

LAW ENFORCEMENT MANAGEMENT INSTITUTE

A REPORT IDENTIFYING ASSAULT REDUCTION
TECHNIQUES - FAMILY VIOLENCE CALLS

A LEARNING CONTRACT
SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR
MODULE I

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Prostitution is often referred to as the oldest profession (crime), when in reality it is not. Family violence is the oldest crime. "One day, Cain suggested to his brother, 'Let's go out into the fields.' And while they were together there, Cain attacked and killed his brother."1 Family violence has not changed throughout time but, for the purpose of this research paper, only the time period beginning January 1978, will be used.

Assaults connected to family violence have always existed. Proper legislation, training and verbalization can reduce assaults connected to family violence calls for the law enforcement officer and family members alike. Legislation gives the police officer the defined laws to be enforced. Training educates police officers in exactly what the legislation requires of them and, with the proper verbalization, the police officer can attain the goal of voluntary compliance.

In 1978, the North Texas Council of Government Regional Police Academy in Arlington, Texas, required over the minimum number of hours mandated by the Texas Commission on Law Enforcement Officer Standards and Education. Officers were trained in handling domestic disturbances to separate the involved parties, calm everyone down, and establish whether the victim wanted to prosecute or whether either party would leave. This system was, at best, ineffective, usually resulting in numerous return calls to the same residence.

With this type of passive enforcement, the problems were never really resolved, only momentarily suppressed. These return calls became routine to the responding officers, thus creating a more likely assaultive situation for the officers and family members. Unfortunately, the laws of the time gave the law enforcement officer no other real choice.

The Code of Ordinances of the City of Terrell, The Code of Criminal Procedure, The Family Code, or The Penal Code of that time made no reference to any type of family violence occurring in one's home, out of the officer's presence or which has no complainant. Legislation passed since 1978 makes the law enforcement officer's job in family violence situations more defined with the results being more favorably predictable.

Article 5.01 of the Code of Criminal Procedure points out that family violence is a dangerous situation to all involved. However, the victims are entitled to maximum protection. This statement alone should eliminate any type of passive enforcement, but the legislation does not stop here.

Code of Criminal Procedure Article 5.01. Legislative statement:

- (a) Family violence is a serious danger and threat to society and its members. Victims of family violence are entitled to the maximum protection from harm or abuse or the threat of harm or abuse as is permitted by law.

- (b) In any law enforcement, prosecutorial, or judicial response to allegations of family violence, the responding law enforcement or judicial officers shall protect the victim, without regard to the relationship between the alleged offender and victim.²

Article 5.04 dictates the duties of peace officers. Though the Code of Criminal Procedure is not difficult to read or comprehend, even to date there are police departments not in compliance with the written notice found in Article 5.04. It is very important in that it provides education for the victim and provides the victim options, thus greatly reducing the chance of future assaults involving that victim.

Article 5.04. Duties of peace officers.

- (a) The primary duties of a peace 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, enforce the law, and make lawful arrests of violators.
- (b) A peace officer who investigates a family violence allegation or who responds to a disturbance call that may involve family violence shall advise any possible adult victim of all reasonable means to prevent further family violence, including giving written notice of a victim's legal rights and remedies and of the availability of shelter or other community services for family violence victims.

(c) A written notice required by Subsection (b) of this article is sufficient if it is in substantially the following form with the required information in English and in Spanish inserted in the notice:

"NOTICE TO ADULT VICTIMS OF FAMILY VIOLENCE

"It is a crime for any person to cause you any physical injury or harm EVEN IF THAT PERSON IS A MEMBER OR FORMER MEMBER OF YOUR FAMILY OR HOUSEHOLD.

"Please tell the investigating peace officer:

"IF you, your child, or any other household resident has been injured; or

"IF you feel you are going to be in danger when the officer leaves or later.

"You have the right to:

"ASK the local prosecutor to file a criminal complaint against the person committing family violence; and

"APPLY to a court for an order to protect you (you should consult a legal aid office, a prosecuting attorney, or a private attorney). For example, the court can enter an order that:

"(1) the abuser not commit further acts of violence;

"(2) the abuser not threaten, harass, or contact you at home;

"(3) direct the abuser to leave your household; and

"(4) establishes temporary custody of the children and directs the abuser not to interfere with the children or any property.

"A VIOLATION OF CERTAIN PROVISIONS OF COURT-ORDERED PROTECTION (such as (1) and (2) above) IS A CRIMINAL OFFENSE.

"CALL THE FOLLOWING VIOLENCE SHELTERS OR SOCIAL ORGANIZATIONS IF YOU NEED PROTECTION:

" _____
 " _____ 3

The enactment of Article 5.05 of the Code of Criminal Procedure, forced the police officer into modern enforcement in family violence calls making a written report mandatory. Police officers disliked the repeat family violence calls, however, they dislike paperwork even more. Article 5.05 does not stop with just making the police officer write a report, but goes on and makes the department responsible for making these reports accessible.

The most important legislative maneuver for reducing assaults in family violence situations is introduced in Article 5.05 in the protective order and examined further in the Family Code.

Article 5.05. Reports and Records.

(a) A peace officer who has reason to believe that an offense involving family violence has occurred shall make a written report, including but not limited to:

- (1) the names of the suspect and complainant;
- (2) the date, time and location of the incident;
- (3) any visible or reported injuries; and

- (4) A description of the incident and a statement of its disposition.
- (b) Each local law enforcement agency shall establish a departmental code for identifying and retrieving family violence reports, as outlined in Subsection (a) of this section. A district or county attorney or an assistant district or county attorney, exercising authority in the county where the law enforcement agency maintains records under this section, is entitled to access to the records.
- (c) In order to ensure that officers responding to calls are aware of the existence and terms of protective orders, each municipal police department and sheriff shall establish procedures within the department or office to provide adequate information or access to information for law enforcement officers of the names and persons protected by a protective order and of persons to whom protective orders are directed.
- (d) Each law enforcement officer shall accept a certified copy of an original or modified protective order as proof of the validity of the order and it is presumed the order remains valid unless:
- (1) the order contains a termination date that has passed;
 - (2) it is more than one year after the date the order was issued, or;

- (3) the law enforcement officer has been notified by the clerk of the court vacating the order that the order has been vacated.⁴

To further examine the protective order in the reduction of family violence assaults, one must refer to the Family Code Section 71.11. This section goes into depth concerning what the court may prohibit a party from doing. For the purpose of this research paper, reference is made to Section 71.11 (a)(7) which is as follows:

- (7) prohibit a party from doing specified acts or require a party to do specified acts necessary or appropriate to prevent or reduce the likelihood of family violence.

- (b) In a protective order the court may prohibit a party from:

- (1) committing family violence;

- (2) communicating:

- (A) directly with a member of the family or household in a threatening or harassing manner;

- (B) a threat through any person to a member of the family or household; and

- (C) on a finding of good cause, in any manner with a member of the family or household except through the party's attorney or a person appointed by the court;

- (3) going to or near the residence or place of employment or business of a member of the family or household; or
 - (4) going to or near the residence, child care facility, or school where a child protected under the order normally resides or attends.
- (c) In an order under Subsections (b)(3) and (b)(4) of this section, the court shall specifically describe the prohibited locations and the minimum distances therefrom, if any, that the party must maintain unless Section 71.11 of this code applies, in which case, the court order need not disclose the locations.⁵

Enforcement of 71.11 Family Code is actually found in Section 25.08 of the Penal Code. Violation of a protective order under this section of the Penal Code is a Class A misdemeanor. The Penal Code also points out that the validity of the protective order is not affected by the reconciliatory actions or agreements made by persons affected by the protective order or the duty of the officer to enforce this order.

Verbal skills of the police officer are his most important tool. He uses his verbal skills 97-98% of the time with the goal to generate voluntary compliance. Communication is a learnable professional skill, not just luck. Peace officers must communicate under uniquely stressful conditions. Most people respond positively to reasonable requests from

police officers, while stern commands or orders usually meet with resistance. The officer who can use words and verbal strategy to redirect the negative behavior of others will avoid needless violence and create more positive behavior. Officers must have the ability to use verbal persuasion as part of the system of processing reality. He must maintain objectivity, learn to allow people to express frustrations, listen, and not take things personally.

Other skills, such as empty hand control, chemical agents, baton, or deadly force, are only used 2-3% of the time, yet probably 95-98% of all training is done in other than verbal skills training. If the situation does escalate to a physical confrontation the officer's act is one designed to defend and protect the victim from criminality and not one of hostility.

Self-control is one of the greatest assets in dealing with any family violence situation. Self-control results from the development of confidence in one acquired skills through practice and experience. The object of using self-control (proper verbalization) is to elicit cooperation from the violator without resorting to physical force. Almost every contact with the police especially in family violence calls where arrests take place is both an emotional and physical problem for the violator and victim. The officer has to realize that each scene has its own dynamics long before his arrival.

In family violence situations, with legislation as defined as it currently is, the police officer must still remain open-minded as to the use of his verbal skills, in order to generate the needed voluntary compliance. Unfortunately, in many police agencies, success in dealing with potential violence is treated as the results of a mystical sixth sense rather than as a professional skill that can be taught and learned.

Officers must keep in perspective that it is usually not what is said, but how it is said. The officer who can empathize with the suspect in a family violence situation and at the same time make that suspect understand that the laws are very defined as to what action is to be taken or which is being taken, should meet with a lesser degree of resistance.

In conclusion, family violence has always existed and will continue to exist. Legislation can reduce family violence to some degree, but police officers must be trained not only in the laws, but in the proper techniques of handling violence calls such as verbalization. The Code of Criminal Procedure, The Family Code, and the Penal Code must be studied and used as tools in family violence situations by responding police officers in order to get favorably predictable results. The police officer must also help educate the victims of family violence (Notice to Adult Victims of Family Violence) in order to free the victims from further violent acts. These various laws and the development and implementation of proper verbal skills of the police

officer should greatly reduce recurring assaults on family members and police officers responding to family violence calls. Again, family violence will continue to exist but major strides have been made in legislation and training to at least bring this violent problem into focus.

ENDNOTES

¹The Living Bible (Carmel, New York: Guideposts Associated, Inc.)
Genesis 4:8, page 3.

²Texas Code of Criminal Procedure - Code and Rules (St. Paul,
Minnesota: West Publishing Co.) 1990 Edition, Article 5.01, pp. 16.

³Ibid, Article 5.04, pp. 16.

⁴Ibid, Article 5.05, pp. 17.

⁵Texas Family Code (St. Paul, Minnesota: West Publishing Col.) 1990
Edition, Section 71.11, A7. pp. 17-18, 186.

BIBLIOGRAPHY

The Living Bible (Carmel, New York: Guideposts Associated, Inc.)

Texas Code of Criminal Procedure - Code and Rules (St. Paul, Minnesota: West Publishing Co.) 1990 Edition, pp. 16-17.

Texas Family Code (St. Paul, Minnesota: West Publishing Co.) 1990 Edition, pp. 17-18, 186.

Texas Criminal Laws; Texas Penal Code (Austin, Texas: Texas Department of Public Safety) 1987-1988, p. 46.