

VIOLENCE IN FAMILY LAW CASES

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INTRODUCTION:

We have now had codified provisions in the Family Code related to family violence for slightly more than two decades. The predecessor of the current Title 4 was first enacted in 1979, to combat the problem of family violence. In 1995 and 1997, major substantive changes were enacted to the statutory provisions concerning protective orders, as the Legislature responded to the urgings of the highly effective domestic violence advocacy groups, as well as the American Bar Association/Domestic Violence Section.

More noticeable to the practitioner is the complete reorganization and codification of Title 4, which was accomplished in 1997.

Prior to September of 1999, many would be protective order applicants proceeded to file a marriage dissolution action, in part because of the fact that protective orders prior to that time had an effective duration of only one year. As of September 1999, the one year duration of the protective order has been extended to two years. There are no credible statistics that the author could find as to any increase or decrease in applications for protective orders coupled with divorce, or stand alone applications.

If an applicant, who is a party to a pending suit for a dissolution of a marriage, wishes to apply for a protective order, the application must be filed under §6.504 T.F.C. However, Title 4 does to offer broad possibilities in the area of post divorce relief, and many practitioners are using protective orders in post divorce situations in which “family violence” or threats of violence have occurred. Title 4 can also be useful in dealing with non-marital situations, such as an outlaw-in-laws, parent abuse, grandparent abuse, same sex abuse, and other violent or threatening situations involving members or former members of the same household or extended family relationships.

FAMILY VIOLENCE – WHAT IS IT?

A. Legal Point of View

“*Family violence*” is defined in §71.004 of the Texas Family Code as:

- (1) an act by a member or former member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself; or
- (2) abuse, as that term is defined by Sections 261.001(1)(C), (E), and (G) (child abuse or neglect) by a member of a family or household toward a child of the family or household.

But what is considered a family? The Texas Family Code defines “*family*” in §71.003 as including “individuals related by consanguinity or affinity, as determined under Sections 573.022 and 573.024, Government Code, individuals who are former spouses of each other, individuals who are the biological parents of the same child, without regard to marriage, and a foster child and foster parent, without regard to whether those individuals reside together.” This definition is very broad in order to maximize protection of individuals in an attempt to decrease the incidents of family violence.

In addition to family members, the definition of family violence includes members of households. So what is a household? A “*household*” is defined in TFC §71.005 as “a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other.” TFC §71.006 expands the protection even further to include a “*member of a household*” as a person who previously lived in a household. This has such a broad sweep that almost any circumstance that resulted in the complainant and the alleged transgressor spending some time, or maybe only

a night under the same roof could fit the definition.

B. Medical Point of View

The medical profession defines family violence by creating three (3) categories of abuse.

1. Physical Abuse

Physical abuse takes many forms including kicking, hitting, biting, choking, scratching, pushing, and assaults with weapons. Sometimes only particular areas of the body are targeted, such as the abdomen of a pregnant woman; or at times, in areas which show little evidence of an attack. The net or cumulative effect of repeated physical and emotional abuse can be great. Consequences include injuries and health problems, days lost from work, and general social withdrawal. Withdrawal, emotional and psychological trauma to include anxiety, depression, panic, self destructive impulses, trauma to other family members and other long ranging social and emotional sequela have been noted.

2. Sexual Violence

Sexual violence includes unwelcome/uninvited sexual overtures and actions to include touches, threats, gestures and attacks, to include rape and sodomy. Many times such actions are repetitive, intrusive, aggressive, hostile or punitive in nature and compromise the individual's ability to care for threats, stalking, imprisonment or other forms of intimidation. While physical trauma may occur specifically from the sexual assaults, emotional trauma and secondary physical abuse create more significant life and life style threatening aspects of such abuse.

3. Emotional Abuse

Emotional abuse includes a variety of controlling, punitive, aggressive and/or subversive acts antithetical to the well-being of the victim. These may be directed to the victim, other relatives and loved ones of the victim as well as other individuals which the individual/victim feels compelled to protect from threatened abuse or maltreatment. It creates both a hostile and intimidating

environment which may lead to further acts of physical aggression and assault, particularly by cyclical, psychopathic and substance dependent abusers. Long term effects of emotional abuse are those of all other trauma victims and may include periods of incapacitation and dysfunction that outlive the actual trauma.

THE MECHANICS OF THE PROTECTIVE ORDER

C. Relationship between Protective Order and Other Suits

1. Application Filed before Other Suit Is Filed:

If an application for a protective order is pending, a court may not dismiss the application or delay a hearing on the application on the grounds that a suit for dissolution of marriage or a suit affecting the parent-child relationship is filed after the application was filed. Tex. Fam. Code Ann. § 85.061 (Vernon Supp. 1998).

If a protective order is rendered before the suit for dissolution or suit affecting the parent-child relationship was filed, the court that rendered the order may, on its own motion or that of a party, transfer the protective order to the court having jurisdiction of the suit if the court finds that the transfer is in the interest of justice or is for the safety or convenience of a party or a witness. TFC § 85.064(a), (c).

2. Application Filed during Pending Suit:

On the motion of any party to a suit for divorce or annulment or to declare a marriage void, the court may issue a protective order as provided by title 4, subtitle B, of the Family Code. TFC § 6.504 (Pamph. 1998).

A person who wishes to apply for a protective order with respect to the person's spouse and who is a party to a pending dissolution suit or suit affecting the parent-child relationship must file the application for the order as required by Code chapter 85, subchapter D. TFC § 82.005 (Supp. 1998). The person may apply for a protective order against another party to the suit by filing an application in the court in which the suit is pending or in a court in the county in which the applicant

resides if the applicant resides outside the jurisdiction of the court in which the suit is pending. TFC § 85.062(a). The applicant must inform the clerk of the court that renders a protective order that a dissolution suit or suit affecting the parent-child relationship is pending in which the applicant is a party. TFC § 85.062(b). If a final protective order is rendered in a court other than the court in which the dissolution suit or suit affecting the parent-child relationship is pending, the clerk of the court rendering the protective order shall inform the clerk of the court in which the suit is pending that a final protective order has been rendered and forward a copy of the protective order to that court. TFC § 85.062(c).

A protective order rendered by a court in a county other than that of the court in which the dissolution suit or suit affecting the parent-child relationship is pending is subject to transfer under Code section 85.064. TFC § 85.062(d). Section 85.064 provides that if the protective order is rendered while the suit is pending, the court that rendered the order may, on its own motion or that of a party, transfer the order to the court having jurisdiction of the suit if the court finds that the transfer is in the interest of justice or is for the safety or convenience of a party or a witness. TFC § 85.064(a), (c).

The requirements of service of notice under chapter 82 do not apply if the application is filed as a motion in a suit for dissolution of a marriage. Notice is given in the same manner as in any other motion in a suit for the dissolution of a marriage. TFC § 82.043(e).

A protective order in a suit for dissolution of a marriage must be in a separate document entitled "PROTECTIVE ORDER." TFC § 85.004.

3. Application Filed after Final Order Is Rendered in Other Suit:

If a final order has been rendered in a suit for dissolution of marriage or suit affecting the parent-child relationship, an application for a protective order by a party to the suit against another party to the suit that is filed after the date the final order is rendered and that is filed

in the county in which the final order was rendered shall be filed in the court that rendered the final order; if it is filed in another county, it shall be filed in a court having jurisdiction to render a protective order under title 4, subtitle B. TFC § 85.063(a).

A protective order rendered by a court in a county other than that of the court that rendered the final order is subject to transfer under Code section 85.064. TFC § 85.063(b). Section 85.064 provides that if a protective order that affects a party's right to possession of or access to a child is rendered after the date a final order was rendered in a suit affecting the parent-child relationship, on the motion of a party or on the court's own motion, the court may transfer the protective order to the court of continuing, exclusive jurisdiction if the court finds that the transfer is in the interest of justice or is for the safety or convenience of a party or a witness. TFC § 85.064(b), (c).

4. Transfer:

Transfer of a protective order under Code section 85.064 shall be conducted according to the procedures provided by Code section 155.207. TFC § 85.064(d). Except as provided by Code section 81.002, the fees and costs associated with the transfer are to be paid by the movant. TFC § 85.064(e).

The transferred order has the same effect as if it remained in the court that rendered it, and it may be enforced by the transferee court in the same manner as if that court had originally rendered it. The transferred order is enforceable by contempt or by any other means by which the court that rendered it could enforce it. The transferee court may punish a violation of the order regardless of whether it occurred before or after the date of the transfer. The transferred order is subject to modification by the transferee court to the same extent modification is permitted under Code chapter 87 by the court that rendered the order. TFC § 85.065.

5. Validity:

A protective order rendered under chapter 85 is valid and enforceable pending further action by the court that rendered the

order until it is properly superseded by another court with jurisdiction over the order. TFC § 85.009.

D. Venue

The application may be filed in the county in which the applicant resides or in the county in which the respondent resides. Tex. Fam. Code Ann. § 82.003 (Vernon Supp. 1998). See the discussion in section 14.3 of these practice notes concerning situations in which a party in a suit for dissolution of marriage or a suit affecting the parent-child relationship that is pending or in which a final order has been rendered seeks a protective order against another party to the suit.

E. Contents of Application

The application must state the name and county of residence of each applicant and the name, address, and county of residence of each individual alleged to have committed family violence; the relationships between the applicants and the individual alleged to have committed family violence; and a request for one or more protective orders. Tex. Fam. Code Ann. § 82.004 (Vernon Supp. 1998).

If an applicant is a former spouse of the individual alleged to have committed family violence, the application must include a copy of the decree dissolving the marriage or a statement that the decree is unavailable to the applicant and that a copy of the decree will be filed with the court before the hearing on the application. TFC § 82.006.

An application that requests a protective order for a child who is subject to the continuing jurisdiction of a court under title 5 of the Code or alleges that such a child has committed family violence must include a copy of each court order affecting the conservatorship, support, and possession of or access to the child or a statement that the orders affecting the child are unavailable to the applicant and that a copy of the orders will be filed with the court before the hearing on the application. TFC § 82.007.

An application that requests the issuance of a temporary ex parte order under chapter 83

of the Code must contain a detailed description of the facts and circumstances concerning the alleged family violence and the need for immediate protective orders, and it must be signed by each applicant under an oath that the facts and circumstances contained in the application are true to the best knowledge and belief of each applicant. TFC § 82.009.

If an application for a protective order alleges that the respondent has violated a previously rendered protective order by committing an act prohibited by the order and that the protective order has expired after the date that the violation occurred, the application for the new protective order must include-

1. a copy of the expired protective order attached to the application or, if a copy of the expired protective order is unavailable, a statement that the order is unavailable to the applicant and that a copy of the order will be filed with the court before the hearing on the application;

2. a description of the violation of the expired protective order; and

3. a statement that the violation of the expired order has not been grounds for any other order protecting the applicant that has been issued or requested under subtitle B of title 4.

F. Temporary Orders and Extraordinary Relief

An application for temporary ex parte orders must contain a detailed description of the facts and circumstances concerning the alleged family violence and the need for immediate protective orders, *and* it must be signed by each applicant under an oath that the facts and circumstances contained in the application are true to the *best knowledge and belief* of each applicant. Tex. Fam. Code Ann. § 82.009 (Vernon Supp. 1998). Section 71.004 defines the term *family violence* as "an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear

of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself or "abuse, as that term is defined by Sections 261.001(1)(C), (E), and (G) [physical injury or sexual abuse] by a member of a family or household toward a child of the family or household." TFC § 71.004.

The Court may include the following in the protective order:

- An order that the Respondent complete a battering intervention and prevention program;
- An order that the Respondent counsel with a social worker, family service agency, etc.;
- An order that the Respondent perform acts specified by the Court;
- An order prohibiting the Respondent from committing family violence;
- An order prohibiting the Respondent from communication with a member of the family or household;
- An order prohibiting the Respondent from going to or near the residence or place of employment of a member of the family or household;
- An order prohibiting the Respondent from engaging in conduct meant to harass, annoy or alarm the person;
- An order limiting the distance between the two parties; and
- An order suspending a license to carry a concealed handgun.

A temporary ex parte order is valid for the period specified in the order, not to exceed twenty days, and these orders may be extended on an applicant's request or on the court's own motion for additional twenty-day periods. TFC § 83.002.

Section 83.005 provides that during the time the order is valid, a temporary ex parte order prevails over any other court order made under title 5 of the Code to the extent of any conflict between the orders. TFC § 83.005.

Section 83.006 contains provisions regulating the circumstances under which a person may be excluded from the occupancy of the person's residence by an ex parte order, including a requirement that the applicant file a sworn affidavit providing a detailed description of the facts and circumstances requiring exclusion from the residence and that the applicant appear in person to testify at the ex parte hearing. *See* TFC § 83.006(a). For an ex parte order excluding a person from the person's residence to be granted, the court must find from the required affidavit and testimony that the applicant requesting the exclusion order either resides on the premises or has resided there within thirty days before the date the application was filed; that the person to be excluded has within the thirty days before the date the application was filed committed family violence against a member of the household; and that there is a clear and present danger that the person to be excluded is likely to commit family violence against a member of the household. TFC § 83.006(b).

The court may recess the hearing on a temporary ex parte order to contact the respondent by telephone and provide the respondent the opportunity to be present when the court resumes the hearing. Without regard to whether the respondent is able to be present at the hearing, the court shall resume the hearing before the end of the working day. TFC § 83.007.

On request by an applicant obtaining a temporary ex parte order that excludes the respondent from the respondent's residence, the court granting the temporary order shall render a written order to the sheriff, constable, or chief of police to provide a law enforcement officer from the department of the sheriff, constable, or chief of police to accompany the applicant to the residence covered by the order; to inform the respondent that the court has ordered that the respondent be excluded from the residence; to protect the applicant while the applicant takes possession of the residence; and to protect the applicant if the respondent refuses to vacate the residence while the applicant takes possession of the applicant's necessary personal property. TFC § 86.003.

G. Court

An application for a protective order may be filed in the district court, court of domestic relations, juvenile court having the jurisdiction of a district court, statutory county court, constitutional county court, or other court expressly given jurisdiction under title 4. Tex. Fam. Code Ann. § 71.002 (Vernon Supp. 1998).

H. Applicant

An application for a protective order to protect the applicant or any other member of the applicant's family or household may be filed by an adult member of the family or household or by any adult for the protection of a child. Tex. Fam. Code Ann. § 82.002(a) (Vernon Supp. 1998). In addition, an application may be filed for the protection of any person alleged to be a victim of family violence by a prosecuting attorney or by the Texas Department of Protective and Regulatory Services; in such a case, the alleged victim is considered to be the applicant. TFC § 82.002(b), (c). ("Prosecuting attorney" means the attorney who represents the state in a district or statutory county court in the county of proper venue who has responsibility for filing applications under title 4. *See* TFC §§ 71.007, 81.007.)

I. Fees and Costs

An applicant for a protective order or an attorney representing an applicant may not be assessed a fee, cost, charge, or expense by a district or county clerk of the court or a sheriff, constable, or other public official or employee in connection with the filing, serving, or entering of a protective order or for any other services described in section 81.002, including a fee to dismiss, modify, transfer, or withdraw a protective order. Tex. Fam. Code Ann. § 81.002 (Vernon Supp. 1998).

Except on a showing of good cause or of the indigence of a party found to have committed family violence, the court shall require in a protective order that the party against whom the order is rendered pay the \$16 protective order fee, the standard fees charged by the clerk of the court in a general civil proceeding for the cost of serving the order, the

costs of court, and all other fees, charges, or expenses incurred in connection with the protective order. TFC § 81.003(a). The court may order such fees paid by a party against whom an agreed protective order is rendered under Code section 85.005. TFC § 81.003(b).

A party who is ordered to pay fees and costs and who does not pay before the date specified by the order may be punished for contempt of court as provided by section 21.002 of the Government Code. TFC § 81.004(a). If the order does not specify a date, payment of costs is required before the sixtieth day after the date the order is rendered. TFC § 81.004(b).

The court may assess reasonable attorney's fees against the party who is found to have committed family violence or a party against whom an agreed protective order is rendered under section 85.005 as compensation for the services of a private or prosecuting attorney or an attorney employed by the Texas Department of Protective and Regulatory Services. TFC § 81.005(a). In setting the amount of attorney's fees, the court shall consider the income and ability to pay of the person against whom the fee is assessed. TTC § 81.005(b). The amount of fees collected, as compensation for the fees of a prosecuting attorney shall be paid to the credit of the county fund from which the salaries of employees of the prosecuting attorney are paid or supplemented. The fees collected as compensation for the fees of an attorney employed by the Department of Protective and Regulatory Services shall be deposited in the general revenue fund to the credit of the department. The fees collected as compensation for the fees of a private attorney shall be paid to the private attorney, who may enforce the order in the attorney's own name. TFC § 81.006.

J. Notice and Hearing

On the filing of an application for a protective order, a notice of the application must be served on each respondent. Tex. Fam. Code Ann. § 82.043(a) (Vernon Supp. 1998). The statute prescribes the contents of the notice. *See* TFC § 82.041. Notice is to be served in the same manner as citation under the Texas Rules of

Civil Procedure, except that service by publication is not authorized. TFC § 82.043(c). A temporary ex parte protective order under Code chapter 83 may be issued without service of the notice. TFC § 82.043(d).

Generally, a hearing must be scheduled for a date no later than the fourteenth day after the date the application is filed. TFC § 84.001(a). The hearing must be rescheduled (with no requirement of additional service) for a date no later than fourteen days after the date set for the hearing if the respondent receives service of the notice of application within forty-eight hours before the time set for the hearing and the respondent entitled to notice requests the rescheduling. TFC § 84.004.

If a scheduled hearing is not held because a respondent failed to receive service, the applicant may request a rescheduled hearing, which must be no later than fourteen days after the date of the request. TFC § 84.003. On request of a prosecutor in a county with a population of more than 1.5 million or in a county in a judicial district composed of more than one county, the district court shall set the hearing on a date and time no later than twenty days after the date the application was filed or, if rescheduled, no later than twenty days after the date a request to reschedule was made. TFC § 84.002(a).

The court may render a protective order that is binding on a respondent who does not attend a hearing if the respondent received service of the application and notice of the hearing. TFC § 85.006(a). If the court reschedules the hearing under chapter 84, a protective order may be rendered if the respondent does not attend the rescheduled hearing. TFC § 85.006(b).

K. Answer

A written answer to an application for a protective order is permitted but is not required and may be filed at any time before the hearing. Tex. Fam. Code Ann. § 82.021 (Vernon Supp 1998).

L. Findings and Orders

If, after the hearing, the court finds that family violence has occurred and is likely to occur in the future, the court shall render a protective order as provided by Code section 85.022 applying only to a person found to have committed family violence and may render a protective order as provided by section 85.021 applying to both parties that is in the best interest of the family or household or member thereof. Tex. Fam. Code Ann. §§ 81.001, 85.001(b) (Vernon Supp. 1998).

If the court finds that a respondent violated a protective order by committing an act prohibited by the order as provided by Code section 85.022, that the order was in effect at the time of the violation, and that the order has expired after the date that the violation occurred, the court shall render a protective order as provided by section 85.022 applying only to the respondent and may render a protective order as provided by section 85.021 without finding whether family violence is likely to occur again in the future or has occurred. TFC § 85.002.

If the court approves an agreement between the parties as authorized under section 85.005 (agreed orders), the court shall render a protective order that is in the best interest of the applicant, the family or household, or a member thereof. TFC § 85.005(c).

Requirements and prohibitions that may be contained in a protective order are set out in sections 85.021 and 85.022 of the Code.

Section 85.021 allows the court to prohibit the removal of a child or the encumbrance of property; prohibit the transfer or disposition of property; determine the right to the possession of a residence; direct a party to vacate a residence; provide for possession of and access to a child; require the payment of support for a party or a child of a party; or award a party the use and possession of property. TFC § 85.021.

Section 85.022 allows the court to order the person found to have committed family violence to complete a battering intervention and

prevention program as provided by article 42.141 of the Texas Code of Criminal Procedure and that meets the guidelines adopted by the community justice assistance division of the Texas Department of Criminal Justice if one is available; to attend counseling if such a program is not available; or to perform specified acts that the court finds are necessary or appropriate to prevent or reduce the likelihood of family violence. TFC § 85.022(a). Section 85.022 also allows the court to prohibit the person found to have committed family violence from committing family violence; communicating with a family or household member; going near the residence, school, child-care facility, or place of employment or business of a member of the family or household; and engaging in conduct directed specifically toward a person who is a member of the family or household that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass that person, including following that person. TFC § 85.022(b).

M. Confidentiality of Certain Information

On request by a member of a family or household, the court may exclude from a protective order the address and telephone number of a person protected by the order (specifying only the county of residence), the place of employment or business of a person protected by the order, or the child-care facility or school a child protected by the order attends or in which the child resides. Tex. Fam. Code Ann. § 85.007(a) (Vernon Supp. 1998). If so, the court shall order the clerk to strike that information from the public records and maintain a confidential record of that information solely for the court's use. TFC § 85.007(b).

In a protective order under section 85.022(b)(3) or (4), the court shall specifically describe each prohibited location and the minimum distances from the residence, school, child-care facility, or place of employment that the party must maintain unless the location information is excluded under section 85.007 because of the need for confidentiality. TFC § 85.022(c).

N. Agreed Orders

Code section 85.005 prescribes the method for an agreement in writing by a party or parties. Once the court approves the agreement, the court shall render an agreed protective order that is in the best interest of the applicant, the family or household, or a member of the family or household.-Tex. Fam. Code Ann. § 85.005(c) (Vernon Supp. 1998).

The parties may agree in writing to the terms of a protective order under Code section 85.021, subject to the court's approval. TFC § 85.005(a). A respondent may agree in writing, subject to court approval, to the terms of a protective order under section 85.022. The court may not approve an agreement that requires the applicant to do or refrain from doing an act under section 85.022. TFC § 85.005(b).

An agreed protective order is not enforceable as a contract, and it expires on the date the court order expires. TFC § 85.005(e).

O. Modification of Orders

On the motion of any party, the court, after notice and hearing, may modify an existing order to exclude any item included in the order or include any item that could have been included in the order. Tex. Fam. Code Ann. § 87.001 (Vernon Supp. 1998). A protective order may not be modified to extend the period of the order's validity beyond the first anniversary of the date the original order was rendered. TFC § 87.002. Notice of a motion to modify is sufficient if delivery of the motion is attempted on the respondent at the respondent's last known address by registered or certified mail as provided by rule 21a of the Texas Rules of Civil Procedure. TFC § 87.003.

If a protective order includes an address or telephone number of a person protected by the order, of that person's place of employment or business, or of the school or child-care facility of a child protected by the order and the information is not confidential under Code section 85.007, the person protected by the order may file a notification of change of address or telephone number with the court that rendered

the order to modify the information contained in the order. The clerk shall attach the notification to the order and shall deliver a copy of the notification to the respondent by registered or certified mail under rule 21a of the Texas Rules of Civil Procedure. The filing of the notification and its attachment to the order do not affect the validity of the order. TFC § 87.004.

P. Violations of Protective Orders or Magistrate's Order

Section 25.07 of the Penal Code encompasses the pertinent elements of title 4 of the Family Code and may subject a violator of certain provisions of a protective order issued under Family Code sections 3.581, 71.11, or 71.12 to felony sanctions. An offense under Penal Code section 25.07 is a class A misdemeanor, unless it is shown at trial that the defendant has been convicted previously under that section two or more times or has violated the protective order by committing assault or stalking; in that case the offense is a third degree felony. Tex. Penal Code Ann. § 25.07 (Vernon Supp. 1998).

Each protective order issued under subtitle B, title 4, must contain warnings about the possible punishments for violation of the order. The warnings must be in bold-faced type or capital letters, and their wording is prescribed by statute. Tex. Fam. Code Ann. § 85.026 (Vernon Supp. 1998).

A person arrested or held without a warrant in the prevention of family violence may be detained if there is probable cause to believe the violence will continue if the person is immediately released. The person may be held after bond has been posted for a period of not more than four hours; in some cases the period may be extended, but not to exceed twenty-four hours. Tex. Code Crim. Proc. Ann. art. 17.291 (Vernon Supp. 1998).

A magistrate may issue an order for emergency protection that prohibits a defendant under arrest for an offense involving family violence or stalking- who appears before the magistrate, from committing family violence, communicating in a threatening manner, or

going to or near the residence, place of employment or business, or school or child-care facility of protected persons. To the extent the order for emergency protection conflicts with an existing court order granting possession of or access to a child, the order for emergency protection prevails for its duration, which is thirty-one days. An order for emergency protection must contain prescribed statements in bold-faced type or capital letters. TCCP art. 17.292.

Q. Counseling

Among the provisions a protective order may contain is a requirement that the person found to have committed family violence complete a battering intervention and prevention program meeting specified criteria if such a program is available or, if such a program is not available, to counsel with a social worker, family service agency, physician, psychologist, licensed therapist, or licensed professional counselor. Tex. Fam. Code. Ann. § 85.022(a)(1), (2) Supp.1998).

A person found to have engaged in family violence who is ordered to undergo such a program or counseling shall file with the court an affidavit before the sixtieth day after the date the order was rendered stating either that the person has begun the program or counseling or that the program or counseling is not available within a reasonable distance from the person's residence. A person who files an affidavit that the person has begun the program or counseling must file with the court before the date the protective order expires a statement that the person completed the program or counseling not later than the thirtieth day before the order expires. The affidavit must be accompanied by a letter, notice, or certificate from the program or counselor verifying the person's completion of the program or counseling. A person who does not comply with these requirements may be punished for contempt of court under section 21.002 of the Government Code. TFC § 85.024(a). The protective order must specifically advise the person of this provision and the possible punishment if the person fails to comply. TFC § 85.024(b).

R. Request by Respondent for Protective Order

To apply for a protective order, a respondent to an application for a protective order must file a separate application. Tex. Fam. Code Ann. § 82.022 (Vernon Supp. 1998).

A court may not delay a hearing on an application in order to consolidate it with a hearing on a subsequently filed application. TFC § 84.001(b).

A court may not render one protective order under section 85.022 that applies to both parties. TFC § 85.003(c).

A court that renders protective orders that apply to both parties and require both parties to do or refrain from doing acts under section 85.022 shall render the protective orders in two separate documents. The court shall provide one of the documents to the applicant and the other document to the respondent. TFC § 85.003(b).

S. Copies of Orders

A protective order made under Family Code subtitle B, title 4, shall be delivered to the respondent as provided by rule 21a of the Texas Rules of Civil Procedure, served in the same manner as a writ of injunction, or served in open court at the close of the hearing as provided by Code section 85.041. Tex. Fam. Code Ann. § 85.041(a) (Vernon Supp. 1998).

The court shall serve an order in open court to a respondent who is present at the hearing by giving to the respondent a copy of the order, reduced to writing and signed by the judge or master. A certified copy of the signed order shall be given to the applicant at the same time. If the applicant is not in court at the conclusion of the hearing, the clerk of the court shall mail a certified copy of the order to the applicant no later than the third business day after the date the hearing is concluded. TFC § 85.041(b).

If the order has not been reduced to writing, the court shall give notice orally to a respondent who is present at the hearing of the

A protective order that requires the first applicant to do or refrain from doing an act under section 85.022 shall include a finding that the first applicant has committed family violence and is likely to commit family violence in the future. TFC § 85.001(c).

A court that renders separate protective orders that apply to both parties and require both parties to do or refrain from doing acts under section 85.022 shall render two distinct and separate protective orders that reflect the appropriate conditions for each party. TFC § 85.003(a).

part of the order that contains prohibitions under section 85.022 or any other part of the order that contains provisions necessary to prevent further family violence. The clerk of the court shall mail a copy of the order to the respondent and a certified copy to the applicant no later than the third business day after the date the hearing is concluded. TFC § 85.041(c).

If the respondent is not present at the hearing and the order has been reduced to writing at the conclusion of the hearing, the clerk of the court shall immediately provide a certified copy of the order to the applicant and mail a copy to the respondent no later than the third business day after the date the hearing is concluded. TFC § 85.041(d).

The court clerk shall send a copy of a protective order under subtitle B, title 4, whether the order is original or modified, along with the information provided by the applicant or the applicant's attorney that is required under section 411.042(b)(5) of the Texas Government Code, to the chief of police of the municipality where the protected person resides, if the person resides in a municipality, or to the appropriate constable and the sheriff of the county where the person resides, if the person does not reside in a municipality. The chief of police or constable and sheriff shall enter the information into the statewide law enforcement information system. TFC § 85.042(a). If an original or modified protective order is vacated, the clerk shall so notify the chief of police or constable and sheriff

who received a copy of the original or modified order. TFC § 85.042(c).

If the order prohibits a respondent from going to or near a child-care facility or school, the clerk of the court shall send a copy of it to the facility or school. TFC § 85.042(b).

The applicant or the applicant's attorney shall provide the clerk of the court with the name and address of each law enforcement agency, childcare facility, and school to which the clerk is required to mail a copy of the order, along with any other information required under section 411.042(b)(5) of the Texas Government Code.

T. Duration of Protective Orders

An order made under Family Code subtitle B, title 4, is effective for the period stated in the order, not to exceed two years. An order that does not specify a period in which it is effective expires on the second anniversary of the date the order was issued. Tex. Fam. Code Ann. § 85.025 (Vernon Supp. 1998).

U. Duties of Law Enforcement Officers

1. Exclusions from Residence:

On request by an applicant obtaining a temporary ex parte order that excludes the respondent from the respondent's residence, the court granting the temporary order shall render a written order to the sheriff, constable, or chief of police to provide a law enforcement officer from the department of the sheriff, constable, or chief of police to accompany the applicant to the residence covered by the order; to inform the respondent that the court has ordered that the respondent be excluded from the residence; to protect the applicant while the applicant takes possession of the residence; and to protect the applicant if the respondent refuses to vacate the residence while the applicant takes possession of the applicant's necessary personal property. Tex. Fam. Code Ann. § 86.003 (Vernon Supp. 1998).

On request by an applicant obtaining a final order that excludes the respondent from the respondent's residence, the court granting the final order shall render a written order to the

sheriff, constable, or chief of police to provide a law enforcement officer from the department of the sheriff, constable, or chief of police to accompany the applicant to the residence covered by the order; to inform the respondent that the court has ordered that the respondent be excluded from the residence; to protect the applicant while the applicant takes possession of the residence and the respondent takes possession of the respondent's necessary personal property; and, if the respondent refuses to vacate the residence, to remove the respondent from the residence and arrest the respondent for violating the court order. TFC § 86.004.

2. Awareness of Protective Orders:

To ensure that law enforcement officers responding to calls are aware of the existence and terms of protective orders issued under subtitle B, title 4, each law enforcement agency shall establish procedures in the agency to provide adequate information or access to information for law enforcement officers of the names of each person protected by an order issued under subtitle B, title 4, and of each person against whom protective orders are directed. TFC § 86.001(a).

A law enforcement agency may enter a protective order in the agency's computer record of outstanding warrants as notice that the order has been issued and is currently in effect. On receipt of notification by a clerk of court that the court has vacated or dismissed an order, the law enforcement agency shall remove the order from those records. TFC § 86.001(b).

To ensure that law enforcement officers responding to calls are aware of the existence and terms of protective orders from other jurisdictions, each law enforcement agency shall establish procedures to provide adequate information or access to information for officers about the name of each person protected by an order rendered in another jurisdiction and of each person against whom the order is directed. Unless an officer knows the order has expired, the officer shall rely on a copy of a protective order from another jurisdiction that has been provided to the officer by any source and the

statement by the protected person that the order remains in effect. An officer acting in good faith is not subject to civil or criminal liability in connection with enforcing a protective order from another jurisdiction that a court later determines was not entitled to full faith and credit. TFC § 86.005.

3. Firearms transfer Information:

On receipt of a request for a law enforcement information system record check of a prospective transferee by a licensed firearms dealer under the Brady Handgun Violence Prevention Act (18 U.S.C.A. § 922 (West Pamph. Supp. 1998)), the chief law enforcement officer shall determine whether the Department of Public Safety has in its law enforcement information system a record indicating the existence of an active protective order directed to the prospective transferee. If so, the chief law enforcement officer shall immediately advise the dealer that the transfer is prohibited. TFC § 86.002.

V. Protective Orders from Other Jurisdictions

In most cases a protective order from another jurisdiction is to be accorded full faith and credit by Texas courts and enforced as if the order were rendered by a Texas court. However, a protective order from another jurisdiction rendered against both the applicant and the respondent is not enforceable against the applicant in Texas unless the respondent filed a written pleading seeking a protective order against the applicant and the issuing court determined that each party was entitled to a protective order. Tex. Fam. Code Ann. § 88.001 (Vernon Supp. 1998). A protective order from another jurisdiction is presumed to be valid if it appears authentic on its face. TFC § 88.002.

In an action to enforce a protective order from another jurisdiction, it is an affirmative defense that the respondent was not given reasonable notice and an opportunity to be heard consistent with due process either before the date the order was rendered or, in the case of an ex parte order, within the time required by the jurisdiction rendering the order after the date the

order was rendered, but not later than a reasonable time. TFC § 88.003.

A protective order from another jurisdiction may be enforced even if the order is not entered into the state law enforcement information system maintained by the Texas Department of Public Safety. TFC § 88.004.

The duties of law enforcement agencies and officers regarding protective orders from other jurisdictions are specified in Code section 86.005. See the discussion in section 14.22 of these practice notes.

RELATED LAWS AND THEIR IMPACT ON OR BY PROTECTIVE ORDERS

Several other provisions of Texas law, described below, relate to the prevention of family violence.

The Department of Public Safety shall collect information about the number and nature of protective orders and all other pertinent information about all persons on active protective orders. Tex. Gov't Code Ann. § 411.042(b)(5) (Vernon Pamph. Supp. 1998).

A. Affect on ability to own a firearm

Family violence can affect an individual's ability to possess a handgun in two (2) different ways. According to §411.172(a)(13) of the Government Code, a person is not eligible for a license to carry a concealed handgun if the person is restricted by a court protective order or subject to a restraining order affecting the spousal relationship, other than a restraining order solely affecting property interests. Also, as a term of the protective order, a Court may suspend a Respondent's right to carry a concealed handgun. See TFC §85.022.

A person commits an offense if he sells, rents, leases, loans, or gives a handgun to any person knowing that an active protective order is directed to the person to whom the handgun is to be delivered. Further, a person against whom an active protective order is directed commits an offense if he knowingly purchases, rents, leases, or receives as a loan or gift a handgun. Tex.

Penal Code Ann. § 46.06(a)(5), (6) (Vernon Supp. 1998).

B. Other “Criminal Ramifications”

A peace officer who investigates a family violence allegation shall advise a possible victim of all reasonable means to prevent further violence, including:

- Written notice of a victim’s legal rights and remedies; and
- The availability of shelters or other community service.

See CCP §5.04.

At the peace officer’s discretion, the office may stay with the victim or take the victim to a place of safety. See CCP §5.045. A peace officer who investigates a family violence call, that may involve family violence, is required to make a written report. See CCP §5.05.

A peace officer may arrest without a warrant persons the officer has probable cause to believe have committed an assault to a member of the person’s family or household. See CCP §14.03(a). A peace officer shall arrest a person whom the officer has probable cause to believe violated a protective order under TPC §25.07. See CCP §14.03(b).

After an arrest for family violence, a magistrate may issue an order for emergency protection. See CCP §17.292(a). The head of the agency arresting or holding the person may hold a person arrested for family violence for up to four (4) hours after bond has been posted. A magistrate may extend such detention for a period of not more than twenty-four (24) hours upon a finding that the violence would continue if the person is released. See CCO §17.291.

Violation of a protective order is a Class A misdemeanor unless the Defendant has been previously convicted two or more times or has violated the protective order by committing an assault (TPC §22.01) or the offense of stalking which would result in a third degree felony charge. See TPC 25.07(g).

The agency releasing a person arrested or held without warrant for prevention of family violence shall make a reasonable attempt to notify the victim of the imminent release. TCCP art. 17.29.

C. Affect on eligibility for spousal maintenance

A conviction or even deferred adjudication of family violence can affect a divorce case in a financial way as well. A spouse may be eligible for spousal maintenance if the spouse from whom maintenance is requested was convicted of or received deferred adjudication for a criminal offense that also constitutes an act of family violence under Title 4 of the Texas Family Code within two years before the date on which the divorce was filed or while the suit is pending. See TFC §8.002

The spousal privilege not to be called as a witness for the state does not apply if the offense charged is a crime committed against the accused person’s spouse, a minor child, or a member of the household of either spouse. Tex. Code Crim. Proc. Ann. art. 38.10 (Vernon Supp. 1998).

D. Affect on Custody

The Texas Family Code specifically provides that the court *shall* consider evidence of family violence when determining whether to appoint a party as a sole or joint managing conservator. There is a limitation, however, that the abuse must have been committed within a two-year period preceding the filing of the suit or during the pendency of the suit. See TFC §153.004(a). The Court *may not* appoint joint managing conservators if credible evidence is presented of a history or pattern of past or present child neglect, or physical or sexual abuse by one parent directed against the other parent, a spouse, or a child. See §153.004(b).

E. Affect on Visitation

The Texas Family Code further mandates that the Court *shall* consider the commission of family violence in determining whether to deny, restrict or limit the possession

of a child by a parent who is appointed as a possessory conservator. See TFC §153.004(c).

If there is a history or pattern of committing family violence during the two years preceding the date of the filing of the suit or during the pendency of the suit, the Court *may not* allow a parent to have access to a child unless:

1. The Court finds that awarding the parent access to the child would not endanger the child's physical health or emotional welfare and would be in the best interest of the child; and

2. The Court renders a possession order designed to protect the safety and well-being of the child. Such possession order may include provisions that:

- The periods of access be supervised;
- The exchange of possession of the child be in a protective setting;
- The parent abstain from the consumption of alcohol or a controlled substance within 12 hours prior to or during the period of access to the child; and/or
- The parent attend and complete a battering intervention and prevention program.

See TFC §153.004(d).

CHARACTERISTICS OF THE VICTIM

- Self-destructive tendencies;
- Significant adjustment difficulties and problems related to both interpersonal and sexual relationships with males and females;
- Abuse their offspring, thus perpetuating abuse of the next generation;
- Depression
- Anxiety
- Traumatic stress
- Feeling of isolation

- Poor self-esteem
- Tendency toward re-victimization
- Substance abuse
- Difficulties in trusting others
- Sexual maladjustment in adulthood
- White and black women have equivalent rates of violence committed by intimates;
- Women age 20-34 have the highest rates of violent victimization;
- Women who graduated from college have the lowest rates of violence;
- Women with family incomes under \$9,999 have the highest rates of violence;
- Divorced or separate women have higher rates of violence compared to married women or women who never married

CHARACTERISTICS OF THE ABUSER

- Rigid and traditional views of sex roles and parenting;
- Focused on own needs;
- A facade of propriety;
- Underlying dependence or insecurity;
- Conventional behavior in many areas;
- Rigid attitudes;
- Jealousy or lack of trust;
- Fear of intimacy;
- Chronic anger/explosiveness
- Loss of self-control
- Drug/alcohol abuse;
- Denial of responsibility for violent behavior
- Depression
- Low self-esteem
- Controlling behavior
- Emotional abuse
- Isolation/loneliness
- Violence in family of origin/abuse by parents

HOW TO HANDLE AN ABUSED CLIENT

CONSIDER THE FOLLOWING.

- Be sensitive to the possibility of false or exaggerated complaints.
- Be objective.
- Remember not all abusers and victims go through the “cycle of violence”
- Review the history of abuse before getting a Temporary Restraining Order or Protective Order. Consider whether it will help or hinder the situation.
- If there is significant abuse, your client needs more protection than a Temporary Restraining Order can provide.
- If your client is in danger, encourage them to go to a shelter or “safe house”.

RESOURCES AVAILABLE TO YOUR CLIENT.

- National Domestic Violence Hotline/National Coalition Against Domestic Violence
1-800-799-SAFE
- National Resource for Domestic Violence
1-800-537-2238
- Texas Family Violence Legal Line
1-800-374-HOPE
- Texas Council on Family Violence
512-794-1133
- American Bar Association
Commission on Domestic Violence
202-662-1737
- Women’s Haven of Tarrant County, Inc.
817-536-5496
- The Women’s Shelter (Arlington)
817-460-5566

- Open Arms Home, Inc. (North Richland Hills)
817-281-1204

APPLICABLE CASE LAW

A. No Mutual Protective Orders

Moreno v. Moore, 897 S.W.2d 439 (Tex. Civ. App. – Corpus Christi 1995, no writ)

Wife filed an application for a protective order. Husband did not file a responsive pleading or an application for a protective order against Wife. The trial court held a hearing and after testimony from both parties, the Court announced it was not going to sign a protective order unless it was mutual. Wife’s attorney objected on the basis that the Texas Family Code prohibited it. The Court advised Wife’s counsel to “get somebody else” to hear it and entered a mutual protective order against Husband and Wife. Wife appealed. The Court of Appeals dissolved the protective order against Wife based on TFC §71.121 which prohibits the Court from entering a single protective order that applies to both respondent and applicant. If further requires Husband to file a separate application for protective order against Wife.

B. Jurisdiction

1. *Ruiz v. Ruiz*, 946 S.W.2d 123 (Tex. Civ. App. – El Paso 1997, no writ) – A protective order entered while a divorce proceeding is pending between the same parties is not a final judgment, thus is not appealable.

2. *Normand v. Fox*, 940 S.W. 2d 401 (Tex. Civ. App. – Waco 1997, no writ) – The Court of Appeals considered whether they had jurisdiction to hear an appeal of a protective order since their jurisdiction is limited to final judgments. Protective orders entered under Chapter 71 of the TFC are effective for a period not to exceed one (1) year, however, during that time the Court retains jurisdiction to modify the order. The Court compared a protective order to

an order affecting the parent-child relationship of which the Court also retains jurisdiction to modify. The Texas Family Code, however, specifically provides that a suit for modification of the parent-child relationship is a new suit filed after the rendition of a final order. Chapter 71, in contrast, does not contain a similar provision, therefore making it not a final appealable order. The Court concluded that the proper vehicle to complain of a protective order entered under the TFC is a writ of mandamus.

3. *James v. Hubbard*, 985 S.W.2d 516 (Tex. Civ. App. – San Antonio 1998, no writ) – The Court held that an injunction is permanent if the duration of the injunctive relief does not depend on any further order of the Court. The Court held that the protective order in this case which had a duration of one (1) year, was a permanent injunction and a final, appealable order. The Court also requested that the Supreme Court of Texas resolve the conflict arising from this decision and the *Normand* case.

C. Specificity of the Order

Collins v. The State of Texas, 955 S.W.2d 464 (Tex. Civ. App. – Fort Worth 1997, no writ) – A protective order was entered against Husband which prohibited him from going to or near the residence or place of employment of Wife. Husband was charged with violating the protective order. Husband was convicted and appealed on the grounds that the provision restricting him was vague in that it did not include any minimum distance he was to remain from Wife thus violating TFC §71.11. The Court, however, affirmed the conviction ruling that TFC §71.11 requires the Court to specifically describe prohibited locations and only minimum distances, *if any*. The section only requires a distance to be set if there is one.

D. Service on Respondent

Poteet v. The State of Texas, 957 S.W.2d 165 (Tex. Civ. Appeals – Fort Worth 1997, no writ) – Husband was convicted of violating a protective order. Husband appealed on the grounds that there was no evidence he received the protective order (although he never testified that he did not receive it), thus making the protective order invalid. Although Husband was

present in Court when the protective order was issued, he claims that he did not receive a copy. TFC §71.17 states that a protective order must be delivered to Respondent in accordance with TRCP 21a *or* be served in open court at the conclusion of the hearing. In this case, because Husband waived a record, the Court assumed that the protective order was served on him in open court.

E. Custody/Visitation

(1) *In the Interest of M.R.*, 975 S.W.2d 51 (Tex. Civ. App. – San Antonio 1998, no writ) – Mom was given managing conservatorship and Dad was awarded supervised visitation. Dad later (in 1997) motioned the Court to modify custody. Mom introduced evidence at trial that Dad had an alcohol problem and had committed violent acts against her two (2) years before. Mom tried to introduce assault charges against Dad in 1996. The Court refused to hear the evidence and awarded Dad custody with Mom having supervised visitation. Mom appealed. The Court of Appeals reversed and remanded the case based on TFC §153.004 which requires a Court to consider abusive physical force committed within two (2) years preceding the divorce. The Court further found that TRE 609(a) (admissibility of evidence or prior convictions) was not relevant because the TFC did not require a conviction of family violence in order to introduce evidence, only credible evidence that the violence occurred.

(2) TWO BLACK EYES AND A DRAGGING DO NOT CREATE A PATTERN OF ABUSE – *Pena v. Pena*, 986 S.W.2d 696 (Tex. App.—Corpus Christi 1998)

Facts: Although the mother presented evidence that the father gave her black eyes on two occasions, dragged her, and sold drugs out of their home, the trial court appointed the parents as joint managing conservators (JMC). The trial judge happened to be a client of the father's attorney. The mother appealed the JMC, claiming credible evidence of family violence precluded the father's appointment as a JMC, and claiming the trial judge was disqualified

from hearing the case because of his relationship with the father's attorney.

Held: Affirmed; mother failed to show pattern of abuse to overcome father's appointment as JMC.

Opinion: Section 153.004 states that a trial court "shall" consider evidence of family violence in determining whether to appoint a party as sole or JMC. A court may not appoint JMC's if credible evidence is presented of a "history or pattern" of past family violence exists. The mother testified to two hitting incidents and one incident when the father dragged her. This evidence "does not necessarily establish a history or pattern of abuse sufficient to prohibit a court from ordering a [JMC]." The phrase "history or pattern" is not defined but pattern has been "interpreted to require more than merely repeated instances of the prohibited conduct, but must include some relationship among the separate instances that tends to connect them and to show a threat of continuing violations." In the present case, the mother's testimony only vaguely connected the two hitting incidents. "We do not know who initiated the arguments, whether the hittings were provoked in any manner, ...or any other relevant details that may show a relationship, connection or predictable 'pattern' of physical abuse." The facts do not establish such a pattern as a matter of law. As for the mother's argument that appointment of her as sole M.C. would be in her children's best interest, the appellate court noted that the trial court has wide discretion and that evidence, both pro and con, about the father's parenting had been presented as evidence. The "great weight of the evidence did not predominate in favor of appointing [the mother] sole managing conservator...."

Summary. The mother argued the trial judge was disqualified to hear a custody dispute because he had an interest in the outcome due to his attorney-client relationship with the father's attorney. A judge may be constitutionally disqualified or subject to disqualification under TEX. GOV'T CODE § 74.053(d), or may be recused from the case. In the present case, the father's attorney also represented the trial judge

in an unrelated matter. To be disqualified, in general, a judge must have a direct pecuniary or property interest in the subject matter of litigation. "Moreover, the Texas Supreme Court has indirectly rejected the claim that an attorney-client relationship between the trial judge and opposing counsel amounts to a constitutionally disqualifying interest in the litigation.... In this case, the trial judge's attorney-client relationship with the opposing counsel did not amount to a constitutional disqualification. The mother could have filed a motion to recuse the judge, but she did not. She waived her claim for recusal by failing to specifically request it by a verified TEX. R. Civ. P. 18a motion.

Editor's Note: What happens if a spouse abuses the other spouse just for the pure hell of it, randomly, and for no reason, and just once? Will the victim-spouse be able to establish a "pattern" of abuse sufficient to justify a denial of JMC? I guess not. JJS.

(3) *State of California v. Brown*

This is a case of California versus the Football Hall of Famer, Jim Brown. Brown had been convicted of family violence in the State of California. Judge Dale S. Fischer had found Brown to have committed family violence, as a result of a jury convicting him of vandalizing his wife's car, during a June 15th argument at their Hollywood Hills home. Monique Brown, who was 25 at the time, was not injured. Simply enough, Brown yelled at Monique, and took a set of keys and scratched the car that he had bought for her. Based upon this conviction, Brown was ordered to do 40 hours of community service, as well as participate for 1 year, in domestic violence counseling. Brown did not perform the community service, nor participate in the counseling. As a result, the Judge revoked his 3 year probation term. Brown indicated that he was ready to go to jail, and stated, "You cannot take my dignity. You cannot take my manhood." Brown said after he was sentenced to jail, "Fifteen years, 20 years, 27 years, Nelson Mandela, spent to fight apartheid in South Africa. That man could stand up for being a man. I need to stand up for being a

man, but the Court system, but the Court system in the State of California is corrupted, and what I did was not violence, nor was it perpetrated against a person.” I wonder what would have been the circumstances in California had he blacked Monique’s eyes and jerked her out of that car and drug her up the driveway by a shank of hair?

CONCLUSION

Domestic violence is a serious problem. It should not be tolerated. Every young man should have been taught by his mother, and if not by her, then by his grandmother, you do not hit girls, women, or children. I am assuming that young ladies are taught the same thing about hitting boys, men and children. But, in spite of these common sense rules, folks continue to be mean to each other.

The State of Texas, as well as the United States, takes a dim view as to family violence. Local governments have become more involved in the process of prevention, and intervention. However, it should be understood that the criminal justice system is an important tool in attempting to deal with this problem. As an example, the Commissioner’s Court of Tarrant County, recently sought a State grant, for a 12-month program that would allow first time domestic violence defenders to bypass prosecution while providing support services to female victims. Note, however, that there is not support service to male victims and I assume that we must presume that there are no male victims!

The Violence Against Women Fund would provide \$253,000 to support the Domestic Intervention Project, with matching funds from the County, of half of that sum.

In 1998, law enforcement agencies in Tarrant County alone, reported 8,266 cases of domestic violence, according to information provided by Jerry Rucker, grant manager of the Tarrant County Sheriff’s department. Under the proposed pretrial program, several county agencies and volunteer advocacy groups would work together to tackle the

domestic violence problem cases in their early stages. It will be interesting to see if this program will really work. Some of the funds will be used to carry out the brain child idea of Judge Jamie Cummings, a county criminal court judge in Tarrant County. This program allows first time offenders to participate. Indications are that the “ideal candidate is a man who has power and control issues, and not problems with drugs or alcohol.” People with prior arrests or convictions, mental problems, or substance abuse problems would not be included in the program. Those offenders who are accepted into the program will be required to appear at least twice a week in night court, in addition to receiving treatment, for up to two years. At the same time, the offenders partner would be receiving help and counseling through another arm the same program. If the offender does not complete the program, the case is then returned to the traditional process of the criminal justice system.

It is not the author’s intent to make light of family violence. It is a serious problem that permeates our society. Our society should not tolerate family violence, but our criminal justice system is often blind to false allegations, trumped up charges, actions that are truly defensive, as opposed to offensive, with little fault being given to the overall impact on the family unit, be they emotional, physical, financial, or otherwise destructive. Experts indicate that in almost every circumstance the recipient of the violence has received multiple prior transgressions that the individual did not seek help until serious injury resulted, or in some circumstances, for economic benefit. A very high percentage return to the same situation and endure the torment again and again. Working with the offenders is a part of the solution, but working with, and strengthening the victims, is perhaps, an even more important part of what the process should be.