to me permanently, and what outcomes avoid it?" You now know the answer from this book. A lawyer who cannot walk you through the affirmative finding, the 22.01(f) deferred trap, the nondisclosure lockout, and the federal firearm ban is not the right lawyer for this case, whatever their general reputation.
- **Both-tracks coordination.** If a divorce or custody case is live or likely, ask how the lawyer coordinates with family counsel, in both directions. The answer should involve actual communication, sequencing decisions, and Fifth Amendment planning, not "that's a separate matter."
- **Early investigation.** The right lawyer moves in week one: preservation letters for 911 audio and bodycam, your injury photos, witness statements, medical records, the scene. Evidence that wins these cases is perishable.
- **Clear fees and honest forecasting.** You want a written fee agreement you understand, and you want honesty about the range of outcomes. Be suspicious of certainty in either direction: a lawyer who promises dismissal is selling something, and a lawyer who treats a plea as inevitable before reading the file is phoning it in. No lawyer can ethically guarantee a result, and no honest one will.

Questions worth asking in the consultation

- How many family violence cases have you taken to trial, and how do you decide which ones should go?
- What would you do in the first two weeks of my case?
- What outcomes in my case avoid an affirmative finding of family violence, and how realistic is each?
- If deferred adjudication is offered, how will you help me price its permanent costs before I decide?
- Who in your office will actually handle my case and my calls?

A final word

You have just read an entire book about consequences, and it would be easy to close it feeling doomed. Do not. The permanence described in these chapters attaches to *outcomes*, not to accusations, and the outcome of your case has not been decided. It will be decided by the evidence, by the county, by the choices you make in the next few months, and by the quality of the defense that gets built. People in exactly your position have seen charges reduced, dismissed, and defeated, and have gone on with their families, their careers, and their rights intact. No one can promise you that ending. What you can do is refuse to lose the case in the first month: obey the orders, stay silent, preserve everything, and put a capable lawyer between you and the State as early as possible.

If this arrest happened to you or someone you love, call us. We will tell you honestly where your case sits on the ladder, what the realistic paths out are, and what it will take to fight for the one that protects your future. The call is free, and it is confidential.

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