

## Family Violence

### 418.1 PURPOSE AND SCOPE

Family Violence is alleged criminal conduct and it is the policy of the Austin Police Department to stress enforcement of criminal laws related to family violence, the protection of the victim and the availability of civil remedies and community resources.

#### 418.1.1 DEFINITIONS

**Dating Relationship** - A relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a dating relationship. The existence of such a relationship shall be determined based on consideration of the (Tex. Fam. Code § 71.0021(b & c)):

- (a) Length of the relationship; and
- (b) Nature of the relationship; and
- (c) Frequency and type of interaction between the persons involved in the relationship.

**Dating Violence** - An act by an individual that is against another individual with whom that person has or has had a dating relationship and that is intended to result in physical harm, bodily injury, assault or sexual assault or that is a threat that reasonably places the individual in fear of imminent physical harm, bodily injury, assault or sexual assault. However, dating violence does not include actions taken in self defense. (Tex. Fam. Code § 71.0021).

**Family** - Individuals who are related either by blood or by marriage. Family includes former spouses, parents of the same child regardless of the marital status or the legitimacy of the child and foster child/parent relationships (Tex. Fam. Code § 71.003).

**Family Violence** - 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. However, family violence does not include actions taken in self defense (Tex. Fam. Code § 71.004).

- *Family violence also includes the term dating violence (Tex. Fam. Code § 71.004).*

**Household** - A unit composed of persons living together in the same dwelling, without regard to whether they are related to each other (Tex. Fam. Code § 71.005).

**Member of a household** - Includes a person who previously lived in a household. (Tex. Fam. Code § 71.006).

**Primary Aggressor** - The person who appears to be the most significant aggressor rather than the first aggressor. In identifying the primary aggressor an officer shall consider:

- (a) The intent of the law to protect victims of family violence from continuing abuse.
- (b) The threats creating fear of physical injury.

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- (c) The history of family violence between the persons involved.
- (d) Whether either person acted in self-defense.

#### **418.2 ENFORCEMENT GUIDELINES**

The primary duties of an officer who investigates a family violence allegation, or who responds to a disturbance call that may involve family violence, are to protect any potential victim of family violence and enforce the law by making lawful arrests of violators.

Officers making an arrest for any incident involving family violence shall direct file all charges as outlined in Policy 323 (Booking and Arrest Review), unless directed otherwise by the appropriate investigator.

##### **418.2.1 ARREST REQUIREMENT FOR ASSAULTIVE OFFENSES**

- (a) Officers are required to make an arrest for incidents involving family violence when:
  1. An assault has occurred that resulted in a minimum of bodily injury or complaint of pain; and
  2. The suspect is still on-scene; and
  3. The assault meets the definition of "family violence" or "dating violence."
- (b) If both parties have been assaulted, officers shall make reasonable efforts to identify the primary aggressor. Arrests of both parties should be avoided unless warranted.
  1. If officers at the scene cannot determine the primary aggressor, an on-duty supervisor shall be contacted to make the determination.
  2. If the on-duty supervisor cannot determine the primary aggressor and there is adequate and articulable probable cause to believe that each person contributed to the violence, supervisors may authorize officers to make multiple arrests.
    - (a) Officers shall write probable cause affidavits for each of the arrests and direct file the charges.
    - (b) The name of the supervisor authorizing a multiple arrest situation shall be included in the incident report.
- (c) Officers shall not use mediation at the scene as a substitute for appropriate reporting and enforcement action when physical violence has taken place.
- (d) Officers shall arrest for assault by threat or assault by contact if no physical violence has occurred but circumstances reasonably show further violence is likely to happen. Supervisor approval is required when the arrest is made from inside a residence.
- (e) Supervisors may authorize an exception to an arrest if there are articulable facts that lead a reasonable person to believe the alleged suspect was acting in self-defense. The facts leading to the decision for an exception shall be fully documented in the incident report, along with the name of the supervisor approving the exception.

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- (f) In felony incidents involving family violence, except for enhancement due to a prior conviction, the on-call investigator from the Family Violence Protection Team shall be contacted by a supervisor:
  - (a) When no arrest is made, prior to clearing the scene; or
  - (b) When an arrest is made, prior to the suspect being transported to the jail.

#### 418.2.2 FAMILY VIOLENCE INVOLVING MENTAL ILLNESS

If there is reason to believe a suspect that is still on-scene suffers from a mental illness, an on-duty patrol officer that is a certified Crisis Intervention Team (CIT) officer shall be requested to the scene.

- (a) A Peace Officer Emergency Commitment (POEC) may be used to remove a suspect from the scene for the purpose of a psychiatric evaluation and/or treatment in lieu of a custodial arrest. The discretion to use a POEC rests solely with the on-scene CIT officer.
- (b) It is recommended that a suspect in a family violence offense only be placed in protective custody pursuant to a POEC when sufficient psychiatric bed space is available and has been confirmed at the proper psychiatric facility by the CIT officer prior to transport. Under no condition will a suspect in protective custody pursuant to a POEC be transported to a hospital ER for a family violence offense when no psychiatric beds are available in lieu of filing criminal charges.
- (c) If the CIT officer determines the subject fits the criteria for a POEC, the CIT officer may transport the subject to a psychiatric facility on the POEC.
  - 1. Once at the facility, the CIT officer will remain with the subject pending the physician's evaluation.
    - (a) If the facility admits the subject, the CIT officer shall complete all required family violence documentation but will not file any charges on the subject. Additional charges may be filed at a later time.
    - (b) If the facility does not admit the subject, the CIT officer will place the subject under arrest for the family violence criminal offenses(s) committed. Once arrested, the CIT officer shall complete all documentation and use direct file procedures for the filing of charges at the time of booking.
- (d) This section does not:
  - (a) Remove the requirement to complete an *Assault Victim Statement (AVS)* and make any applicable notifications as outlined in this policy.
  - (b) Supersede an officer's authority to arrest for a felony offense at the scene in accordance with Department policy.

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#### 418.2.3 FAMILY VIOLENCE INVOLVING JUVENILES

##### (a) **Juvenile Suspects**

1. Family violence incidents involving a juvenile suspect between the ages of 10-16 years old shall be enforced and reported the same way as if the suspect was an adult.

##### (b) **Juvenile Victims**

1. Officers investigating an allegation of family violence that involves the discipline of a child/juvenile should make the determination if the force used was reasonable. Officers are reminded not to allow personal beliefs regarding discipline to interfere with their legal judgment.
  - (a) Officer determining the force was unreasonable, serious injury occurred, or the potential for serious injury is likely, shall contact their supervisor prior to making an arrest.
  - (b) Supervisors shall contact the appropriate Investigative Unit prior to transporting the suspect; these arrests are not direct filed.

##### (c) **Investigative Unit Responsibility**

- (a) The incident shall be handled by the Family Violence Protection Team when:
  - (a) The victim is 15, 16, or 17 years of age and the alleged suspect is any "family member;" or
  - (b) The victim is 14 years of age or younger and the alleged suspect is a "family member" who **does not** have care, custody and control of the child at the time of the incident (e.g., older sibling, cousin or person not authorized to discipline the child).
- (b) The incident shall be handled by the Child Abuse Unit when:
  - (a) The victim is a juvenile 14 years of age or younger and the alleged suspect is a "family member" who **does** have care, custody and control of the child at the time of the incident (e.g., parent, guardian, related babysitter).

#### 418.2.4 FAMILY VIOLENCE INVOLVING STRANGULATION/SUFFOCATION

When the suspect impedes the normal breathing or circulation of the blood of the victim by applying pressure to the victim's throat, neck or by blocking the victim's nose or mouth, the assault shall be enhanced to a felony of the third degree (Tex. Penal Code § 22.01(b)(2)(B)).

- (a) While in most cases there is evidence of both external and internal injury to the neck, many times there are no visible injuries. In those instances, an internal injury may still have occurred that can result in death. Victim may not understand the danger of their injuries and may be reluctant to seek medical attention.
  1. Call EMS to the scene to evaluate the victim even if the victim doesn't want them.

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2. Advise EMS you suspect strangulation with possible life threatening injury.
- (b) Proper documentation of an assault involving strangulation/suffocation is critical and should include at least the following:
1. **Physical Signs** - This may include, but is not limited to:
    - (a) Red marks or bruising around the neck.
    - (b) Loss of memory in the recollection of the sequence of events.
    - (c) Petechial hemorrhaging (burst blood vessels) in the eye or face area.
    - (d) Difficulty and/or painful swallowing or hoarseness in the voice.
  2. **Type/Method**
    - (a) Ligature - Involves the use of a weapon (e.g., belt, telephone cord, shoe string, rolled up shirt) to impede breathing or cause air restriction.
    - (b) Manual - Involves the use of the suspects' hands to impede breathing or to cause air restriction.
      1. Describe in detail the position of the suspect in relation to the victim (e.g., grabbed from the front or from behind) and what body part was used by the suspect (e.g., one hand, both hands, arm using choke hold).
  3. **Specific Questions**
    - (a) What did you think was going to happen?
    - (b) What did the suspect say?
    - (c) How did it stop?
    - (d) What did you say during the assault?
    - (e) How did you feel?
  4. **Additional Observations**
    - (a) If the victim has trouble swallowing, breathing or any pain or tenderness in neck area.
    - (b) Any changes in the victim's voice during interview (e.g., hoarseness, raspy, loss of voice).

#### 418.2.5 ENHANCEMENT DUE TO PRIOR CONVICTION

- (a) A misdemeanor assault shall be enhanced to a felony of the third degree if the suspect has an eligible prior conviction on his CCH (Tex. Penal Code § 22.01(b)(2)(A)).

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- (b) An assault involving strangulation/suffocation shall be enhanced to a felony of the second degree if the suspect has an eligible prior conviction on his CCH, with the exception of a prior conviction involving continuous violence against family (Tex. Penal Code § 22.01(b-1)).
- (c) **Eligible Prior Conviction**
  - 1. A prior conviction meets the guidelines for enhancement if:
    - (a) The victim in the previous offense had a family or dating relationship with the defendant; and
    - (b) The offense is classified as:
      - 1. Any offense in Tex. Penal Code Chapter 19; or
      - 2. Any offense in Tex. Penal Code Chapter 22; or
      - 3. Kidnapping (Tex. Penal Code § 20.03); or
      - 4. Aggravated kidnapping (Tex. Penal Code § 20.04); or
      - 5. Indecency with a child (Tex. Penal Code § 21.11); or
      - 6. Continuous violence against the family (Tex. Penal Code § 25.11).

#### 418.2.6 CONTINUOUS FAMILY VIOLENCE

- (a) Continuous violence against family (Tex. Penal Code § 25.11) is a separate offense and should only be used when the defendant does not have a qualifying previous conviction.
- (b) The determination of whether to file the continuous violence against family charge shall be at the discretion of Arrest Review.

#### 418.2.7 INTERFERENCE WITH EMERGENCY TELEPHONE CALL

Interference with emergency telephone call has its own arrest authority (Tex. Code of Crim. Pro. art. 14.03(a)(5)) that is separate from the arrest authority for family violence.

- (a) Officers should consult with their supervisor or Arrest Review to confirm there is enough probable cause for the arrest of this offense. If enough probable cause exists, officers may make an arrest.
- (b) When no arrest is made, officers shall write up a report and detail whether the victim wants to file charges for the offense.
- (c) When this offense also involves a family violence incident, officers shall make sure an *Assault Victim Statement (AVS)* is completed.

#### **418.3 ADDITIONAL INVESTIGATIVE GUIDELINES**

This section includes additional guidelines and required notifications when investigating any incident that involves family violence or may have involved family violence.

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#### 418.3.1 ASSAULT VICTIM STATEMENT

- (a) An *Assault Victim Statement* (AVS) form shall be completed on every incident involving family violence, regardless of whether an arrest is made. This includes, but is not limited to, the following offenses:
1. Any assault offense involving family violence.
  2. Harassment.
  3. Stalking.
  4. Interference with emergency telephone call.
- (b) Officers shall advise victims of their right to obtain an emergency protective order (EPO) and ask them if they wish to file one. The required guidelines for filing an EPO are outlined later in this policy.
- (c) Victims of family violence are to be given the opportunity to complete the AVS and sign it.
1. Victims should be advised that the AVS may be used to file charges.
  2. In the event the victim refuses to complete and sign the AVS, the reporting officer shall complete the form and sign it under the signature refused section with a witness to the refusal, if possible.
  3. The AVS form must be reviewed for completeness by the officer prior to leaving the scene.

#### 418.3.2 VICTIM INFORMATION

- (a) Officers shall provide each adult present with a copy of the information pamphlet entitled *Victim Assistance Information* that includes the *Notice to Adult Victims of Family Violence* and write the incident number on the front page.
- (b) Victims should always be referred to Victim Services for counseling.
- (c) Victims and offenders should be told that assault charges on family violence arrests may be filed even if the victim does not wish charges to be filed.
1. Victims who express a desire to drop charges should be referred to Victim Services. Victim Services will refer the victim, after counseling, to the County or District Attorney.
- (d) Victims with additional questions should be referred to the Family Violence Protection Team.
1. On felony arrests, the victim should be told to contact the Family Violence Protection Team the next day to determine if the assigned investigator needs additional information or statements.
  2. On non-arrest incidents, the victim should be told that the case will be assigned to an investigator for follow-up investigation.

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#### 418.3.3 REQUIRED CHILD PROTECTIVE SERVICES NOTIFICATION

##### (a) **When CPS Notification is Required**

1. Child Protective Services (CPS) must be notified following all incidents of family violence that resulted in a visible injury or aggravated assault if a child is:
  - (a) Present at the scene of the incident; or
  - (b) Known to reside at the location of the incident.
2. The notification shall be made:
  - (a) Regardless of whether the child witnessed the incident; or
  - (b) If an officer has reason to be concerned for the physical or emotional welfare of the child.

##### (b) **How CPS Notification may be Completed**

- (a) The incident should be reported to CPS from the scene or immediately after clearance; however, notification shall be made prior to the end of the primary officer's tour of duty.
- (b) It is ultimately the primary officers responsibility to ensure the required notification is completed, regardless of what method is used.
  - (a) The primary officer can complete the notification by using the CPS Law Enforcement Hotline number available through Communications.
  - (b) APD Victim Services may be requested to complete the notification.
    - (a) If Victim Services is used, officers need to provide all the required pertinent information to the team member.

##### (c) **Required Information for CPS**

- (a) APD incident number.
- (b) Brief summary of incident.
- (c) Names, ages and dates of birth of all children involved.
- (d) Names, ages, dates of birth of adults involved.
- (e) Address where incident occurred.
- (f) Address where parties reside and/or may be located.

##### (d) **Reporting**

- (a) Any received CPS call ID number provided to the officer or Victim Services member should be included in the narrative of the incident report.



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#### 418.3.4 EVIDENCE COLLECTION AND PHOTOGRAPHS

##### (a) Evidence Collection

1. Any weapon or object used in the commission of the offense shall be seized as evidence.
2. Any other evidence that relates to the offense (e.g., ripped clothing, soiled clothing, broken phone).
3. Evidence shall be submitted as outlined in Policy 618 (Property and Evidence Collection Procedures).

##### (b) Photographs

1. Digital photographs should be taken of:
  - (a) All visible injuries on the victims and suspects, regardless of severity.
    1. All victims and suspects shall receive proper medical care prior to being photographed, if needed or desired.
    2. Photographs should include, but are not limited to:
      - (a) Full body;
      - (b) Close up of face;
      - (c) Visible injuries;
      - (d) Area of body surrounding injury;
      - (e) Body part used as a weapon.
    3. Victims whose injuries are not visible at the time of the incident shall be advised to contact the Investigative Unit in the event they become visible. An investigator may be assigned to ensure the injuries are photographed during the course of preparing the case for court.
  - (b) The overall scene if there was a struggle or damage to property.
  - (c) Any weapon or object used in the commission of the offense.
2. Digital photographs shall be downloaded into the Digital Crime Scene Management System.

#### 418.4 EMERGENCY PROTECTIVE ORDERS

Officers shall offer all victims of family violence the opportunity to file an EPO.

- (a) Officers shall file a motion for an EPO on the victim's behalf in all felony family violence arrests, including felony enhancements.
- (b) Officers shall file a motion for an EPO on the victim's behalf in all other family violence arrests when:

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1. The victim wishes to have an EPO filed; or
  2. The victim is unable or refuses to file and the officer has sufficient reason to believe it is imperative to the safety of the victim to file an EPO.
- (c) The reason why the suspect will be a further danger to the victim shall be documented on a motion for an EPO and included in the incident report.
- (d) Completed motions shall be turned in at Arrest Review.

#### **418.5 CIVIL STANDBY**

Officers may respond to a call for service where a complainant is requesting an officer to standby while he removes some of his minor belongings from a residence. The goal of the standby is to prevent a disturbance from occurring while the complainant takes necessary items from a residence.

- (a) When requested to conduct a standby, officers shall:
1. Check to see if the complainant has a protective order against him for the requested address. No person, including the protected person or a law enforcement officer, can authorize any person to violate a protective order.
  2. Advise the complainant that only minor belongings needed for the immediate future should be taken (e.g., clothing, child items, toiletries); arrangements should be made at another time if the complainant requires prolonged assistance for the retrieval of his additional items.
  3. Advise the complainant that the determination of property ownership is not the officer's responsibility. Any contest to property ownership should be handled by the appropriate Justice of the Peace.
- (b) The incident may be cleared as a civil issue without an incident report as long as no disturbance occurs. However:
1. Officers are encouraged to include notes in the call log summarizing the incident and whether the complainant needs to return for more belongings.
  2. Officers shall complete an incident report if a disturbance occurs.

#### **418.6 REPORTING GUIDELINES**

- (a) A written report shall be completed on all incidents involving:
1. Family disturbances and dating disturbances.
  2. Family violence and dating violence allegations.
  3. Any complaint of unreasonable discipline against a juvenile, regardless of whether an arrest is made.

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#### 418.6.1 USE OF PROPER TITLE CODES

When initiating an incident report, the use of proper title codes is critical to ensure proper report routing.

- (a) When no offense has been committed, the following title codes shall be used:
1. Dating Disturbance (2400) - When the incident involves a dating disturbance or dating violence incident.
  2. Family Disturbance (3400) - When the incident involves a family disturbance or family violence incident.
  3. Family Disturbance/Parental (3458) - When the incident involves a parent/guardian and child under 17.
- (b) When a family violence related offense is alleged or found to have been committed, the following title codes shall be used:
1. Assault W/Injury Fam/Dating Violence (0900-1).
  2. Assault by Threat Fam/Dating Violence (0901-1).
  3. Assault by Contact Fam/Dating Violence (0902-1).
  4. Agg Assault Fam/Dating Violence (0402-1).
  5. Agg Aslt Strangle/Suffocate - FV (0410-1).
  6. Agg Aslt Enhancement Strangle/Suffocate - FV (0411-1) - When an assault involving strangulation/suffocation is enhanced due to an eligible prior conviction.
  7. Continuous Violence Against Family (4030-1).
  8. Felony Enhancement Assault with Injury - FV (0909-0) - When a misdemeanor assault is enhanced due to an eligible prior conviction.

#### 418.6.2 REQUIRED INFORMATION

Officers shall document the following information in an incident report:

- (a) Specific facts that lead to the probable cause for an arrest, including a detailed description of injuries sustained and threats made by the victim and/or suspect.
- (b) Information supporting, and the name of the supervisor approving, a decision to:
1. Not make an arrest when a suspect is on-scene of a family violence incident; or
  2. Make multiple arrests in a family violence incident.
- (c) The identity of all children witnessing or residing at the location of an incident. This includes the child's full name, date of birth, race, and sex in the "Persons" section of the incident report.
1. List as witness if the child was present in the household during the disturbance.

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2. List as observed/seen if the child was not present in the household during the incident of family violence.
- (d) Whether a motion for an EPO is being filed and the reason why, including why the suspect is believed to be a further danger to the victim upon release from jail.
- (e) The CPS Call ID number in the event a CPS notification is made as outlined in this policy.
- (f) A description of any evidence seized or photographs taken.
- (g) Names of EMS and/or AFD personnel on scene that cares for any person, if applicable.
- (h) Name of any medical facility that any person is transported to, if applicable.

#### 418.6.3 FOSTER HOME LOCATIONS

In addition to the required incident report, an officer who investigates a family violence incident, or who responds to a disturbance call that may involve family violence, shall make an oral or electronic report to the Department of Family and Protective Services within 24 hours if the location of the incident or call, or the known address of a person involved in the incident or call, matches the address of a current licensed foster home or a verified agency foster home as listed in the Texas Crime Information Center (Tex. Code of Crim. Pro. art. 5.05(a-1)).

#### **418.7 SUPERVISOR RESPONSIBILITIES**

Supervisors shall:

- (a) Contact the Family Violence Protection Team anytime there is a felony incident, regardless of whether an arrest is made. The contact should be made:
  1. Prior to transporting the suspect, when an arrest is made; or
  2. Prior to clearing the scene, when no arrest is made.
- (b) Contact the appropriate Investigative Unit when there is an arrest situation involving a juvenile victim 14 years of age or younger.
- (c) Determine whether to authorize the following types of family violence arrests:
  1. Multiple arrest situations when the primary aggressor can not be determined; or
  2. No arrest is made at the scene; or
  3. Assault by contact or assault by threat arrests from inside a residence.
- (d) Review family disturbance and dating disturbance report to ensure the report does not meet the qualifications of a criminal offense. Should a criminal offense be reported, supervisors shall ensure the correct title code is added and the report is routed to the appropriate Investigative Unit.