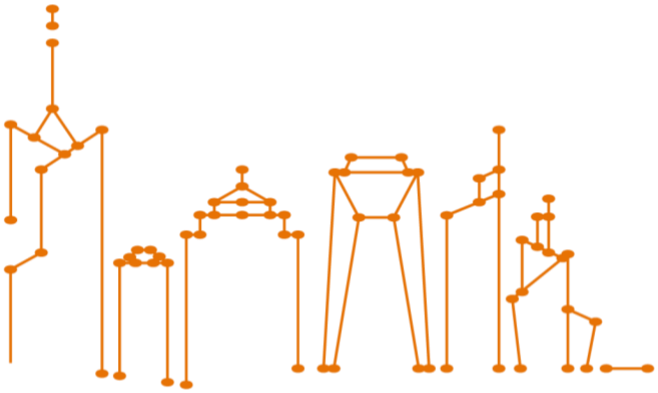

ATX.LEGAL

2023 Travis County

Assault – Domestic Violence Guide

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A Note on Family Violence

There's no question that domestic violence is a blight on American society. There's also no question that for many years/decades, it was a problem that was largely overlooked. Police would look the other way. Family members and friends would ignore what was in plain sight.

Today, that is not the case. Family violence cases make up a large percentage of arrests in Travis County and elsewhere. This has certainly led to improved safety for victims, generally. But the justice system is often clumsy, and the benefits of enforcement have costs as well.

It should go without saying that nothing in this guide is intended to condone violence of any kind, whether in the home or outside of it. However, as a criminal defense attorney, it is my job to advocate for those ***accused*** of domestic violence and other crimes. In my experience, Domestic Violence (DV) cases have – by far – the largest percentage of false accusations of any crime. Additionally, false accusations in such cases can have significant, long-lasting impact on the accused life, even when he/she is acquitted, or charges are dismissed.

This guide covers some difficult topics. I'm sure that some will read it and criticize it as condoning violence – perhaps as condoning violence against women. The critics usually see the issue as a monolith. They do not see it as I do – one case at a time. Each case is different. The accused are often charged falsely or overcharged. No case is a simple as it seems at first. And it is exactly ***because of*** the social stigma involved with family violence charges that an advocate for the accused is so needed.

Another fact that might not be easy to see from the outside is that the alleged victims are also hurt by overzealous prosecution. Some of all of the cost of the legal process is often borne by the alleged victim. Rightly or wrongly, the alleged victim often feels some responsibility for the legal mess that they are in together.

At ATX Legal, we cast no judgments on the accused or the alleged victim. My only goal is to aid my client in getting the best possible outcome and putting their legal situation behind them so they can live their life. A person facing charges for domestic violence could potentially deal with the consequences of the case for the rest of his/her life. An advocate who fights on their behalf can make the difference.

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How to Use This Guide

Not a Substitute for Real Legal Advice

The first thing you need to know is that this guide is for educational purposes only. It is not legal advice. It does not take into account facts that are specific to your situation. Every single case is different and must be treated differently.

This guide is **NOT** a substitute for a lawyer. If you or a loved one has been charged with Assault, you should seek the opinion of an attorney. ATX Legal offers zero-cost consultations by phone or zoom. If you would like to schedule one, you may call 512-677-5003 or visit atx.legal.

Written for Regular People

In this guide I discuss general principles, but it is not meant for lawyers. It is meant for someone who wants to learn about the legal process as it relates to Assault – Family Violence. Perhaps you are a friend or loved one of someone charges, and you helping them through the situation. Or you are charged with Assault yourself.

If you are facing these charges, you may be scouring the internet for every bit of information you can find. This guide is an attempt to give you some handle on what the process will be like. However, it is NOT a DIY guide for handling your case. Always defer to the advice of your attorney.

Focuses on Practical Solutions

With this guide, I attempt to focus on real practical issues that come up over and over. Things like: is there a protective order? When will my court date be? How long will this process last? Will it show up on my criminal history when I apply for a job? If you have specific questions like these, check the table of contents - there might be an answer in there. If not, you can always set up a consultation.

Any criminal charge – and especially an AFV charge – is stressful. Even if the charge is later dismissed, the stress and hassle of the court process can

be extreme. Hopefully, this guide will get rid of the mystery and alleviate some of the stress that is associated with the unknown. It is also intended as an introduction to ATX.legal, and the services that we can provide as your criminal defense attorney, should you decide to hire us. We are always a phone call away: 512-677-5003 during business hours. Or text the same number after hours for jail release.

Arrest and Bond

Bonding out after an arrest for an assault goes differently than other crimes. When a person is charged with a nonviolent misdemeanor like a first time DWI or a drug possession charge, they are often granted a Personal Recognizance Bond (at no charge) the next day. When a person is alleged to have committed a violent crime like domestic violence, it can be trickier to get a release so quickly. If a PR bond is granted at all, it can be days or weeks later. However, an attorney can often speed up the process.

The Arrest

Usually an arrest for Assault-FV will happen one of two ways. If the accused is on site when the police arrive and they decide to charge him, he will be arrested on the spot and taken to jail. If he has left before the police arrive, they can issue a warrant for arrest and execute the warrant at a later date. These scenarios play out very differently for the purpose of bond.

The Walk-Through

If not arrested on the day of the incident, a person can hire an attorney to arrange a walk-through. Be aware that the Travis County Sheriff's Office (TCSO) is now requiring an attorney for every walk-through. Previously you could set up a walk through with a bondsman only.

With a walk-through, the attorney can bring the case to the attention of a magistrate judge, who can sign a bond immediately or agree to sign the bond as the turn-in happens. This minimizes the uncertainty surrounding release, and can eliminate multiple days of custody while a bond is secured.

If you turn yourself in without a lawyer, you do this at your own risk. It can cost you time and possibly more money to pay a bondsman. Additionally, there is more uncertainty regarding whether you will be released at all.

Personal Recognizance Bond

Whether arranging a walk-through or seeking a jail-release after already being arrested, the best way to be released is with a Personal Recognizance (PR) Bond. This is free except for a $20 or $40 fee to be paid later to Travis County Pretrial Services. If the magistrate judge does not grant a PR bond, you may have to pay a bondsman a percentage for a surety bond.

When deciding whether to grant a PR bond, a judge will consider a number of factors. In many cases, the biggest factor will be whether the alleged victim (sometimes referred to as complaining witness or "CW") fears for his/her safety and wants to "press charges" (more on pressing charges in a later section). The Judge or Pretrial Services will actually call the CW directly to get his/her input. Based on their statement, the Judge could grant the PR bond, grant with conditions, or refuse to grant it at all.

Another big factor is criminal history. If a person has a previous conviction it can really hurt his/her chances at receiving a PR bond. It can be especially bad if there are multiple arrests and convictions for violent crimes. If there are multiple assaults where the current CW was also involved, the judge is not likely to grant immediate release and will likely require multiple bond conditions (discussed in the next section).

Other factors play into the decision as well. The Probable Cause Affidavit is a statement of the facts observed and attested to by the police officer. The Judge will consider the severity of what is alleged, and also look for evidence of what occurred beyond mere statements, such as bruising, bleeding, scratches, or other witnesses besides the complaining witness. The Judge will also look to mitigating factors, such as possible self-defense. Even though the magistrate judge is not determining guilt or innocence at this phase, the strength of the evidence does play a factor in most cases.

Cash/Surety Bonds

When a PR Bond is not granted, the judge will then set a bond amount. You can then bond out either by paying the full amount in cash, money order or cashier's check. This amount would be returned after the case is disposed. Alternatively, you can pay a bondsman a percentage of the fee – usually about

10%. This amount will not be returned. Sometimes by calling a number of local bondsman, you can negotiate a better fee than 10%.

Bonds in misdemeanor AFV can be set as low as $5,000, meaning you would only need to pay about $500 to a bondsman for release. If there are multiple charges and/or felony charges, the bond amounts can go up to $50,000, $100,000 or even higher.

Bond Reduction Hearing

If a PR bond is not granted and the bond is set at a level that the defendant cannot afford, an attorney can set a bond reduction hearing. The judge can take in a number of factors in reducing bond, including the defendant's ability to pay. The attorney can put on evidence – usually through testimony of the defendant and his/her family regarding the ability to pay, as well as ties to the community and facts that indicate he/she will not be a danger if released.

Based on this evidence, the judge may reduce bond. This is more relevant in felony cases where bond amounts tend to be higher, or when there are multiple charges where bond amounts add up to a significant sum. Bond reductions are rare in in misdemeanors where the bond is already set low.

Bond Conditions and Protective Orders

Bond Conditions

As a condition of release, the judge can place any condition to ensure the safety of the community, or to secure the return to court. A good attorney will work to tailor the conditions as narrowly as possible, but depending on the situation, they cannot always be avoided entirely. Some common conditions are discussed below.

1. Stay Away Order. A Stay Away Order means that you cannot come within a certain distance – like 200 yards – of a person – usually the CW. The Stay Away Order can also specify no communication between parties, but not always. Unlike an emergency Protective Order (discussed below), the Stay Away order as a bond condition does not expire unless the judge orders it or the case is disposed. However, your attorney can request that the judge remove the order. Usually this requires the cooperation of the CW.

   It is extremely important to note here that it is the responsibility of the subject of the Stay Away order to maintain distance. If the CW has changed their mind and they want to be back together, this does not terminate the order. The CW cannot consent to waive the order. If you are found together, you will be in violation of the stay away order whether the CW wants you to be charged or not. If you want to get the order removed and you both agree, talk to your attorney. Only a Judge can remove the order.

2. Ankle Monitor. This is a device that locks around your ankle and monitors your location by GPS. It's very invasive, but fortunately, many judges are willing to have it removed if you're able to have no violations over a certain amount of time – often 60-90 days. If you do have violations, like gaps where the device was not kept charged, or a visit to the CW's residence, the monitor may stay on while the case is pending.

3. "Cooling Off Period". The judge may sign a bond, but require you to stay in custody for a few days. This allows the situation to cool down, and

sometimes gives the CW a chance to gather her things and settle somewhere else if they shared a residence.

4. Counseling. Almost every case will involve a requirement to go to DV counseling. An assessment determines which class will be assigned, and the number of hours can range from 8 to 30 or even 52 weekly sessions.

Emergency Protective Order

An Emergency Protective Order (EPO) can be requested by the CW or by the police. They don't need the cooperation of the CW in all cases. However, the judge will sometimes take it into account when deciding whether to grant it. An EPO works almost exactly like a Stay Away Bond Condition, except that it expires in 90 days.

Protective Order Hearing

The EPO can be extended. Two years is common, but it can extend to be a lifetime PO. To transform the EPO into a more permanent Protective Order, the accused must be served notice and given a hearing.

You will not automatically be given a lawyer at the PO hearing, but you can hire one. It's a good idea to hire a lawyer because, in addition to challenging the PO, it is possible to question the CW under oath. His/her answers will be recorded on a transcript and can be used in the criminal case.

There are several ways a CW can prove up the facts necessary for a PO. The most common way involves showing the Court enough evidence to make a finding that:

1. Domestic violence occurred, and
2. It will occur in the future.

Note here that it's not enough just to prove up that an incident occurred. There must also be evidence that it might happen again in the future.

Default Judgments

If you do not show to the hearing, usually a default judgment will be entered. The judge will typically grant the PO if the accused is not there to challenge it. For this reason, it is a very bad idea to ignore the hearing once you have received notice. Even if you have to take a day off of work or make other arrangements, make your best effort to show up to the hearing.

The hearing is often set in Travis County Court at Law #4, but may also be at the Civil Courthouse. Pay attention to details so that you don't show up to the wrong court!

The Process

Court Dates

In Travis County, after the covid lockdowns, in-person court appearances are much less frequent. Check-ins can happen on attorney-only dockets where the defendant will not need to be present. Some dockets are still held on Zoom. At some point, you will need to check in with the court in-person. Always consult with your attorney.

Almost all misdemeanor family violence cases are heard in County Court #4. Felony cases can be heard in any of the District Courts, but there is always one prosecutor in those courts that exclusively deals with family violence cases.

The amount of time it takes to dispose of a case varies greatly. When the evidence for a charge is truly lacking, a dismissal can happen swiftly. In other cases, there is some grey area and the prosecutor will not dismiss right away.

For many cases, there is no offer of dismissal, and we need to press forward toward trial. This can mean gathering additional exculpatory evidence, or simply setting on a trial docket to force the prosecutor to prove the case. Each case is going to be handled differently at this stage. I almost never accept a plea that requires a family violence finding without a compelling reason. If that is the best offer we get, the typical response is to set for trial.

Plea Negotiations

Assault - Family Violence cases are somewhat unique in the way plea negotiations are handled. They can require taking a hard stance with the prosecutors. Because any conviction or even a deferred adjudication will lead to a family violence finding (discussed later), and because an FV finding will be on your criminal record forever, I do not usually counsel my clients to accept an offer that includes the FV finding.

Input from the Complaining Witness can have a big impact. If the Complaining Witness is pushing hard for prosecution, the prosecutor may continue with the case even in the face of shaky or exculpatory evidence. If the CW does not want to cooperate with prosecutors, we may have better options.

In some of these cases, the prosecutor may offer the Family Violence Intervention Program (FVIP) in misdemeanor cases, or pretrial diversion if the charge is a felony. These options are generally attractive and I often encourage my clients to accept. In fact, they are important enough that I dedicate an entire section to these options in a later chapter. Check it out if you're interested to learn more.

Trial Docket

If there is not an offer that is worth accepting, we will usually ask for the case to go onto the trial docket. Once on the trial docket, this does not mean that your case will be going to trial at the next setting. In fact, it is very likely that we will be set with a number of older cases that will take precedence. The judge will determine which case is actually tried.

An important note about the trial docket is that you can continue plea negotiations. I have often been able to secure a much better offer once the case is on the trial docket. Once the prosecutor begins digging deeper into the case for trial prep, they will often encounter holes that they didn't know were there. Maybe a witness has recanted or is unavailable. Maybe a police officer has moved out of state. A lot can happen that will disrupt their ability to put on their case, and they might not be aware until they give the case a hard look. In that situation, we can often accept a better offer that avoids the need for trial.

The downside of setting a case on a trial docket is that it will certainly delay the outcome in the case. We may need to be present at court for settings several months in a row before we actually go to trial. Attorney and defendant both need to be present when a case is set for trial. If the alternative is to accept a conviction, it is usually worth it to press forward. If an offer is made that avoids a conviction, it is usually worth considering at this stage.

The Burden of Proof

The Prosecutor Must Prove the Case, Not You

An important factor in family violence cases is the burden of proof. These cases can come down to he-said/she-said, and that is not enough for a conviction. The State must prove the case beyond a reasonable doubt. They need more evidence than just a statement from an alleged victim. If they can corroborate the statement with physical evidence such as injuries, photographs, and medical record, damaged property, or the accused's own statements, then they may be able to go forward with the case.

The prosecution is responsible for showing that the accused is guilty beyond a reasonable doubt. This means that they must present evidence that proves the accused committed the crime, and that this evidence is strong enough to convince a jury of their guilt.

One of the key pieces of evidence in assault family violence cases is the testimony of the alleged victim, also referred to as the complaining witness or "CW". The victim's testimony can be used to establish the elements of the crime, such as the use of force or the intent to cause harm. However, in many cases, the CW does not want to participate in the prosecution process, and may wish for the charges to be dropped.

Affidavit of Non-Prosecution

Even though the prosecutor always has the final decision about whether to proceed, the CW's input is given a lot of weight. If the CW does not want to press charges, they can file an Affidavit of Non-Prosecution. This is a legal document in which the complaining witness of a crime, in this context of family violence, states that they do not wish to pursue criminal charges against the accused. This document is often used in cases where the complaining witness decides not to cooperate with the prosecution, or where the complaining witness and the accused have resolved the matter privately and no longer wish to proceed with the criminal case.

An Affidavit of Non-Prosecution can result in reduced or dismissed charges. The CW can also contact the prosecutor directly by reaching out the

a victim's advocate and making a statement. A good defense attorney will facilitate communication with the prosecution if the CW wants to drop charges. I usually recommend to call them directly, because it can take weeks or even months before they call.

The burden of proof is always on the prosecution and not the defense. And even if the prosecution has enough evidence to prove their case, the defense attorney can still argue that the evidence doesn't prove guilt beyond a reasonable doubt, or that the defendant's actions were in self-defense. A good defense attorney will always force the State to show they have enough evidence to prove the case – and if they can't, charges should be dismissed.

But they aren't "pressing charges". Why am I still being prosecuted?

First off, there is quite a bit of confusion about what "pressing charges" means. Charges are not brought by the alleged victim (complaining witness, CW). They are brought by the prosecutor. In Travis County, felony charges are brought by the District Attorney and misdemeanors by the County Attorney. They can move forward with or without the help of the complaining witness. They can even subpoena the CW and force them to testify even when they don't want to come to court.

However, the input of the CW is taken seriously. If the prosecutor receives input that they do not want to assist with the prosecution, they may choose to dismiss the case. This is for two reasons. First, as with any criminal proceeding, prosecution is easier with the cooperation of witnesses. Second, the prosecutor's primary role is to serve the community. In this case, that means the CW. If they are communicating that they do not need the prosecutor's assistance, the prosecutor will take that into account.

The Family Violence Finding

The Family Violence (or FV) finding is a big reason why these types of cases are handled differently from other misdemeanors and felonies. An FV finding is automatic if there is an assault against a family member, partner, or even a roommate. While a judge may read an "affirmative FV finding" into the record, it is important to note that the judge CANNOT waive the finding. Even if the judge does not affirmatively hold that an FV finding applies, a judge or jury in a later case can find that it DOES apply. This is important because it means that the FV finding is not a point of plea negotiations.

When Does it Apply?

The FV finding applies for all convictions AND for all deferred adjudications. This is another important point because you may jump to the conclusion that because there is no conviction with a deferred adjudication, there is no FV finding. However, the law clearly states that FV findings apply even for a deferred adjudication. For this reason I almost never recommend my clients agree to a plea for deferred adjudication in Domestic Violence Cases.

Why is an FV finding so bad?

There are four main reasons to avoid an FV finding.

1. Any future DV charge can be enhanced to a felony. Even a charge that would be considered "minor" is automatically bumped to a felony. Even a false accusation will be charged as a felony.

2. You can't own a firearm for the rest of your life. Even though the Texas law states that the prohibition lasts five years, the Federal equivalent states that the prohibition on gun ownership is for life.

3. An FV finding stains your criminal history. Especially in today's political climate, an FV finding is going to affect your ability to get a job, rent an apartment and maybe even find a dating partner. The FV finding is public record and anyone can see it.

4. An FV finding is forever. Unlike some other crimes, there is no way to seal or expunge a Domestic Violence conviction or even deferred adjudication. Unless the laws change, the FV finding will stay on your record for life.

A Note on the Prohibition of Firearms

In February 2023, the 5th Circuit released an opinion stating that the prohibition on firearms is unconstitutional as applied to Protective Orders. This finding did NOT extend to people who have family violence convictions on their record.

I have seen some misinformation online regarding this decision. If you have previously had your firearm rights taken away, do not assume that this decision changes that. However, given that our current Supreme Court's stance toward the 2nd amendment, it might be worthwhile to keep track of developments. You can follow my YouTube Channel for updates.

How to Avoid a FV finding?

There are only a few ways to avoid a FV finding after you have been charged with DV Assault:

1. Dismissal by the prosecutor,
2. Acquittal by a jury or
3. A Pretrial Diversion program that ends in dismissal. (Discussed later.)

All other outcomes – guilty plea, deferred adjudication, or a guilty verdict at trial – all result in a FV finding. The only rare exception to this hard and fast rule is if you convince the prosecutor and judge that the alleged victim in the case is not classified as a partner. The definition is broad, and can even include roommates, but if you can make that case and get the FV enhancement dropped, you can escape the FV finding.

I would use caution here, because a later judge or jury can reverse that decision. You can ask for the judge to state on the record that there is explicitly *not* a finding of family violence. However, even this can be overlooked in future cases. Therefore, I will rarely accept a plea offer that

involves a conviction even if the prosecutor is "waiving" the FV finding. Instead, I would seek a resolution that gets us to a dismissal.

FVIP Program and Pretrial Diversion

The Family Violence Intervention Program (FVIP) for misdemeanors, and Pretrial Diversion for Felonies each allow the case to be dismissed following completion of certain requirements. This is often great for the client because he/she does not have to admit guilt and the case can be expunged from their criminal history. Not all cases will qualify for these programs. They are offered at the discretion of the prosecutor, and you must apply and be accepted.

FVIP

The FVIP program lasts 6-12 months and can sometimes be ended earlier if all requirements are completed early. Once complete, the case is dismissed, and can be eligible for an expunction. Importantly, the FVIP program does NOT require an admission of guilt. After dismissal (and sometimes after a waiting period) the case can be expunged from your criminal history.

Of course, there are some requirements that you must adhere to during the course of the program. If you violate these requirements, you can be kicked out of the program and the prosecution will be restarted.

During the 6-12 months, you will usually need to complete BIPP (Batterer's Intervention and Prevention Program) classes. These classes can be from 16 to 52 weeks. Obviously if the BIPP classes are on the longer side, they can extend the time you are on FVIP. You will still be on bond and the case is pending during this time and won't be released until the classes are done. If there are bond conditions, you will still have to comply with those. Of course, is there is a Stay-Away order, you will need to comply.

The biggest requirement is that you do not pick up any new charges. Any new criminal charge above a class C violation (traffic tickets are allowed) is going to get you removed from FVIP. This is especially true if the new charge is a domestic violence case. If that occurs, you will now be facing both criminal charges and the case becomes exponentially more difficult. It is very important not to put yourself in a position to pick up a new charge while on the program.

The FVIP program replaced the former "Deferred Prosecution". If you are familiar with the deferred prosecution, the key difference between it and the FVIP program is that with the deferred prosecution, the case would be dismissed up front. This was preferred for many reasons. On your criminal history, the case would show as dismissed. Even though you would need to wait until the Deferred Prosecution expired before getting it expunged, many employers will accept a dismissal as a resolution for the case. Unfortunately, the Deferred Prosecution is totally within the discretion of the prosecutor, and it is no longer offered in Travis County.

It's not all bad though. Unlike the Deferred Prosecution, with the FVIP program, you do NOT need to admit guilt. Even though that admission would typically never leave the prosecutor's office, it can still be a huge factor in immigration cases and other edge cases. An admission of guilt in a family violence case can be the difference in attaining citizenship or even being deported. Also, it could mean an automatic conviction in cases where the client failed out of the FVIP program. Now, the prosecutor simply reactivates the case and we can begin negotiations again.

Pretrial Diversion (Felony Cases)

The FVIP program is only for misdemeanors. So what happens if you're in felony court? Felonies are handled in District Court, and there you may qualify for pretrial diversion. It lasts for 12 months, also requires BIPP classes, but additionally includes monthly check-ins and probation fees (approximately $65 per month).

Just like FVIP, the case can be dismissed and expunged once complete. You also must avoid new charges, especially new charges involving violence. It's a little more onerous because of the monthly check-ins and fees. The prosecutor can also tailor the program and add new requirements. The additional requirements beyond FVIP reflect the fact that the felony is a more serious charge with more significant consequences.

Conclusion

In conclusion, either of these programs are typically great options because they can dispose of the case while keeping your criminal history

clear. It can also be a quicker and less stressful resolution than setting the case for trial. In cases where FVIP or Pretrial Diversion is not being offered, I will often fight to get my client reconsidered. To avoid a conviction and a family violence finding while also avoiding trial is a big deal. That's why these programs have a full section in this guide. They are often my client's best option for these cases get resolved.

Felony AFV Cases

It should go without saying that Felony Assault cases are extremely serious. They can become a felony when "enhanced" because there is a previous family violence conviction, because it is alleged that the defendant impeded breath of the alleged victim, or when serious bodily injury has occurred as a result of the assault.

The risk of jail time and a felony conviction on your criminal history mean that the stakes are higher. A dismissal in these cases can still be possible when evidence is lacking. In general, felony cases require more time and care from the attorney because of the high stakes. This section is a brief discussion of Felony DV cases, but if you are charged, it is imperative that you speak to an attorney as soon as possible.

Impede Breath Cases

FV Assaults are enhanced to a third degree felony if it is alleged that strangulation was involved. This means that the maximum jail sentence can range from 2-10 years. Strangulation cases are considered more serious because studies have shown them to be one of the last steps of an escalating cycle of violence. Even though the cycle of violence is overused by prosecutors, there is some truth to it, and strangulation can lead to death. Therefore, when strangulation is alleged, the case needs to be taken seriously, given the consequences.

Evidence of strangulation can include CW statements, bruises or scratching around the neck area, or evidence that the CW lost consciousness. When there is an abundance of physical evidence, the prosecutor is likely to move forward on such a case even without support from the CW.

All defense attorneys should be aware that strangulation cases are overcharged. This means that police will often charge a case with the impede breath enhancement even when it is not warranted by the evidence. Police always ask the CW if the accused put their hands to his/her throat. Sometimes they don't understand the question and will answer yes even if the accused did not apply any pressure. Other times, in an emotional state, they will lie to police because they know it will enhance the charge. Therefore, the

strangulation claim should always be viewed with skepticism and the evidence examined closely.

Subsequent FV Charges and Continuous Violence

If a person has previously been convicted or given deferred adjudication for a domestic assault, new charges are automatically enhanced to a third degree felony. Note here that the severity of the new charge has no bearing and can be charged as a felony even if the allegations are relatively minor.

It is sometimes possible to drop the enhancement and plea to a misdemeanor in these cases. I don't know if you can call it a silver-lining, but when there is already a FV finding on the criminal history, a new conviction won't change that in any material way. This means that the option to plea to a misdemeanor conviction might be a good one since the FV finding is not a factor.

In general, prosecutors are not going to give great plea options for someone who is back in court on a second DV charge. They are much more likely to see it as a pattern that they need to curb with severe punishments. Therefore the conversation might be more about avoiding jail time and/or reducing to misdemeanor charges than avoiding convictions. Still, every case is different, and there are often ways to handle them that avoid the worst consequence and can keep the accused out of jail.

The "Continuous Violence" enhancement is similar to the subsequent charge enhancement, except that there does not need to be a previous convictions. Instead, there must be two or more instances of violence in the last 12 months. The prosecutor needs to prove up each charge individually. If he can do that, two misdemeanors can equal one felony.

Aggravated Domestic Assault

If the accused is charged with causing serios bodily injury or with using a deadly weapon, they can be charged with Aggravated Domestic Assault, a first degree felony. The punishment range for a first degree felony is 5-99 years. Serious bodily injury means an injury that causes substantial risk of death or disfigurement. If aggravated assault is alleged, the evidence will need

to be studied carefully, not just for determining whether the assault occurred, but whether there is enough evidence for serious bodily injury.

A deadly weapon can mean a knife, a gun, or even an air rifle in some cases. If the weapon is capable of causing death, even in rare cases, it can be considered a deadly weapon. Courts have certainly found that vehicles can be a deadly weapon as well.

Conclusion

In many ways, felony AFV cases play out the same way as misdemeanors. It is still the defense attorney's job to force the prosecutor to prove every element of the case. If a dismissal is not offered, then we must consider trial as an option. But with felonies, the raised stakes mean that we must consider every step carefully in terms of risk and reward. The potential risks in a felony case are much higher.

Also, because felonies often include enhancements, there are additional elements that the prosecutor must prove. This makes the cases more complicated for all parties involved – including the prosecutor, who has to prove all the enhancement elements as well.

If charged with a felony AFV, seek consultations as soon as possible. Having the right attorney advocating for you in this situation can have far-reaching consequences for the rest of your life.

Criminal History

There are a few unique characteristics that make DV cases difficult to deal with when it comes to a criminal history. The FV finding, discussed previously, cannot be waived, and applies to all convictions and deferred adjudications. This lasts forever, as do all entries on a person's criminal history that are not expunged or sealed. Below, I will discuss a little bit about what a criminal history is, and then go specifically into options for FV cases.

Anatomy of a Criminal Record

A criminal record consists of 3 parts. 1) The arrest, 2) time spent in custody, and 3) the disposition. As soon as you are arrested, the arrest and jail time (if any) is shown on your history. The disposition will appear only after the case concludes. An expunction or order of non-disclosure is available only if your cases are disposed in certain ways.

Under current law, **if not expunged or sealed, the record of arrest and/or conviction will remain on your record forever.**

Expunction

An expunction means that your criminal record is literally destroyed. No one should be able to find it, and you are legally permitted to deny that the arrest ever existed. It does not happen automatically. You must petition the court. I charge $1,200 flat fee for an expunction, which breaks down into about $400 court costs and $800 in attorney fees.

You can also have your expunction handled for free by the UT Expunction Project. The expunctions are handled by UT Law students under the direction of a licensed attorney. It is a very good program, but the downside is that you may have to wait, as they only do expunctions once or twice a year. See the Link below for more details.

UT Law Expunction Project

An expunction is available only after a waiting period for the duration of the statute of limitations. However, the prosecutor can waive this waiting

period in some cases. Once filed, the agencies that have records relating to the arrest, but destroy them or send them back to the Court. They have up to one year to do so, but often comply within 4-6 months. Note that, as a Federal Agency, the FBI keeps arrest records and is not bound by Texas Expunction Law. However, they voluntarily comply with Texas expunctions, typically automatically. If you have had a case expunged, but the FBI still maintains a record, you can contact them to have it removed.

Expunctions are available for acquittals, dismissals, and successful completion of FVIP or Pretrial Diversion. Because of the stigma attached to an FV case on your criminal history, I recommend that everyone who qualifies for an expunction begin that process as soon as possible.

Order of Non-disclosure (Sealing) Not Available

Non-disclosures are simply not available in FV cases. In other types of cases, when you plea to a deferred adjudication, you can typically seal the record from public view once that is complete. Not so with Family Violence cases. It will stay on your record. Since the ability to seal is the main advantage of a deferred adjudication, and because it comes with significant disadvantages, I don't usually recommend it to clients.

About the Author

Born and raised in Texas, I began practicing in Austin in 2014. I have always focused my practice on criminal defense. In that time, I have learned the value of a client-centered approach focused on communication with all my clients. I launched ATX Legal in 2021 because I wanted to expand the client-focused approach I had developed over five years and hundreds of clients. A large percentage of my business comes from references from previous clients because they know the kind of value I deliver and the level of care I take in each case.

After graduating cum laude from Loyola University in New Orleans, I returned home to Austin. I am married and I have a beautiful daughter in elementary school. On my off days, I enjoy hiking, motorsport, and sim racing. Austin will always be my home, and I want to make it a better place, one client at a time.

Helpful Resources

Criminal Court

Blackwell-Thurman Criminal Justice Center
509 West 11th Street
Austin, Texas 78701

(512) 854-9244

https://www.traviscountytx.gov/courts/criminal

Travis County Docket

https://publiccourts.traviscountytx.gov/dsa/#/

Pretrial Services

Located on the second floor of the Blackwell-Thurman Justice Center.

https://www.traviscountytx.gov/tccjs/pretrial/contact

512-854-9381

Travis County CES (for education classes)

https://www.traviscountytx.gov/counseling-education

Intake and Assessment:
314 West 11th Street
Suite 250
Austin, Texas 78701
Phone: (512) 854-9540

Service Center:
5501 Airport Blvd., #102
Austin, TX, 78751
(512) 854-9540

Adult Probation

https://www.traviscountytx.gov/tccjs/adult-probation/

411 W. 13th St.
Austin, TX 78701
Room 722
512-854-4600

CCA – County Court Admin

Phone: (512) 854-9244

Courts

CC3 – Honorable John Lipscombe
5th Floor
(512) 854-9243

CC4 – Honorable Dimple Malholtra
3rd Floor
(512) 854-9896

CC5 – Honorable Nancy Hoengarten
4th Floor
(512) 854-9676

CC6 – Honorable Brandy Mueller
4th Floor
(512) 854-9677

CC7 – Honorable Elizabeth Earle
6th Floor
(512) 854-9679

CC8 – Honorable Carlos Barrera

5th Floor
(512) 854-7180

CC9 – Honorable Kim Williams
6th Floor
(512) 854-8460

Texas Penal Code

https://statutes.capitol.texas.gov/Docs/PE/htm/PE.22.htm

Law Library Resources

https:///www.Texaslawhelp.org

UT Expunction Project

https://law.utexas.edu/probono/projects/special-projects/texas-law-expunction-project

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