

Everything You Need to Know About Fighting **Domestic Violence** Charges in Texas

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Introduction

When you are charged with domestic violence, it can feel like the whole world is against you. However, with the right legal representation, you can fight these charges and protect your reputation. This e-book will give you a basic understanding of what to expect when fighting domestic violence charges in Texas and how these charges could affect your life.

Keep in mind that every case is different. After reading this e-book, it's important to speak to an experienced [Houston domestic violence lawyer](#) about the specific circumstances of your case.

What Qualifies As Domestic Violence in Texas?

DOMESTIC VIOLENCE IN THE TEXAS PENAL CODE

“Domestic violence” technically does not appear under the Texas penal code. However, family violence is found under section 71.004 and is defined as an “assault against a member of [one’s] family or household.”

The statute specifies that [family violence](#) may include:

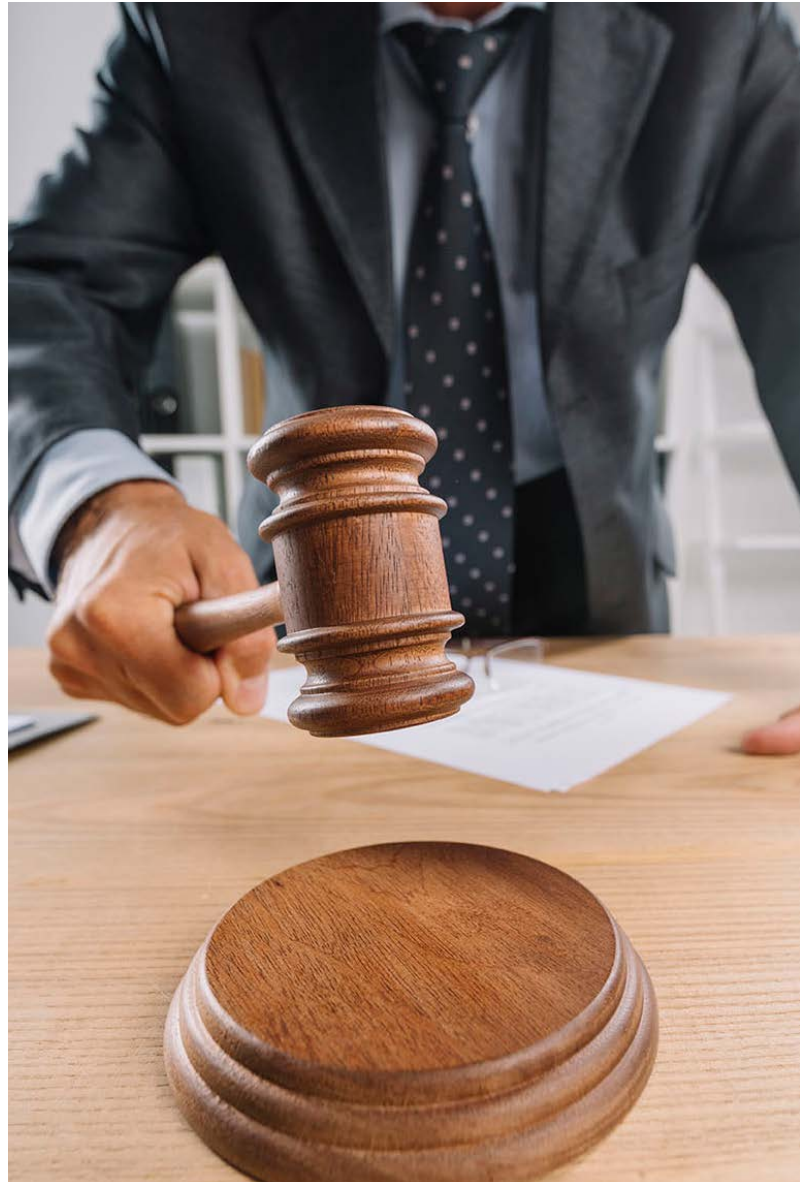
- Intentionally or knowingly causing bodily injury to a family member
- Intentionally or knowingly causing physical contact with a family member when the person knows or should reasonably believe that the other will regard it as offensive or provocative
- Intentionally, knowingly, or recklessly causing by any means (including threatening) serious emotional distress to another person
- Placing another in fear of imminent serious bodily injury or death by pointing a firearm at that person
- Intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of another person by applying pressure to the person’s throat or neck.
- Intentionally causing bodily contact with another when the person knows or should reasonably believe that the other

WHO IS CONSIDERED FAMILY IN TEXAS DOMESTIC VIOLENCE CHARGES?

Texas courts have ruled that, for domestic violence cases, a person's family includes:

- A current or former spouse, including someone from whom you are separated
- The biological parent of your child, even if the relationship between the two of you is broken
- Someone who lives or has lived with you
- Someone related by blood or marriage
- Someone you are in a dating relationship with

For family violence charges, a "dating relationship" is specified as "a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature." This includes casual relationships and those that were never "ongoing" or "substantial."



What Happens If You Are Charged With Domestic Violence in Texas?

If you've been arrested for or accused of domestic violence, it is vital to speak to a Houston family violence lawyer as soon as possible.

The criminal court process for family violence charges in Texas can be complicated. It's important to understand your legal rights and what you can expect during the process.

POSTING BOND FOR A DOMESTIC ASSAULT CASE

In Houston, domestic violence lawyer Lisa Shapiro Strauss has helped many clients navigate the entire process of their case. How this process begins will be slightly different depending on whether there has already been an arrest.

If you were charged with family violence but were not arrested at the scene, you must post bond before we can begin working on the case. The district attorney (DA) and the judge won't discuss the case while there is an open warrant pending.



Here is what must be done:

01

The first step is to hire an attorney. The next step is to set up an account with a bail bondsman. In Houston, Lisa Shapiro Strauss can recommend a bail bonding agency that you can set up an account with. After they get your information and set up your credit, we can go into the court together when we are ready.

02

The next step is to confirm a time to meet in court and speak to the judge with the DA to have a bond amount set. Most cases will show “no bond” for the amount until you come for this “walk-through” with your attorney. The judge will set the bond amount based on what they feel is necessary. As your attorney, Lisa Strauss will argue to make it as low as possible.

03

At this hearing, the DA will file a Motion for Emergency Protection (MOEP). This is standard and cannot be avoided at this point.

04

You will be expected to sign the MOEP. Typically, this order requires you to not have contact with the “complaining witness” in the case. This means not living together, not talking by phone, not texting or speaking on social media, or having any type of contact at all.

05

Depending upon the situation, a few weeks after the bond is set, we may be able to get the judge to amend the MOEP so you can move back home and not jeopardize your bond.

After the bond is in place, the case truly begins.

REVIEWING THE EVIDENCE IN YOUR CASE

At the first real court date in an arraignment setting, the judge serves mostly as the “referee,” ruling on things we ask them to. This case is between us and the DA’s office.

The first thing we must do is request evidence from the DA’s office. Before we can tell your side of the story, we have to see all of the evidence, which can take a long time to get. Times vary depending on which agency filed the report.

This can include:

- Police reports
- Photos, if any were taken
- 911 calls
- Footage from police body cameras

All of the evidence must be gathered before we can fully evaluate the case and talk to the DA. We also need our clients to provide us with any additional evidence they may have that supports their version of the events, such as writing us a letter (a page or two is fine) that explains what happened from your perspective.

WHAT EVIDENCE DOES A PROSECUTOR HAVE TO DISCLOSE TO THE DEFENSE?

The process by which prosecutors and defense attorneys exchange evidence and information about a criminal case is known as discovery. Under article 39.14 of the Texas Code of Criminal Procedure, the prosecutor is required to produce and permit the “inspection and the electronic duplication, copying, and photographing, by or on behalf of the defendant” of:



OFFENSE REPORTS



DOCUMENTS AND PAPERS



CRIME SCENE PHOTOGRAPHS



**WRITTEN OR RECORDED
STATEMENTS OF THE
DEFENDANT OR WITNESSES**



**STATEMENTS OF LAW
ENFORCEMENT OFFICERS**

In addition to sharing evidence, the prosecutor must also disclose how and why the evidence was gathered. If a judge rules that evidence was collected illegally, it is likely not going to be allowed in a trial.

How Can a Domestic Violence Case Be Dismissed in Texas?

In the majority of assault family member cases we handle, the alleged victim wants the charges dropped. It is important that the complaining witness does NOT avoid calls from the DA as that will only delay resolving the case.

In Texas, the DA can proceed with an assault family violence charge even if the complaining witness wants the case dropped.

However, it may increase the odds of the case being dismissed.

In most cases, prosecutors will encourage a complaining witness to cooperate with them as long as the case is being prosecuted. They may even threaten the alleged victim with getting in trouble for recanting their story.

However, even if the witness admits they were not being truthful when they spoke to the police, they likely would not be charged for filing a false report. Although the DA's Office may threaten it, it's very, very unlikely to ever happen.



What Is Continuous Family Violence?

In Texas, a person may be charged with continuous violence against the family if he or she is accused of assaulting a family or household member two or more times within 12 months under Penal Code 25.11. This covers events that span days, weeks and even hours in some cases.

If there is an accusation of assault against more than one family member during the same event, this charge may also apply.

IS A FELONY ASSAULT WITH PREVIOUS FINDINGS/CONVICTION FOR FAMILY VIOLENCE DIFFERENT FROM CONTINUOUS FAMILY VIOLENCE?

There is a distinction between an allegation of continuous family violence and the assault with a previous conviction for family violence, which is also a third-degree felony.

If you've ever been previously convicted for an assault of any family member, you might also be charged with a third-degree felony under Texas Penal Code 22.01.

A few things to note about an assault with a previous finding/conviction for family violence:

- The assault doesn't have to be against the same person twice.
- There is no time expiration for the previous case.
- The previous charge doesn't necessarily need to have resulted in a conviction.

The last point is tricky. If you've completed a deferred adjudication on an assault family violence case in the past, then that means you were not convicted. However, an "affirmative finding of family violence" is still attached to your record. This means the district attorney can charge you in a subsequent case with a felony under this statute.

What Are the Penalties for a Domestic Violence Conviction in Texas?

Family violence charges are most often misdemeanor offenses. There are different levels of misdemeanors, and the penalties depend on the severity of the charge:

- **Class C:** Up to \$500 in fines. This charge typically involves threats of harm or provocative or offensive contact
- **Class A:** Up to \$4,000 in fines and/or up to one year in jail. This charge is more likely the result if the alleged victim suffers bodily injury.

In some cases, family violence accusations may result in felony charges. An assault involving injury may become a third-degree felony if the defendant has any prior domestic assault convictions, as discussed in the previous chapter, or if the offense alleges impeded breath or suffocation.

An [accusation of choking during a family violence assault](#) includes intentionally, knowingly, or recklessly impeding a person's normal breathing or blood circulation by applying pressure to the neck or blocking the nose or mouth.

A third-degree felony conviction subjects the offender to two to 10 years in prison and a \$10,000 fine. Beyond the potential fines and jail time, a conviction for domestic violence charges can have other effects on your life.

HOW CAN A DOMESTIC VIOLENCE CONVICTION AFFECT YOUR CHILD CUSTODY RIGHTS?

There are many reasons a domestic violence conviction could affect your child custody arrangement. Even if the criminal charges were dropped, you actually can be restricted from seeing your children as part of a civil protective order. This means that even though you may not have been convicted of anything, an accusation alone can restrict contact with your kids.

A [protective order](#) prohibits contact between a defendant and the alleged victim. A civil restraining or protective order prohibits you from threatening or harassing the alleged victim.

Harassment is defined in Texas law as conduct directed at another person with the purpose of:

- Harass
- Abuse
- Alarm
- Annoy
- Torment
- Embarrass

In Texas, a threat is defined as actions or language intended to cause another person to:

- Fear that they will be harmed physically.
- Fear their lives are in danger.
- Fear their property will be harmed.

If you violate a protective or restraining order by coming into “contact” with your children — meaning you communicate in some way — could result in arrest and additional charges.



HOW DO DOMESTIC VIOLENCE CHARGES AFFECT YOUR SECOND AMENDMENT RIGHTS?

The right to bear arms is an important one to many Texas. The 2nd amendment protects the rights of Americans to own guns, but there are restrictions on those who have been convicted of domestic violence charges.

WHAT TEXAS LAW SAYS ABOUT DOMESTIC VIOLENCE AND FIREARMS RIGHTS

Under Texas state law, a court may order the suspension of a person's right to possess a weapon if he or she is subject to an active Family Violence Protective Order (including a Temporary Ex Parte Order, Final Protective Order, and Magistrate Orders for Emergency Protection). Chapter 85.026 of the Texas Family Code states that:

“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.”

Violating this order may be punishable by a fine of as much as \$4,000 or by confinement in jail for as long as one year, or both.

HOW FEDERAL LAW AFFECTS FIREARMS RIGHTS AFTER DOMESTIC VIOLENCE CONVICTION

Federal laws also apply when it comes to domestic violence convictions and firearms rights. Under Title 18 USC § 922(g)(8)(9), you are prohibited from owning, possessing or using guns and ammunition if you have been convicted of misdemeanor domestic violence or who are under a protection order for domestic abuse. This statute “Gun Ban for Individuals Convicted of a Misdemeanor Crime of Domestic Violence,” also makes it illegal for someone to knowingly sell or give a firearm or ammunition to a person who falls under the above criteria.

However, federal law allows for firearms rights to be restored if the conviction is expunged or set aside, or the person is pardoned.

How Do Most Domestic Violence Cases End?

Many domestic violence cases end in a plea bargain of some type. This means that the defendant pleads guilty to a lesser charge, usually assault or disorderly conduct, to avoid going to trial and risking a greater sentence if convicted.

POSSIBLE DEFENSES TO DOMESTIC VIOLENCE CHARGES

Several common defenses can potentially be used in domestic violence cases.

- Self-defense is one common defense against assault charges. If you can prove that you were acting in self-defense, you may be able to have the charges dismissed.
- Defense of others is also a common defense in domestic violence cases. This occurs when a person defends another individual from harm, even if that means using force.
- False allegations is also a common defense in domestic violence cases. If you can prove that the alleged victim made up the story or lied to authorities, it will be easier to have the charges dismissed.

Having a skilled criminal defense attorney is critical to determining the right strategy for your case and increasing your chances of a favorable outcome. In Houston, Lisa Strauss has helped many clients facing family violence charges to get charges completely dismissed or downgraded to a lesser charge.

DEFENDING AGAINST INJURY TO A CHILD BY OMISSION CHARGES

Another type of charge that should be discussed regarding domestic violence. Under Section 22.04 of the Texas Penal Code, [injury to a child by omission](#) is a charge that arises when someone “intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission” causes injury to a child, elderly person or disabled person. This includes:

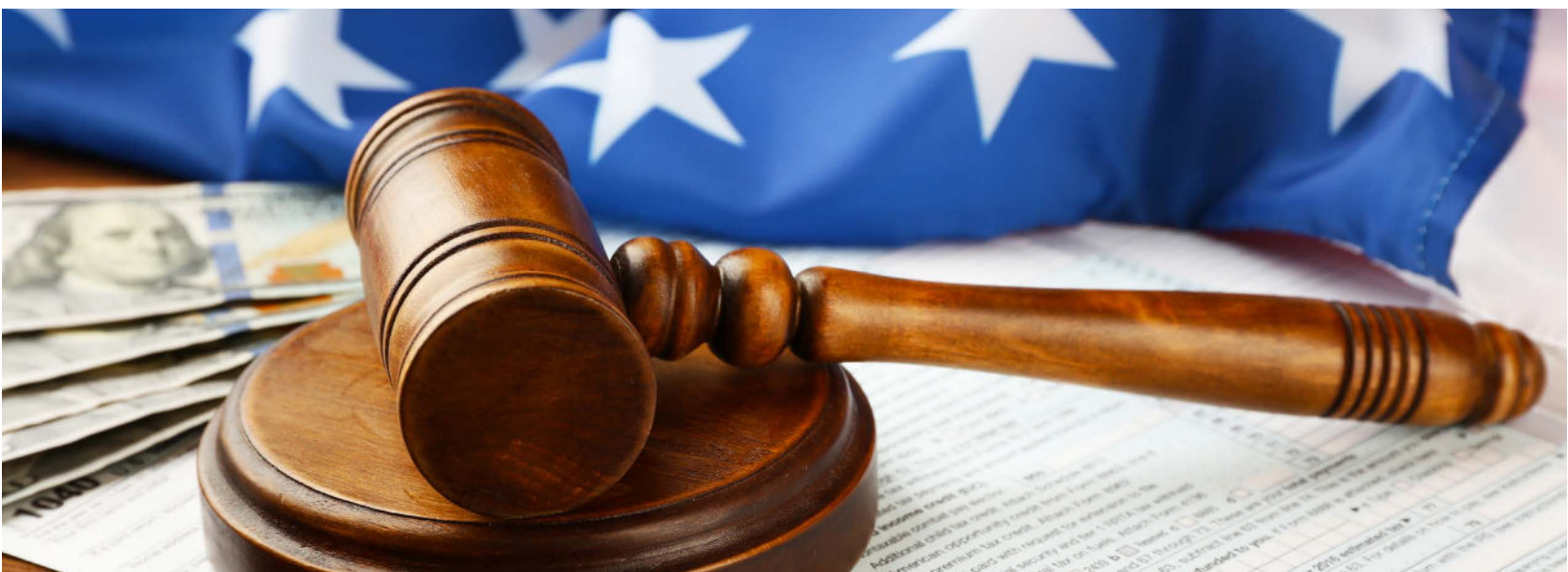
Bodily injury;

- Serious bodily injury; or
- Serious mental deficiency, impairment or injury

These charges can range from state jail to felony of the first degree.

In many cases, those charged with this offense are mothers accused of failing to protect their children from domestic abuse. The mothers in these cases are almost always victims of abuse themselves.

When this is the case, an affirmative defense tactic is sometimes the best option to avoid fines and jail time. This means the defendant admits they are guilty of committing the crime but provides evidence that they were not responsible for committing the crime due to extenuating circumstances. The defendant asks the court to consider these factors while determining punishment.



Choosing the Right Attorney for Your Domestic Violence Case in Houston

No one can guarantee you the outcome of your case. However, your chances of a good outcome are increased with the right attorney. Not all attorneys have the experience or knowledge to handle these types of cases. When selecting an attorney to represent your case, here are a few things to consider:

ARE THEY EXPERIENCED IN DOMESTIC VIOLENCE CASES?

Not all attorneys have the experience and skill to handle a domestic violence case. Make sure you select an attorney who has experience in this type of case. Lisa Shapiro Strauss was a chief prosecutor in a family violence court at the DA's office and now handles many family violence cases daily as defense attorney.

DO THEY HAVE A GOOD REPUTATION?

You will want to select an attorney with a good reputation. Review their biography on their website, check sites such as Avvo to see if they have endorsements from other attorneys.

CAN THEY PROVIDE REFERENCES OR TESTIMONIALS FROM PAST CLIENTS?

Check to see if the attorney has any testimonials from past clients on their website. Check Avvo, Google, Facebook and other sites where people leave reviews to see what past clients have to say.

WILL THEY BE AVAILABLE TO ANSWER YOUR QUESTIONS AND PROVIDE SUPPORT THROUGHOUT THE ENTIRE PROCESS?

You should be able to contact your attorney whenever you have a question. Make sure the law office has a policy of returning phone calls and emails promptly. At the law office of Lisa Shapiro Strauss, we use a secure online portal to take our client communication to a new level. With this portal, our clients can leave messages at any time of the day or night. Lisa or her staff will receive the message and respond as soon as they can. This portal ensures that communications are documented and kept in a confidential system for both parties to access at any time.

DO THEY HAVE A GOOD TRACK RECORD OF GETTING CHARGES DISMISSED OR DOWNGRADED?

Not all attorneys have the experience or skill to get your charges dismissed or downgraded. Make sure you select an attorney who has a good track record in this area. Ask about past case results, particularly related to cases similar to yours.

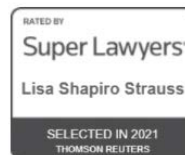
About Lisa Shapiro Strauss

Lisa Shapiro Strauss began her legal career as an Assistant District Attorney in Dallas County in 1997. In 1999, Lisa started a private practice focusing on criminal defense. Since then, she has used her experience and knowledge as a former prosecutor to get her clients the best possible results. She has a proven track record of getting charges dismissed or downgraded to lesser offenses for her clients.

For over 20 years, Lisa has provided dedicated criminal defense representation in Houston, Texas. She understands the serious, lasting consequences associated with felony and misdemeanor domestic violence charges and fights hard to protect her clients' legal rights.

Her experience as a prosecutor gives Lisa unique insight into both sides of the justice system. Because she was trained by prosecutors, she understands how they handle different types of criminal cases. She can go through your case carefully to determine which defense strategies are ideal for it.

If you need guidance from a dedicated [criminal defense lawyer](#), contact Lisa Shapiro Strauss today at (713) 429-7310.



Harris County Criminal Lawyers Association



AREAS OF PRACTICE

Lisa handles only criminal defense cases.



BAR ADMISSIONS

Texas, 1997



EDUCATION

- Southern Methodist University School of Law, Dallas, Texas – J.D.
- University of Arizona, Tucson, Arizona – B.A. – 1994, Major: Political Science



PROFESSIONAL ASSOCIATIONS AND MEMBERSHIPS

- Harris County Criminal Lawyers Association, Member (current); former Vice President (2016-2017); and Secretary (2017-2018)
- Texas Criminal Defense Lawyers Association, Member
- National Criminal Defense Lawyers Association, Member
- State Bar of Texas, Member



AWARDS

- Selected to the Texas Super Lawyers list published annually by Thomson Reuters in the area of Criminal Defense – 2021-2022
- Lead Counsel Verified – Law Info
- AVVO – 10 Rating
- Houstonia Top Lawyers – 2015
- H Texas Top Lawyers – 2015



SPEAKING ENGAGEMENTS

“Armed with the Best Tools: Efficient, Simple and Successful Uses of Technology in the Courtroom (including How to use PowerPoint, Images, Timelines, Graphs and Enhancements- Highlighting, Circling, etc.),” Unleashing Your Inner Beast Seminar in Galveston, April 20, 2018



If you need guidance from a dedicated criminal defense lawyer, contact Lisa Shapiro Strauss today at (713) 429-7310.

Reviews



“She help me with a domestic case. She fought for me & was even more upset then me that the charges was even brought up on me. She did an excellent job getting my case dismissed and always kept me in the loop about my case”

KINGME JAZZO



“Dependable informative professional friendly and my case was DISMISSED!!!! Thank you Lisa your the best!”

ROGELIO MONTALVAN



“Lisa is the best criminal attorney. Do not look any further. She got my case dismissed. She communicate with my wife and me at all times and updated us on my case status. She knows exactly what she is doing. At all times she look for what was best for me. Definitely recommend her. Thanks Lisa for all your hard-work.”

ADAN MEDINA



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