

A Guide to the Texas Criminal Legal System For Family Violence Victims

Family Violence

Family violence is a crime that can cause psychological, physical, and emotional harm. The crime may involve a knife, a gun, or some other object used as a weapon, but the most common weapon involved in family violence cases is physical force through use of hands, feet and fists.

Family violence is defined in the Texas Family Code as:

(1) An act by a member of a family or household against another member of the family or household intended to result in physical harm, bodily injury, assault, or sexual assault or 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... by a member of a family or household toward a child of the family or household; or"

(3) "Dating violence..." which is "an act by an individual against another individual with whom that person has or has had a dating relationship and is intended to result in physical harm, bodily injury, assault, or sexual assault or 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."

TX Family Code § 71.004,

TX Family Code § 71.0021

When a Crime Occurs

Call 911 for law enforcement and/or emergency medical care. The National Domestic Violence Hotline is available for crisis intervention, safety planning, and referrals to domestic violence shelters and services 24-hours a day.

The Complaint

Before an arrest, a complaint must be filed charging a specific person with a violation of criminal law. Someone familiar with the facts of the crime, either by direct knowledge or through investigation, must swear to the complaint. It can be filed by an individual or law enforcement officer. That person then becomes a witness for the state.

Sending Charges to the Prosecutor

The prosecutor's office will often 'screen' the case to determine if there is sufficient evidence to:

- prove a crime was committed and
- show probable cause the accused is the person who committed the crime. Once the prosecutor's office accepts the case, an arrest can be made and bail set.

The Arrest

A judge may issue an arrest warrant once a complaint has been issued. In the case of family violence offenses, a law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed an offense involving family violence.

A law enforcement officer must also arrest a person without a warrant if the person violates a protective order in the presence of the officer.*

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

**TX Code of Criminal Procedure §14.03*

After the Arrest

The accused will be taken before a judge to be formally charged. The judge will explain the complaint charges and advise the defendant of his/her rights. The judge is also required to set a bail amount for the defendant.

Bail

Bail is defined in the Texas Code of Criminal Procedure 17.01 as:

"the security given by the accused he will appear and answer before the proper court the accusations brought against him, and includes a bail bond or a personal bond."

The legal purpose of bail is to guarantee the defendant's appearance in court at a later date. The judge is required to consider the seriousness of the offense, defendant's ability to raise the necessary money, and future safety of the victim and the community.

If a defendant cannot post bail, she/he remains in custody.

The victim may request an emergency order of protection against his/her abuser when the abuser posts bail.

"At the defendant's appearance before a magistrate after arrest for an offense involving family violence...the magistrate may issue an order for emergency protection on the magistrate's own motion or on the request of:

- (1) the victim of the offense;
- (2) guardian of the victim;
- (3) a peace officer, or
- (4) an attorney representing the state."*

"The magistrate shall issue an order for emergency protection if the arrest is for an offense involving family violence also involves:

- (1) serious bodily injury to the victim; or

**For more information visit our website at
www.79-DistrictAttorney-tx.org**

A Guide to the Texas Criminal Legal System For Family Violence Victims

(2) use or exhibition of a deadly weapon during the commission of an assault.”*

*TX Code of Criminal Procedure § 17.292

Plea Bargains

A plea bargain is an agreement between the prosecutor and defendant and his/her attorney in which the State recommends a specific punishment in the case if the defendant enters a plea of guilty. The punishment agreement is not binding until final approval is provided by the judge. The judge may impose any punishment within the range authorized by law.

Trial

In a trial, the prosecutor presents the case for the State. The prosecutor's job is to prove beyond a reasonable doubt the defendant committed the crime as charged. The defendant has the right to present or not present his/her case. The jury or the judge must decide if the State's case has been proven beyond a reasonable doubt.

Sentencing

If the defendant is found guilty, the law allows for a second stage of trial at which time punishment is set. The defendant can choose in advance to have his/her punishment set by the judge or jury. A range that is allowable by law will determine the punishment. In addition, a judge may rely on the probation department to conduct a sentencing investigation and offer recommendations.

Appeals

Following a conviction, the defendant has a right to appeal his or her case to an appellate court. The defendant may appeal on the grounds that an error occurred at trial requiring a reversal of conviction.

Emergency Numbers

Police Emergency 911

National Domestic Violence Hotline

Crisis intervention, safety planning and referrals to local domestic violence programs.

1-800-799-SAFE (7233)

1-800-787-3224 (TTY) for the Deaf

Texas Advocacy Project

Information and referrals regarding legal issues.

Family Violence Legal Line

1-800-374-HOPE (4673)

Department of Family and

Protective Services

For reporting abuse against children, people with disabilities or the elderly.

Abuse/Neglect Hotline

1-800-252-5400

Telephone Numbers In Your Area

Police and/or Sheriff's Departments:

Brooks Co. SO	(361)325-3696
Jim Wells Co. SO	(361)668-0341
Alice PD	(361)664-0186
Falfurrias PD	(361)325-5041
Premont PD	(361)348-3231
Orange Grove PD	(361)384-2844
San Diego PD	(361)279-2924

County Attorney's Offices:

Jesusa Sanchez-Vera	Homer Mora
Jim Wells County Attorney	Brooks County Attorney
(361)668-5700	(361)325-5604, ext. 159, 160

Domestic Violence Program Hotline:

Women's Shelter of South Texas

Toll-Free Hotline- (800) 580-HURT (4878)

Local Hotline- (361)881-8888

ABOUT THE DISTRICT ATTORNEY

Carlos Omar Garcia, 79th Judicial District Attorney.

Carlos was born and raised in Alice with extended family ties in Jim Wells, Brooks, and Duval Counties. Carlos began his distinguished prosecutorial career in 1997. Before being elected as District Attorney, Carlos worked an Assistant District Attorney for Kleberg and Kenedy Counties (2008-2012) and the 79th Judicial District Attorney's Office for Brooks & Jim Wells Counties (1997-2008). In addition to his service as a felony prosecutor, Carlos has also served as an Assistant County Attorney for Brooks, Jim Wells, and Kleberg Counties.

In addition to his background as a prosecutor, Carlos is a certified martial arts/self defense instructor, certified NRA *Refuse to Be a Victim* instructor, and NRA Pistol Instructor.

COMPLIMENTS OF



CARLOS OMAR GARCIA
79th JUDICIAL DISTRICT ATTORNEY

JIM WELLS COUNTY

P.O. Box 3157
Alice, Texas 78333
(361)668-5716
Fax (361)668-9974

BROOKS COUNTY

P.O. Box 283
Falfurrias, Texas 78355
(361)325-5604, Ext. 259
Fax (361)325-2993

**For more information visit our website at
www.79-DistrictAttorney-tx.org**