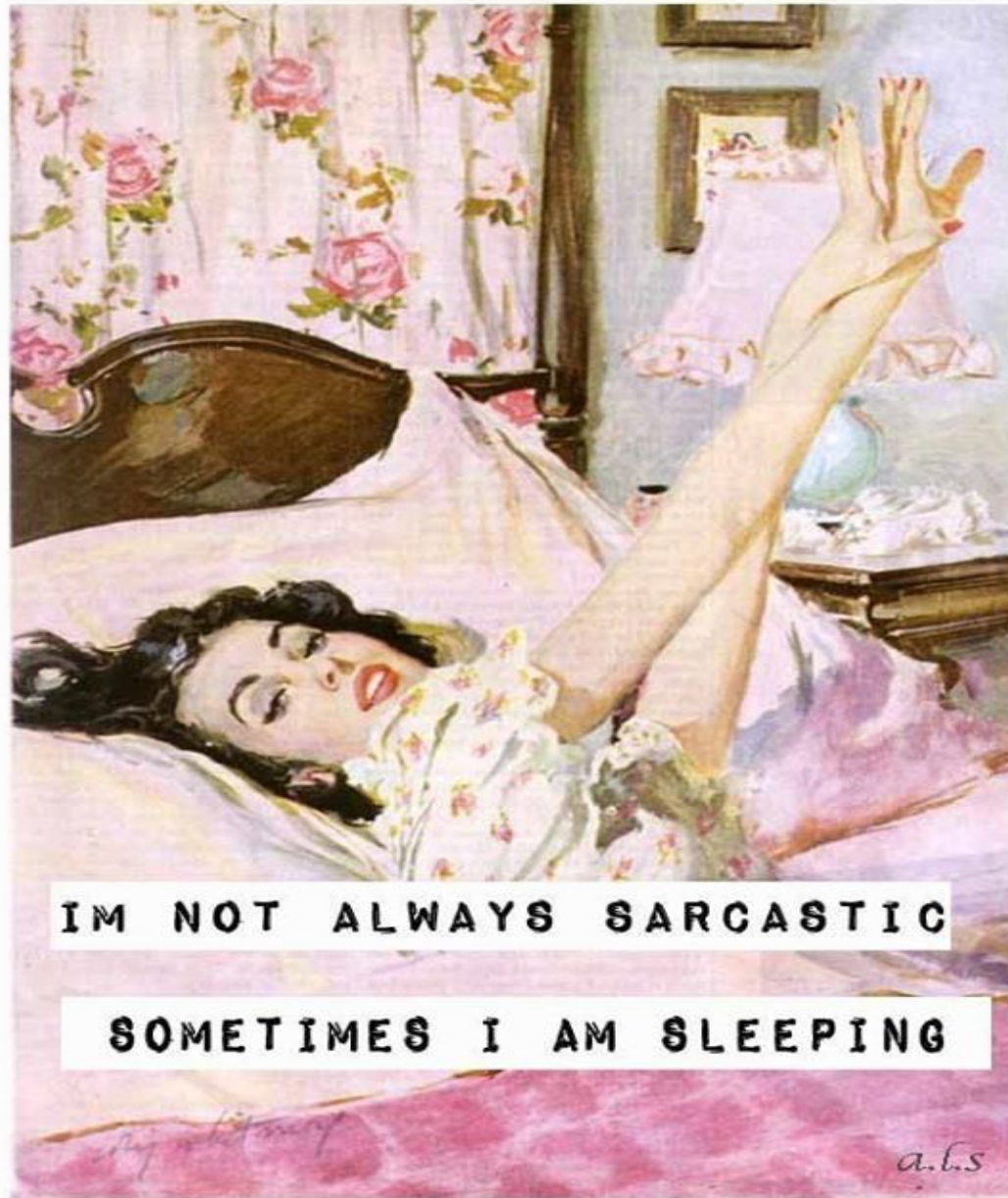


A Matter of Life and Death: Protective Orders and Misdemeanor Crimes of Domestic Violence

Kimberly Piechowiak
Domestic Violence Training Attorney
Office of Court Administration







You have to
either
laugh OR
CRY.
I prefer to laugh.

-Marjorie Hinckley



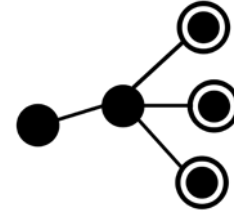


"Sustained. Prosecution will refrain from going 'dun dun *dunnnnnnn*...' during the witness' testimony."

Agenda



Dynamics and Prevalence



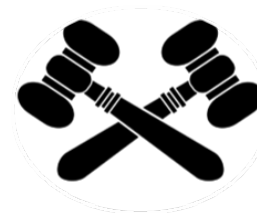
Potential Indicators of Future Violence



Link between DV and Mass Shootings

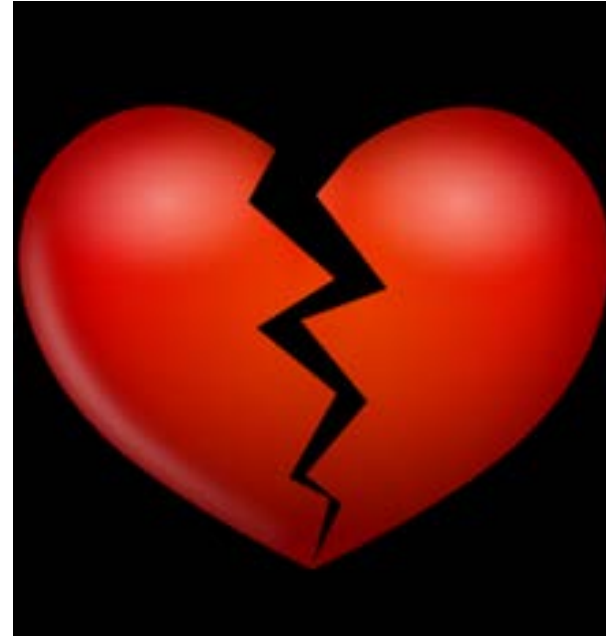


P.O. Reporting



Misdemeanor Crimes of Domestic Violence

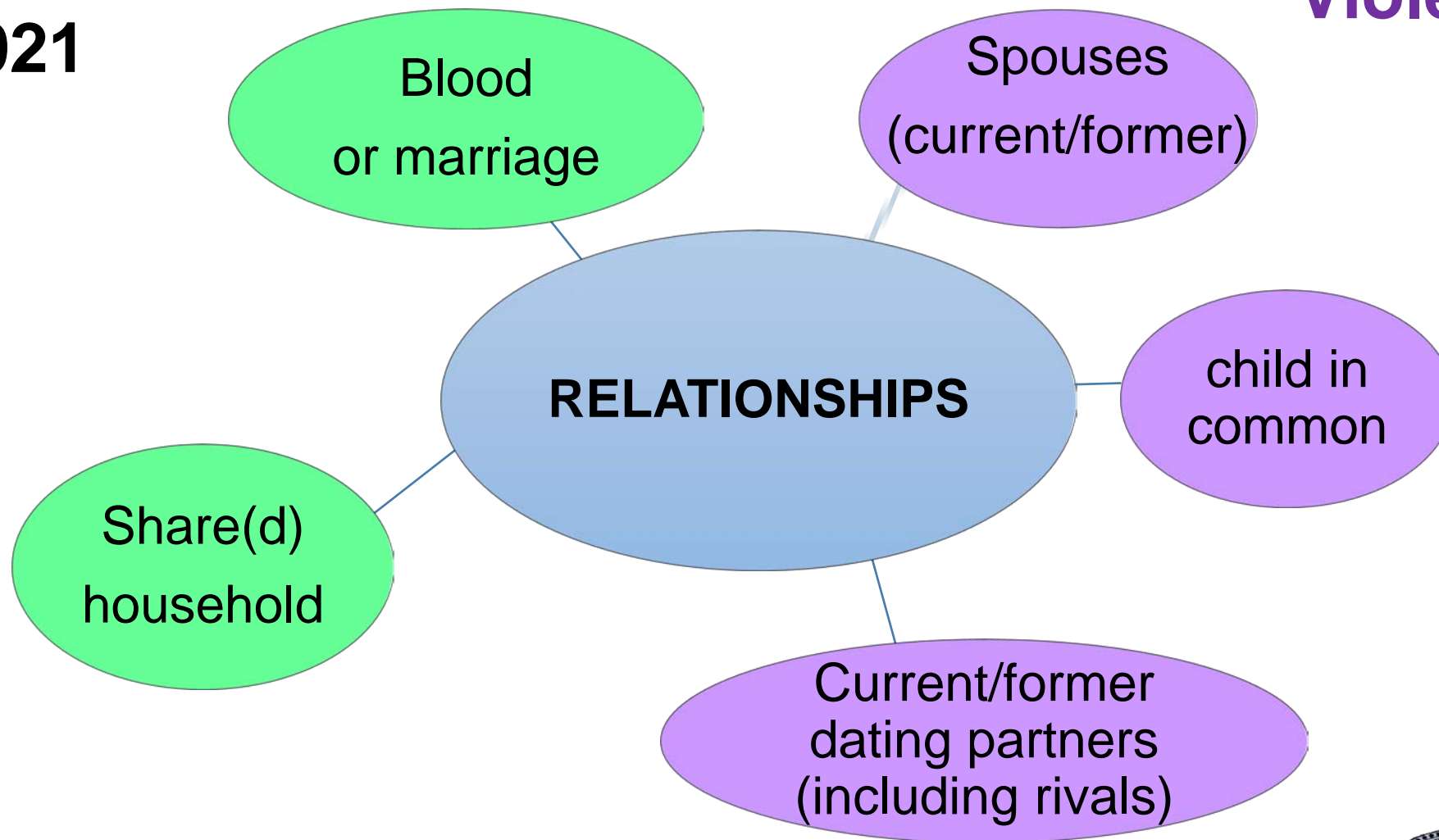
Dynamics and Prevalence





“Family Violence” TFC §§ 71.002 and 71.0021

Domestic Violence





1 IN 3 WOMEN
AND
1 IN 4 MEN
EXPERIENCE **DOMESTIC VIOLENCE.**



National Domestic Violence Hotline

<https://www.thehotline.org/resources/statistics/>

1 in 4 women (24.3%) and **1 in 7 men** (13.8%) aged 18 and older in the United States have been the victim of severe physical violence by an intimate partner in their lifetime.



Texas 2017 Family Violence Crimes

YEAR	2017
Incidents	195,315
Victims	212,307
Offenders	207,231



Historically, about 96% of FV incidents are assaults. About 76% of those assaults are classified as “simple assaults”.

"No relationship goes from happy, healthy, and functional to murder-suicide overnight. It never happens that way. There's always a **pattern** of abuse."

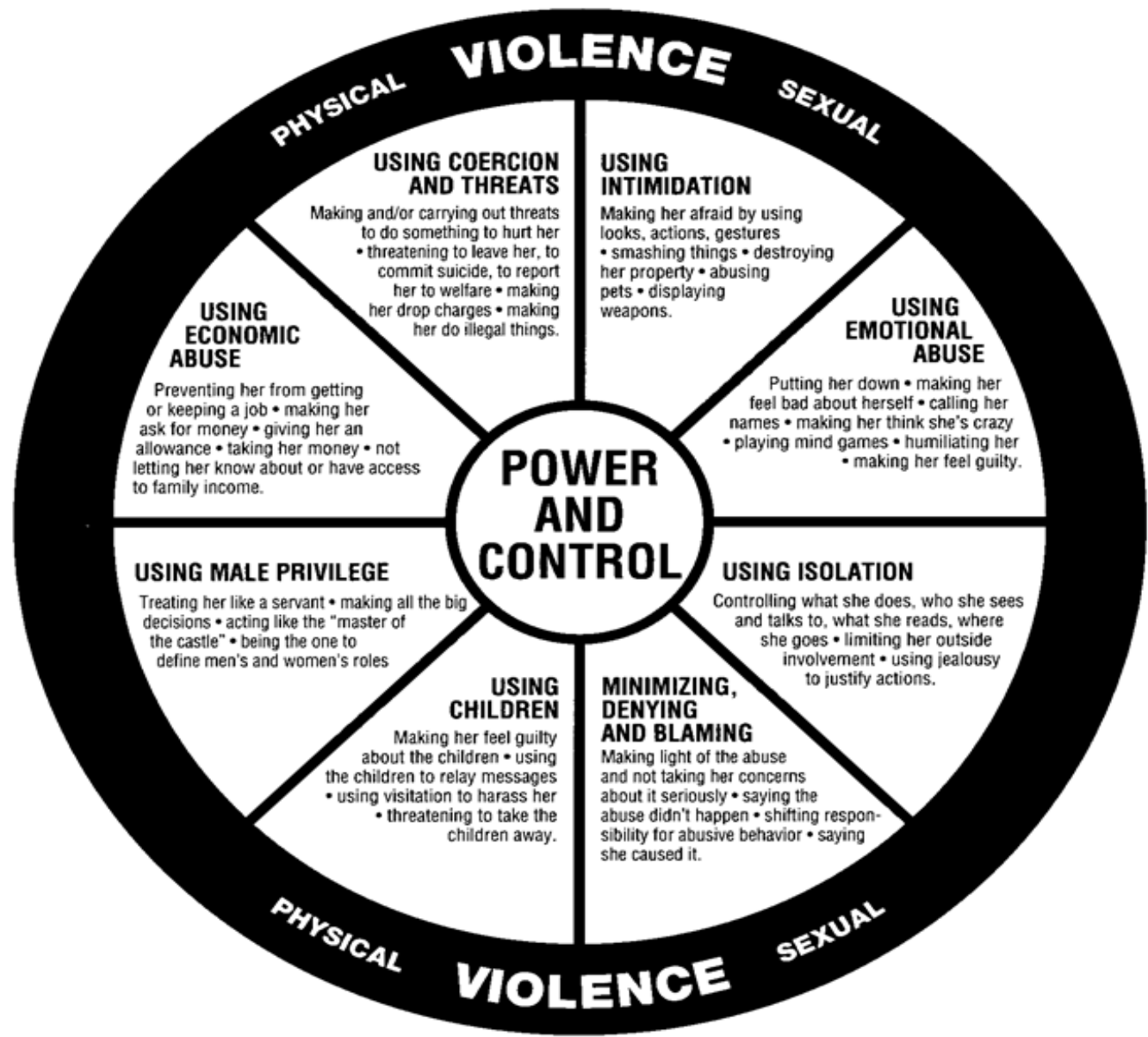
**Casey Gwinn, J.D., President,
National Family Justice Center Alliance**

THE BEST PREDICTOR OF
FUTURE BEHAVIOR IS
PAST BEHAVIOR.

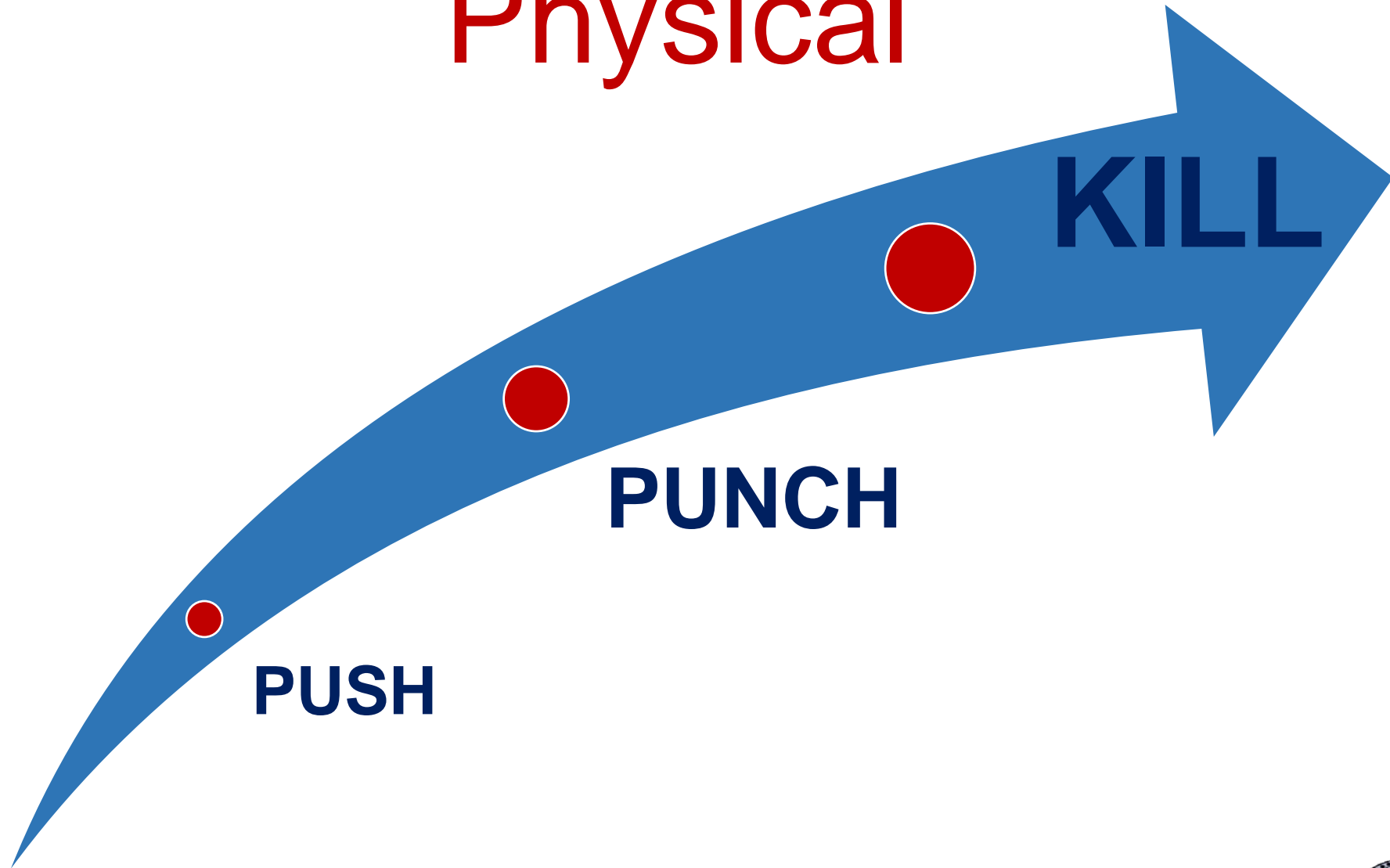


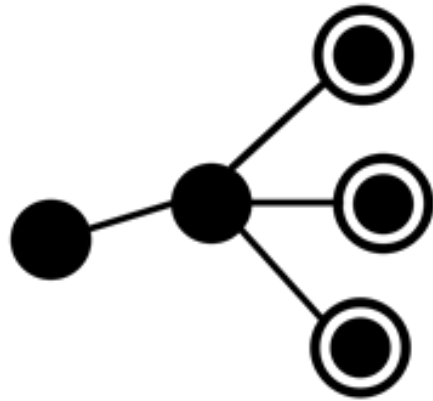
Made with  by recitethis.com





Physical





Potential Indicators of Future Violence

- Survivor
- Law Enforcement
- Community



Risk Factors for Survivors

Prior Family Violence

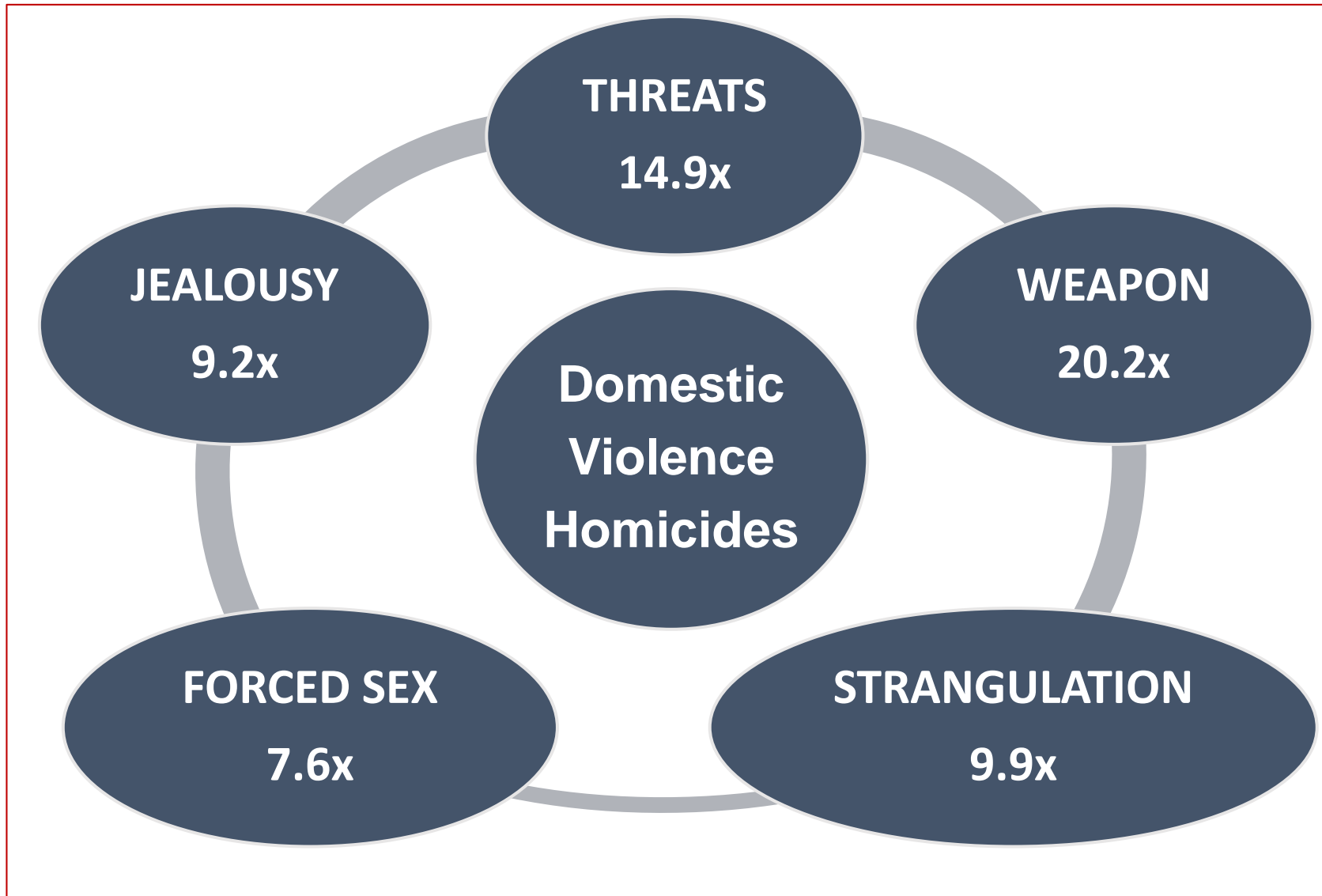
72% of domestic violence homicides

Stalking

76% of female domestic violence
homicide victims



Other important lethality factors...



A word about strangulation...

Loss of consciousness can occur within 5-10 seconds. Death within minutes.

Only half of victims have visible injuries. Of these, only 15% could be photographed.

SB 971: require law enforcement training recognizing and documenting strangulation – passed both chambers and has been sent to Governor



Tools You Can Use

- **Lethality/Danger Assessments**

<https://www.dangerassessment.org/>

- **Strangulation**

The Training Institute on Strangulation Prevention

<https://www.strangulationtraininginstitute.com/>

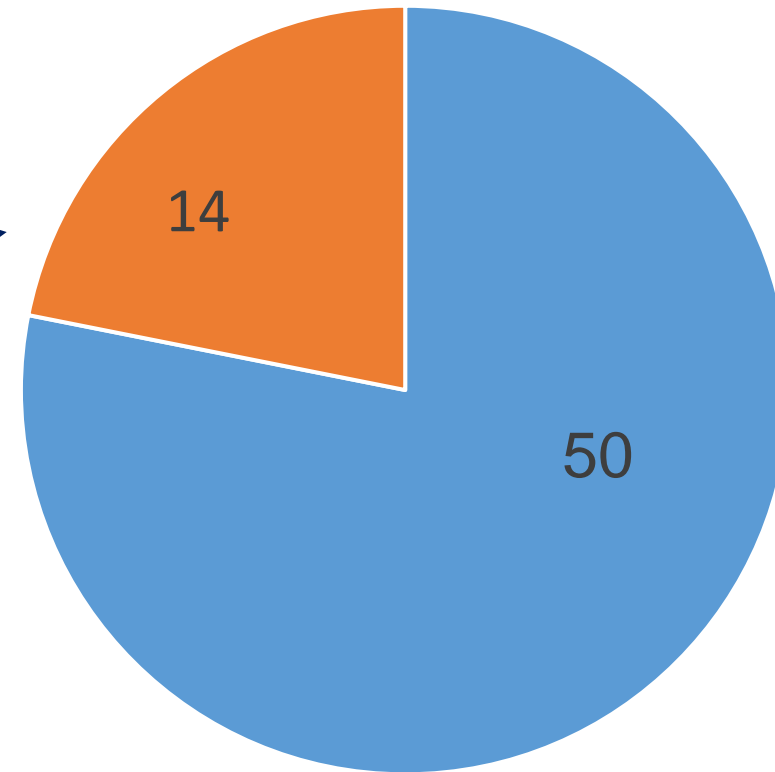
<https://www.strangulationtraininginstitute.com/resources/library/strangulation-information-graphic/>



Leading Circumstances of Fatal Officer Shootings (2016)

Total: 64 in 2016

22% were domestic violence calls

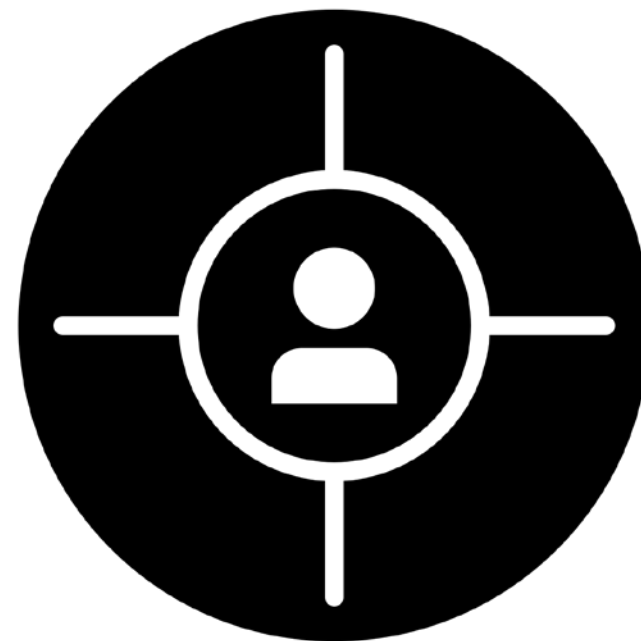


Source: National Law Enforcement Officers Memorial Fund.

■ Other circumstances/calls ■ DV Calls

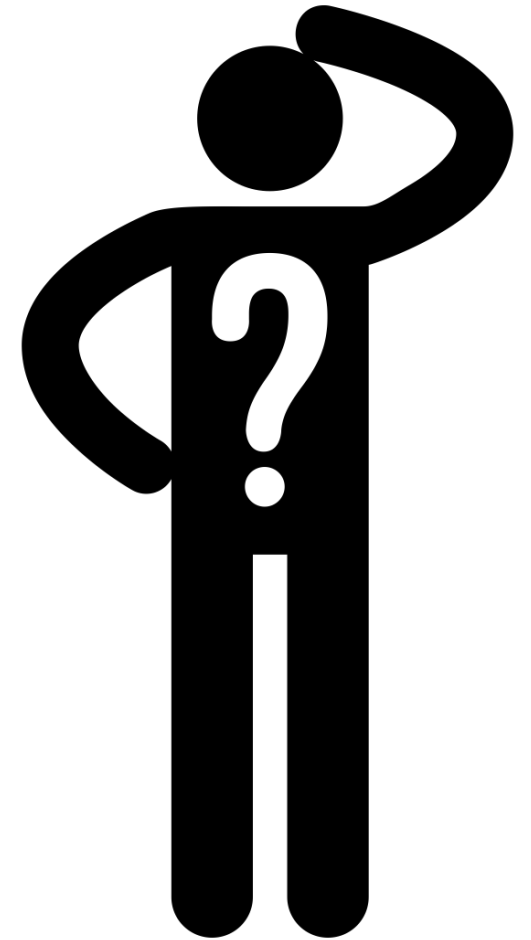


Link between DV and Mass Shootings



“Mass Shooting” Definition:

- Federal agencies collect data on “active shooters,” i.e., “one or more individuals actively engaged in killing or attempting to kill people in a populated area.”
- Another common definition (Congressional Research Service):
 - gunman
 - kills four or more people
 - selects victims randomly (ruling out gang killings or the killing of multiple family members), and
 - attacks in a public place

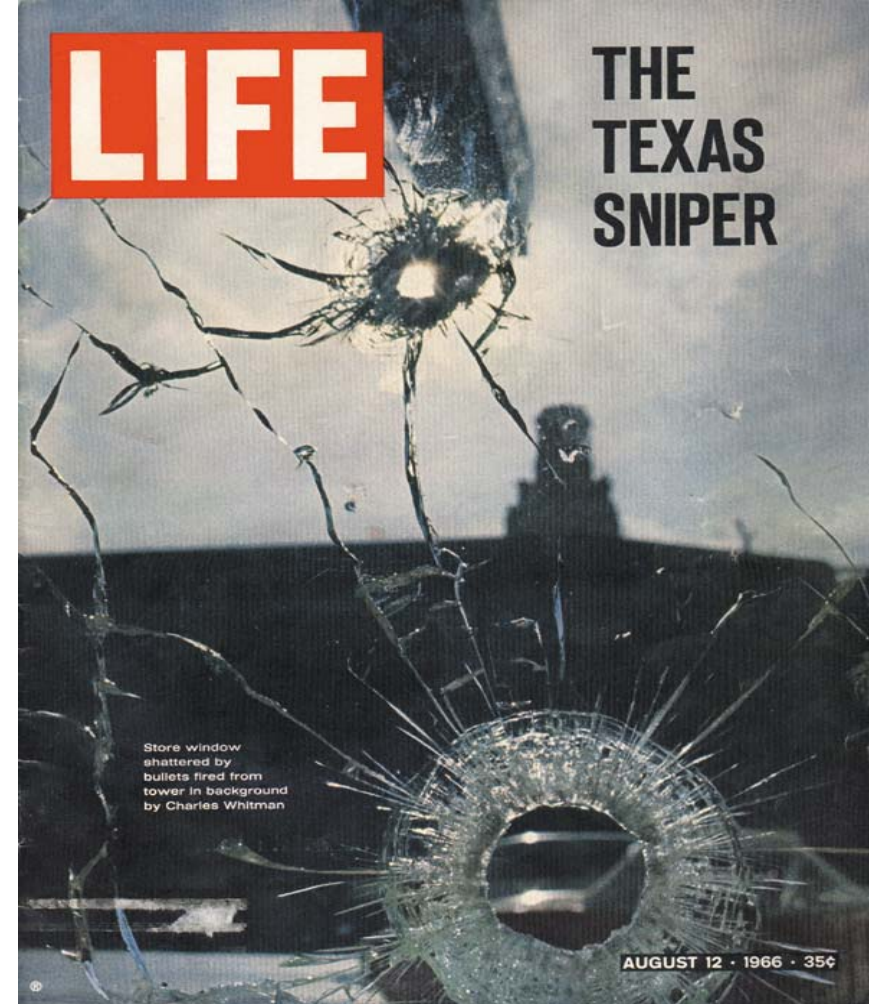


Domestic Violence and Mass Shootings

University of Texas Tower in Austin, Texas (Aug. 1, 1966)

Charles Whitman, a 25-year-old former Marine, murdered his mother and his wife before climbing the University of Texas Tower, ultimately killing 14 people and wounded 31 from the tower. He was killed by police.

<http://www.npr.org/sections/thetwo-way/2016/06/12/481768384/a-list-of-the-deadliest-mass-shootings-in-u-s-history>



Shooter killed three people and wounded nine others when he opened fire on a Planned Parenthood clinic in Colorado in 2015, had been accused of domestic violence by two of his ex-wives.

Shooter opened fire on a congressional baseball practice June, 2017 had been arrested in 2006 after setting a fire to his foster center.

Michigan (12/18)
Central Michigan University student suspected of killing parents

Shooter killed 49 people in the Pulse nightclub massacre in Orlando in 2016, had divorced his ex-wife.

Italy (1/22/18)
juvenile shot female high school student after recent break-up

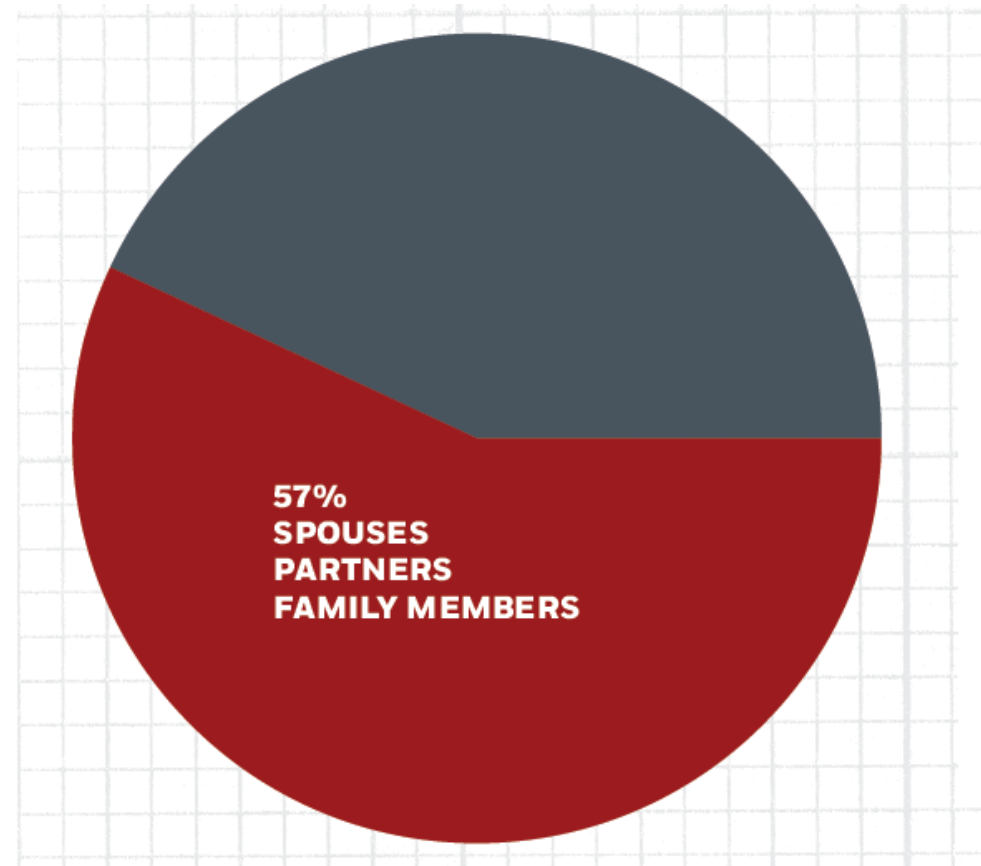
Plano, TX (1/16/18) shooter killed his fiancée along with 7 other people during a football viewing party.



Domestic Violence and Mass Shootings

- **January, 2009 – July, 2015:** 133 mass shooting identifiable through FBI data and media reports.
- **76 cases (57%):** The perpetrator shot a current or former spouse or intimate partner or other family member.
- **21 cases (16%):** The shooter had a prior domestic violence charge.

<https://everytownresearch.org/documents/2015/09/analysis-mass-shootings.pdf>





Protective Order Reporting



After the order...Send the Order to Law Enforcement
TFC Sec. 85.042 / CCP Art. 17.292 (k)

Based on the victim's current or last known address:

Magistrate/clerk shall send a copy of the order to either
Chief of police OR Sheriff

When? By the end of the following business day

How? May be sent electronically

Why?



Protective orders that cannot be verified will often not be enforced.



Late September, 2017



Paula Coles, Iraq war veteran

WASHINGTON (WUSA9) - A man accused of murdering his ex-girlfriend in Southeast, D.C. Wednesday was under a judge's order to stay away from her, but police could not confirm the order existed when the victim called for help, according to court documents revealed Friday.

Paula Coles' babies



“The child was found by police in a pool of his mother's blood in the hallway of Coles' apartment...”

Do protective orders provide safety?

For 50% of victims, the PO stopped the violence.

For the other half, violence was significantly reduced.

Weakness — enforcement, especially in rural areas

- Law enforcement difficulties in determining predominant aggressor
- Fewer resources
- Local politics



WHAT? Alphabet soup...

- **TCIC**—Texas Crime Information Center
 - Links to NCIC so that Texas law enforcement officers know instantly about stolen property, wanted persons, and protective orders anywhere in the country
- **NCIC**—National Crime Information Center
- **NICS**—National Instant Criminal Background Check System; checks available records in NCIC, III, and the NICS Index to determine if prospective transferees are disqualified from receiving firearms



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NICS

NCIC

TCIC



National Instant Criminal Background Check System (NICS)

- Title 18, United States Code (U.S.C.), Section 922(g)(9) Brady Act: (1993) provided for the development of NICS
- computerized system established to provide information on whether a prospective gun purchaser is eligible to receive or possess gun
 - Searches criminal, mental health, protective order, and other records
 - FBI makes follow-up requests (if needed) to police, prosecutors, or courts for additional information demonstrating whether or not the person is prohibited from buying a gun



Importance of NICS:

- The Virginia Tech shooter was able to purchase firearms from a licensed seller because information about his prohibiting mental health history was not submitted to NICS.
- Therefore, the system was unable to deny the transfer of the firearms used in the shootings.



NICS Act Record Improvement Program (NARIP)

- Requires states to report all Brady disqualifiers (from purchasing or receiving a firearm) to the federal criminal databases.
- Per 18 U.S.C. § 922(g)(1-9), Brady disqualifiers include:
 - Felony convictions
 - Misdemeanor convictions of domestic violence
 - Mental health commitments
 - Protective orders against intimate partner or his/her child
- According to the Government Accountability Office, of the **20,738** Texas protective orders in the National Crime Information Center Protection Order File in 2015, only **2,169** protective orders had a Brady indicator.



Full Faith And Credit



- POs from Texas are enforceable in other states
- POs issued in other states are enforceable in Texas





GUIDE TO USING Y'ALL



YOU



Y'ALL

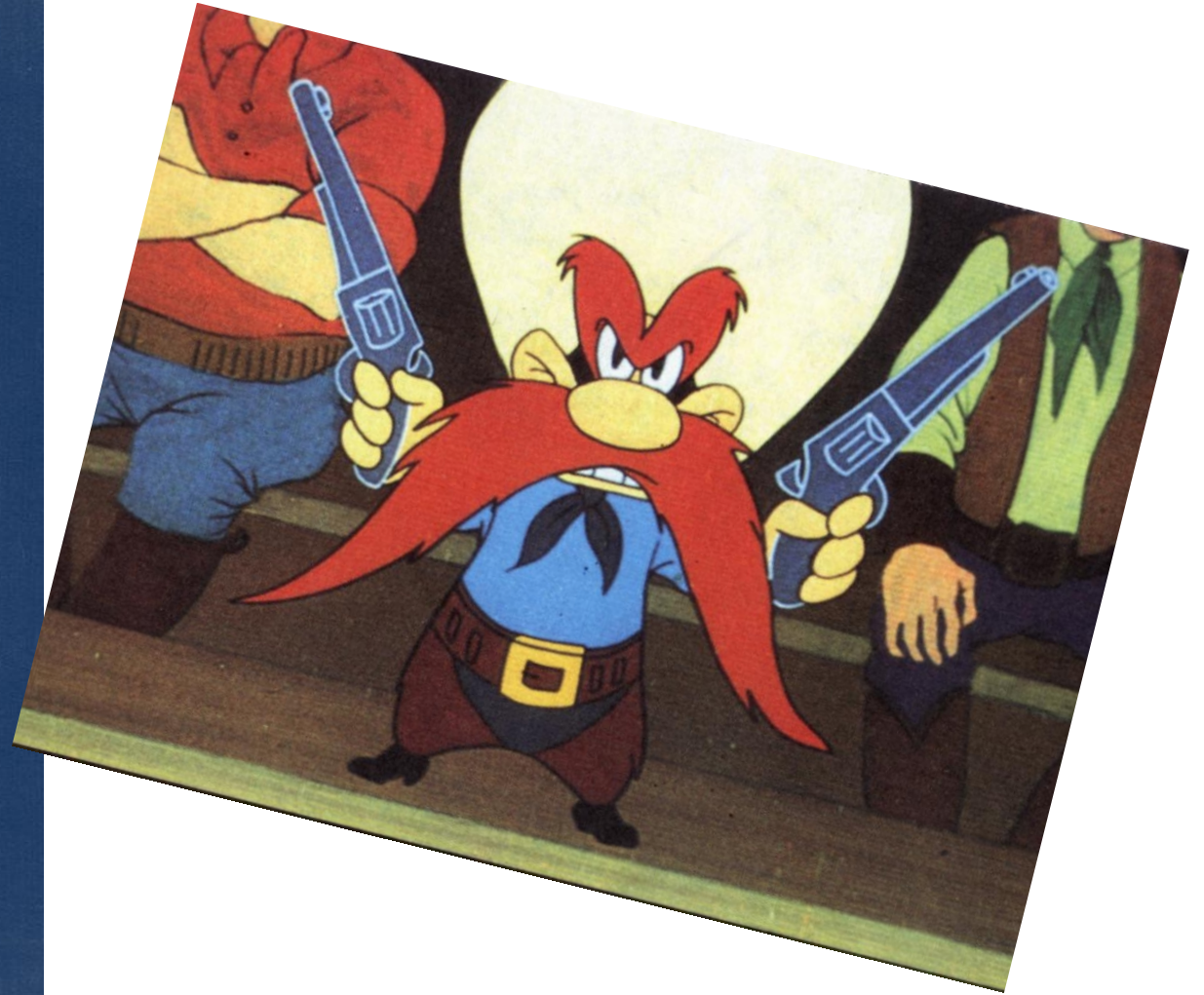


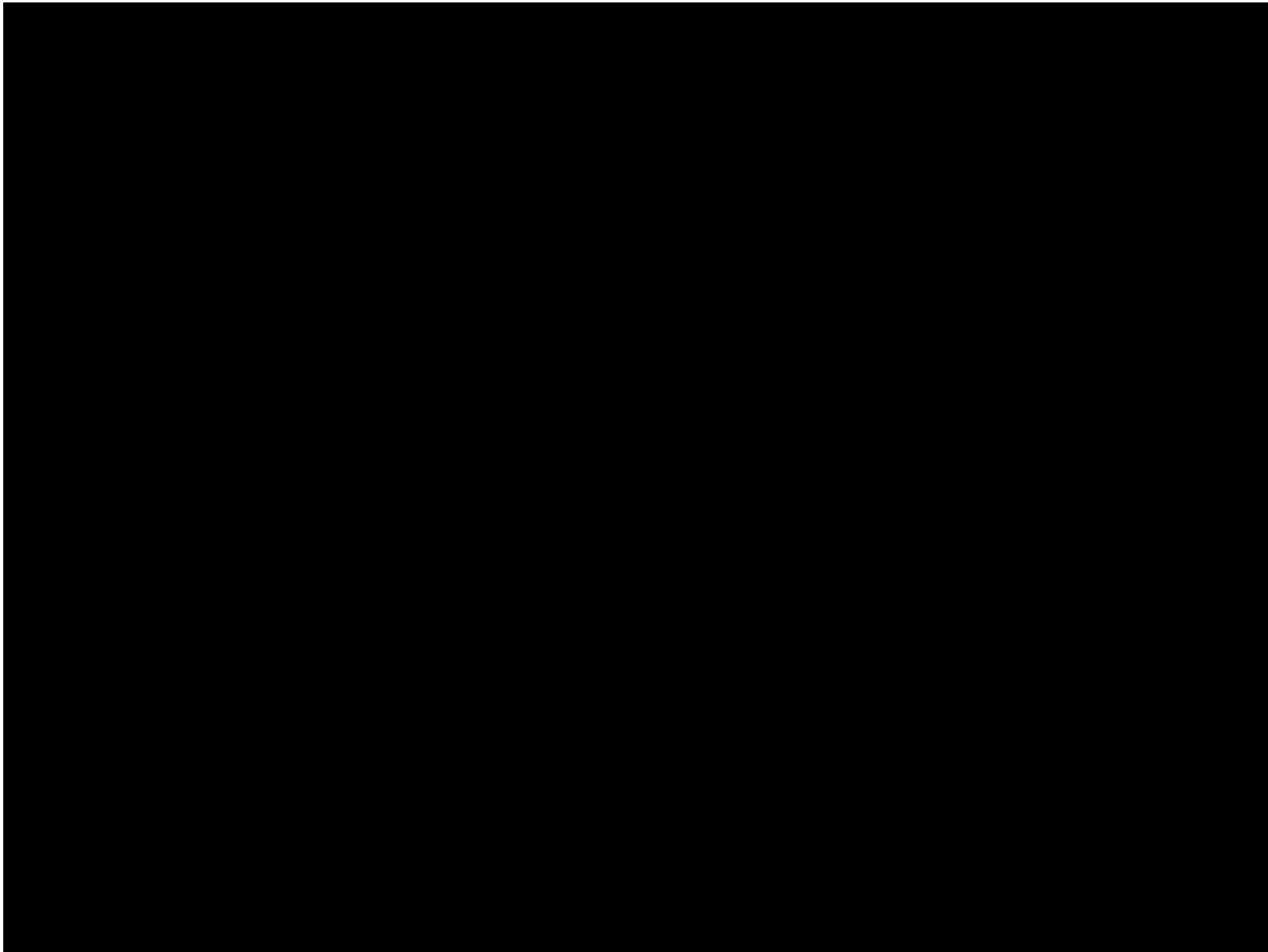
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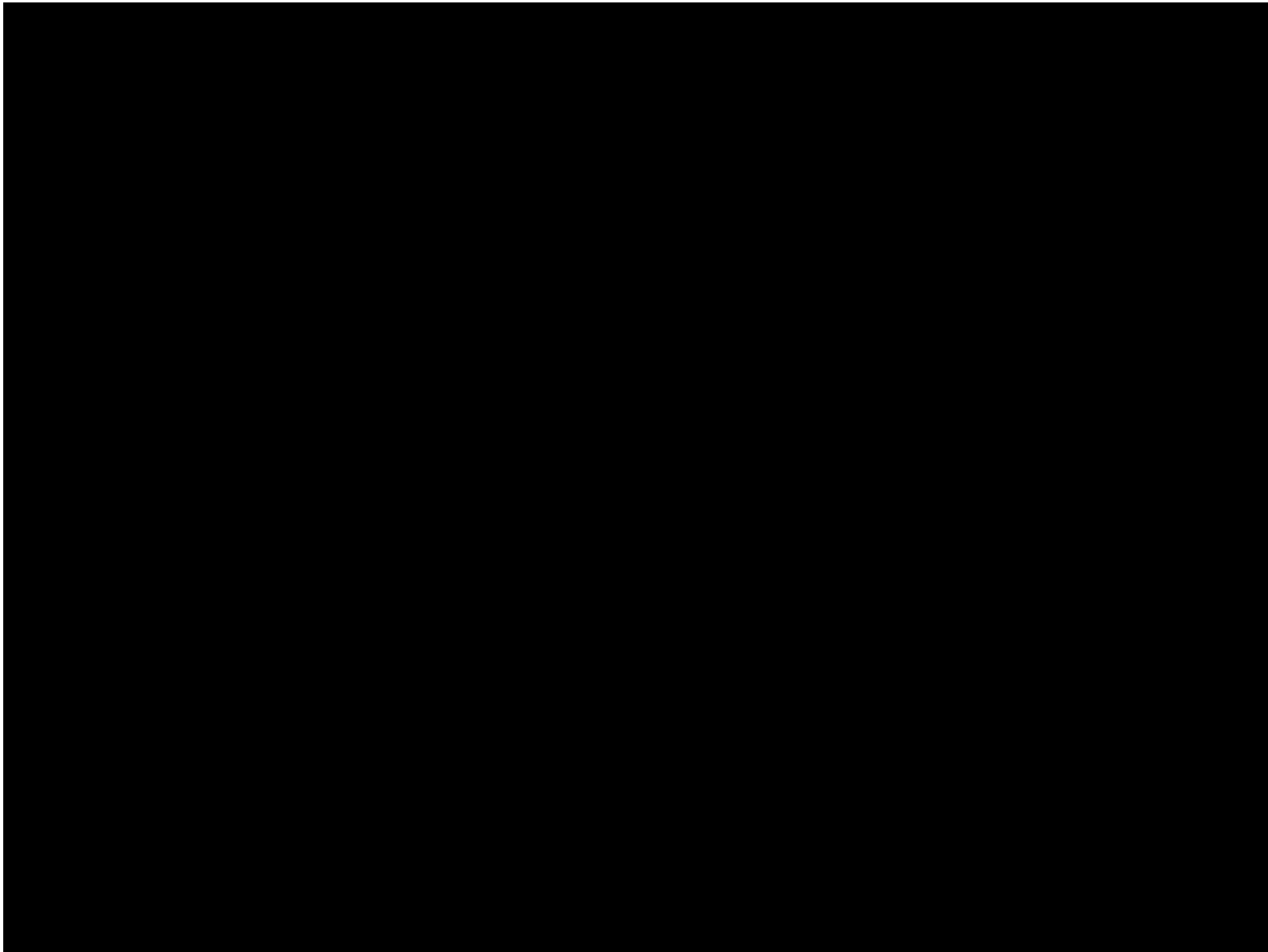
@TEXASHUMOR

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HUMOR

TXHUMOR.COM







Firearms Possession During PO: State law

MOEPS: Discretionary

Magistrate *may* forbid an accused from possessing a firearm unless the person is licensed peace officer in full time employment by state agency or political subdivision (*CCP art. 17.292 (c)(4)*)

Except: Mandatory suspension of state handgun license (*CCP art. 17.292(l)*)

Protective order under FC. 85.026: Mandatory

"IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS DEFINED BY SECTION 1.07, PENAL CODE, ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER TO POSSESS A FIREARM OR AMMUNITION."



Federal Firearms Possession Prohibition per Brady Act

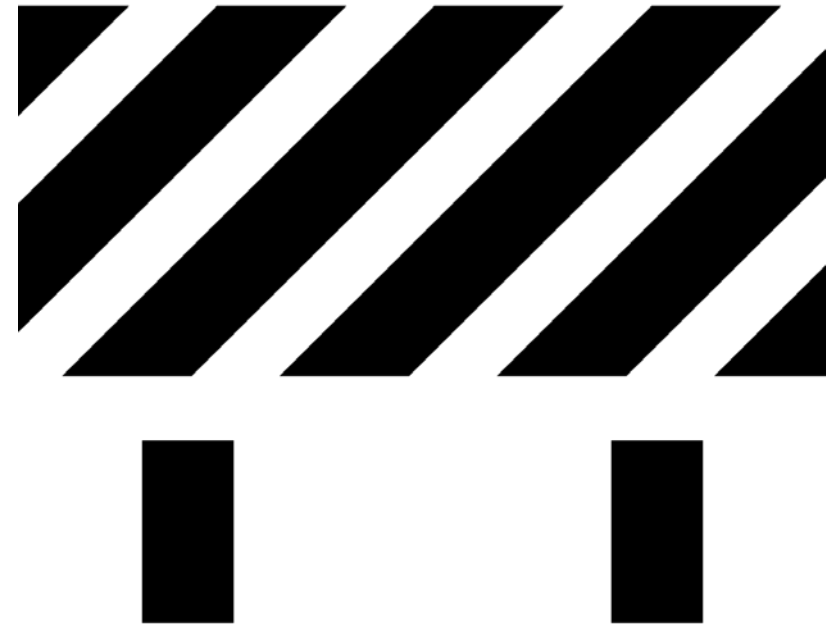
Qualifying protective order

- Issued after notice and an opportunity for a hearing;
- Prohibits harassing, stalking, or threatening the accused's:
 - intimate partner or the intimate partner's child; AND
 - contains a finding the accused poses credible threat of physical harm to protected persons, OR
 - prohibits use, attempted use, or threat of physical force capable of inflicting bodily injury to the protected persons



“Big Picture” Obstacles Identified:

- Texas’ decentralized court and law enforcement systems
- Incomplete or missing TCIC data entry sheets
- Protective order and data sheet have conflicting information
- Unaware of other participants’ roles in the process
- Lack of regular communication



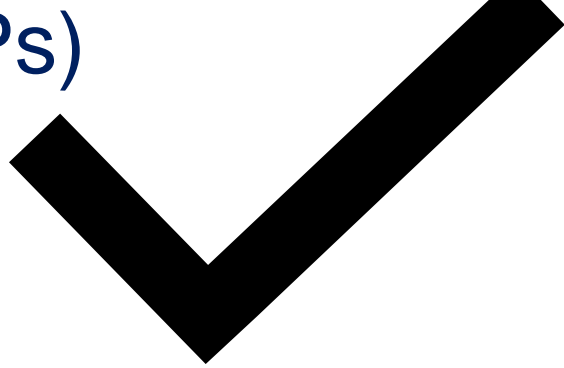
“Big Picture” Recommendations

- Mandatory, uniform forms
- Training of all participants
 - Dynamics of family violence
 - Types of protective orders
 - Importance of information gathering
- Statewide requirement to provide completed TCIC data entry form at time of application or request





Best Practices

- Require officers to furnish (MOEPs)
 - Probable cause affidavit
 - Criminal history
 - Motion/request for MOEP
 - Completed Protective Order Data Entry form
 - Offense report
 - Confirm information with complainant, if possible
 - Confirm data sheet information in court and compare to protective order for accuracy
- 



Best Practices

Send electronic copy or fax of PO to reporting agency whenever possible.

- NCIC Operating Manual, “each record in the POF must be supported by a protection order (electronic or hard copy).”
- Certified copies are also accepted per CCP Art. 5.05 (d)

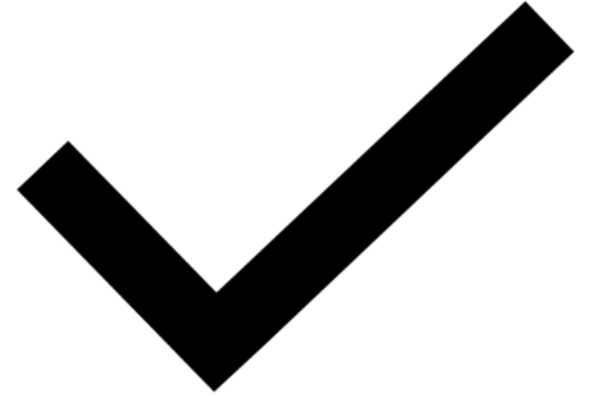
Get involved with local agencies

- Meet for breakfast
- Focus on effective administration of justice and communication



Check that law enforcement is receiving all the protective orders:

- Create and complete a checklist or cover sheet to send with the protective order data sheet and the protective order that informs the receiving law enforcement agency (and yourself!) that both items have been forwarded.
- Keep a copy of everything including the data sheet in the court's file.
- Require confirmation (by an actual human) of receipt by the agency.
- Have a staff member be trained and certified for TLETS access to run cases to check if PO is in the system.



Recent(ish) Legislative Changes

2015: SB 737

- Deadline for judges/clerks to send order to law enforcement – end of following business day
- Deadline for law enforcement to enter the order – 3 days
- Mandate entry of MOEPs
- Determination of which agency should enter order based on victim's current or last known address



2017: Confidentiality requirement for court clerks

SB 1242/Family Code 82.011 Effective September 1, 2017

- On request by an applicant, the court may protect the applicant's mailing address. The court can require that the court clerk:
 - Redact applicants address from public records of the court, and
 - maintain a confidential record of the information for use **only by the court, or a law enforcement agency** for purposes of entering the information into the statewide law enforcement information system maintained by DPS

86th Leg. Session

- **SB 2390 – sent to governor for signature**
 - Amends CCP Art. 17.294. to apply similar procedure to MOEPs



86th Legislative Session:

- **SB 325:**

- requires OCA to establish a protective order registry that allows case management systems to interface, restricted access authorized users (prosecutors, police, etc.) to access PO info and images.
- Allows limited access by public only if victim opts to do so.
- passed both chambers and signed by the Governor



Misdemeanor Crimes of Domestic Violence





OFFICE *of* COURT ADMINISTRATION



Misdemeanor Crimes of Domestic Violence (MCDV)

Title 18, United States Code (U.S.C.), Section 922(g)(9) – Brady Act prohibits persons who have been convicted of an MCDV from receiving or possessing a firearm.





What can WE do to improve NICS reporting of misdemeanor crimes of domestic violence?



Information Needed to
Enforce the Firearm
Prohibition

Misdemeanor Crimes of Domestic Violence (MCDV)



September 2016

Identifying offenses that qualify as MCDV

- Misdemeanor conviction
- **Use or attempted use of force**, or the threatened use of a deadly weapon;
- Defendant's relationship to victim was
 - current or former spouse, parent, or guardian
 - shares a child in common;
 - cohabiting with or has cohabitated with the victim as a spouse, parent, or guardian;
 - person who was or is similarly situated to a spouse, parent, or guardian of the victim.



PRESS HARD-YOU ARE MAKING THREE COPIES!

TEXAS DEPARTMENT OF PUBLIC SAFETY CRIMINAL HISTORY REPORTING FORM

						PRESENT AT ARREST? <input type="checkbox"/> Y or N <input type="checkbox"/>			
COURT	COURT ORI (ORIC)		COURT NAME			CAUSE NUMBER (CAU)			
	DOMESTIC VIOLENCE OFFENSE? <input type="checkbox"/> Y or N <input type="checkbox"/>		OFFENSE CODE (CON)	OFFENSE LITERAL (COL)	VICTIM'S AGE (VIC)	STATUTE CITATION (CIT)	DEGREE OF DISPOSED OFFENSE	FELONY (X,1,2,3 or S) <input type="checkbox"/>	MISDEMEANOR (A, B, or C) <input type="checkbox"/>
	FINAL PLEA (FPO)	NO CONTEST <input type="checkbox"/>	NOT GUILTY <input type="checkbox"/>	COURT DISPOSITION DATE (CDD)	SENTENCE/STATUS DATE (DOS)	COURT DISPOSITION (CDN)	COURT COST (CST)		
	CONFINEMENT (CMT)	SENTENCE SUSPENDED - TIME (CSS)		PROBATION (CPR)	FINE (CFN)	SENTENCE SUSPENDED-FINE (CSF)			
	COURT PROVISION (CPN)		COURT PROVISION LITERAL (CPL)				MULTIPLE SENTENCES (MCC)		
	AGENCY TO RECEIVE CUSTODY (ARC)		APPEAL DATE (DCA)		OFFENDER STATUS DURING APPEAL (DDA)		RESULT OF APPEAL (FCD)		
	CHECK BOX TO INDICATE DIC-17 DATA IS PRESENT <input type="checkbox"/>	BEGINNING DATE OF SUSPENSION	EDUCATION PROGRAMS	DWI <input type="checkbox"/>	EDUCATION REQUIRED	EDUCATION WAIVED	REPEAT OFFENDER REQUIRED		
		ENDING DATE OF SUSPENSION		DRUGS <input type="checkbox"/>	EDUCATION COMPLETED	INTERLOCK REQUIRED	REPEAT OFFENDER COMPLETED		
	PREPARED BY, PLEASE PRINT						DATE		

FOR LOCAL AGENCY USE



Which Texas misdemeanors qualify?

- ✓ • ASSAULT - Penal Code 22.01(a)(1) (bodily injury)
- ? • ASSAULT - Penal Code 22.01(a)(3) (offensive contact)

Federal standard: Use or attempted use of force



Penal Code § 22.01(a)(3) Assault-contact

“intentionally or knowingly causes **physical contact** with another when the person knows or should reasonably believe that the other will regard the contact as **offensive** or provocative”

BUT *United States v. Castleman*, 13 S. Ct. 1405 (2014):

Domestic violence crimes include such as pushing, grabbing, and shoving, and that federal law is intended to cover all domestic violence crimes whether or not “serious and violent” force was involved.

Result: “Offensive touching” is enough to subject a convicted domestic abuser to the federal gun ban.



Problem: MCDV not labeled or identified in court records

Recommendations: Court records should include information that demonstrates:

1. Exact charge and applicable statute;
2. The use or attempted use of physical force or threatened use of a deadly weapon; and
3. Relationship between defendant and the victim



Which court records?

- The charging document
- Any plea agreement or plea colloquy
- Any other final court records of the proceedings, such as:
 - judgments of conviction
 - sentencing orders



State law does not require Municipal Courts to report Class C misdemeanor family violence convictions to DPS

- Reporting is optional.
- San Antonio Municipal Court commenced reporting to DPS on March 31, 2018.
- Dallas started in the Fall of 2018
- Staff received DPS training.

Stolen from Fred Garcia, Municipal Court Clerk/Director fred.garcia@sanantonio.gov



86th Legislative Session: Other bills to watch

- **HB 1528**: reporting of fine-only family violence convictions to DPS – passed House and Senate, on its way to Governor
- **SB 415**: defendants in fine-only family violence cases to appear in open court to enter plea; passed full Senate and House committee, now on to House floor
- **SB 1804**: require entry of conditions of bond in family violence criminal cases; passed full Senate and House committee, now on to full House



Why do it?

- Defendant with a prior family violence conviction can allow new family violence class A to be filed as a 3rd degree felony.
- Keep firearms out of the hands of dangerous people whenever possible.





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OCA's Domestic Violence Resource Program

<http://www.txcourts.gov/dvrp/domestic-violence-resource-program.aspx>

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Thank you!!!

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