
SAFETY

DOMESTIC VIOLENCE

COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN (CSEC)



DOMESTIC VIOLENCE

Domestic violence can be a common occurrence in child welfare cases. The following information, tools, and resources are designed to support judges' understanding of the complexities of domestic violence and to support informed decision making when these dynamics impact a child welfare case. Additionally, judges are encouraged to contact their local Family Violence Center to access opportunities for education and training. To determine which Family Violence Center serves a particular county, please see a list of Texas counties and their centers by using this [statewide chart](#). For more support or assistance in identifying a local program, please contact the [Texas Council on Family Violence](#).

A. Background

Domestic violence (referred to as “family violence” in [Tex. Fam. Code § 71.004](#)) is defined as a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner.²¹² Domestic violence can be physical, sexual, emotional, economic, psychological, or technological actions or threats of actions or other patterns of coercive behavior that influence another person within an intimate partner relationship. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Physical aggression is not always a tactic that is utilized in domestic violence; however, if it is used, physical aggression may or may not show physical evidence of harm.

“Coercive control is a central dynamic in domestic violence situations, and it can take the form of “tactics to isolate, degrade, exploit, and control [the victim] as well as to frighten them or hurt them physically” although it can also take the form of emotional and psychological intimidation without physical violence.²¹³ Other methods of coercive control can take the form of “depriving victims of their financial independence or material possessions and regulating their everyday behavior.”²¹⁴ The cumulative effect is a pattern that minimizes the victim’s “autonomy, equality, liberty, social supports and dignity in ways that compromise the capacity for independent, self-interested decision-making vital to escape and effective resistance to abuse.”²¹⁵

Domestic violence can include the domestic violence perpetrator (hereinafter referred to as perpetrator) taking away access to resources needed by the survivor parent and the children as well as removal of psychological or emotional support. In a child welfare case, coercive control can manifest as the perpetrator taking away access to resources and/or documents as a threat, consequence, or barrier for the survivor parent participating in the child welfare investigation process, signing a safety plan, or getting a protective order. This could also take the form of the perpetrator making threats about the children, employment, or basic needs. These actions by the perpetrator increase risk to the survivor parent and the children and can compromise the survivor parent’s ability to protectively parent and in turn increase the negative impact that domestic violence has on the children. It is crucial to respond to domestic violence in a way that supports the protective capacities of the survivor parent and bolsters protective factors for the children, while simultaneously holding the perpetrator accountable for the impact that their behavior and parenting choices have on the family.

It is important to note that witnessing family violence, in and of itself, is not defined as child abuse under Texas law. However, co-occurrence of domestic violence and child neglect or abuse is common and domestic violence constitutes the single greatest precursor of child maltreatment fatalities.²¹⁶ In 2022, Texas DFPS' annual report on child fatality and near fatality²¹⁷ documented that out of the 199 child fatalities in Texas the following circumstances were present:

- The families of 98 of these children (49.24%) had a documented history of domestic violence in their case file;
- The families of 50 of these children (25.12%) had active domestic violence present in their home environment; and
- The families of 39 of these children (19.6%) had both a history of domestic violence and active domestic violence present in their home environment.
- Physical abuse was the cause of death for 64% of the 39 child fatalities where there was both a documented history and active domestic violence present in the home environment.

A common response by perpetrators is an unwillingness to participate in the child welfare process, including choosing not to engage in conversations, meetings, and services. This can leave the survivor parent accountable for addressing all safety concerns on their own, even when they may not be the cause of all safety concerns. It is important to note that a survivor parent's decision to leave an abusive relationship may leave them without the financial resources to care for the child and might result in a loss of employment, housing, and childcare. Poverty has a compounding impact on survivor parents due to the isolation, coercion, and economic abuse they may experience. Instead, the survivor parent may stay in the relationship as a protective response, believing that the perpetrator will do more serious harm if the survivor parent tries to leave. Notably, women who leave their abusive partners have a 75% greater risk of being killed than those who stay.²¹⁸

Exposure to domestic violence can have long-lasting negative effects on children's physical and emotional well-being. Children who are removed from their home as a result of domestic violence may also then experience the trauma of being separated from the survivor parent. Also, the separation of the children from the survivor parent creates more opportunity for the perpetrator to use the children as a tool to manipulate the survivor parent. These threats can add to other sources of pressure to stay in a domestic violence situation, such as cultural practices or norms, religious pressures, and the desires of the children to return to their home.

B. Domestic Violence and Disproportionality

The intersection of disproportionality, child welfare, and domestic violence is impacted by the criminal justice and mental health systems. The child welfare system sometimes relies on other systems to help assess parents' abilities to care for and protect their children. The criminal justice and mental health systems are two of these systems, and families of color may experience disproportionate and disparate impacts²¹⁹ or be fearful of the impact of using these systems to assess their protectiveness. Regarding the criminal justice system, families of color may be reluctant to seeking such relief as calling law enforcement, requesting a protective order, or testifying against the perpetrator. The mental health system is especially connected to survivor parents involved in the child welfare system as mental health professionals are often asked to assess the mental health of survivor parents.

Trauma survivors (both child and adult) experience a wide range of issues related to trauma exposure and may at times experience co-occurring mental health issues stemming from their experiences, such as Post Traumatic Stress Disorder (PTSD). For a discussion of disproportionality, please see the [Disproportionality and Equity](#) chapter in this Bench Book.

C. Judicial Responses to Child Welfare Cases Involving Domestic Violence

Judges may consider taking the following steps to have a positive impact on the safety and stability of families experiencing domestic violence:

- **Keep the children’s safety in mind:** It is common for the perpetrator to use the children to control the survivor parent. Perpetrators may threaten to gain sole custody, kill, kidnap, or otherwise harm children if the survivor parent leaves. Services, planning, and hearings should be conducted with the safety and well-being of the children as a primary concern and in the context of domestic violence dynamics.
- **Keep the domestic violence survivor parent’s safety in mind:** If virtual hearings or separate testimony/hearings are an option, consider allowing the survivor parent to make the decision about which hearing format suits their safety needs. In addition to upholding the victim-advocate privilege as outlined later in this section regarding [Texas Family Code Chapter 93](#), judges might consider holding separate hearings at different times to discuss each parent’s individual portion of the case if there are concerns by the survivor parent about continued use of intimidation, threats, manipulation, or retaliation by the perpetrator. Also, the child’s safety and well-being are closely connected to that of the survivor parent.
- **Address the trauma of removing children from the survivor parent:** Considerations may include placing the children with relatives or fictive kin that the survivor parent identifies as safe and supportive for the shortest duration while the survivor parent plans for their next step and seeks safety. Note that placement with the perpetrator’s family could lead to continuing coercion and/or collusion against the survivor parent by the perpetrator or the perpetrator’s family depending on their relationship with the perpetrator.
- **Recognize the effects of trauma for the survivor parent:** Trauma, such as that which a victim of domestic violence experiences, can affect memory and behavioral responses. Recognizing the complex nature of trauma can allow for an understanding of how traumatic experiences can shape survivor parents’ responses in a child welfare case, as such responses may differ from those which are typically expected.
- **Recognize the danger of separation:** Separation from an abusive partner increases the risk of lethality when domestic violence is a dynamic in the relationship, as can pursuing legal options such as protective orders, divorce, custody, and mediation. Additionally, because the perpetrator’s actions often directly involve, target, and impact the children in the family, the fear of being harmed might impact the information that the survivor parent and their children share with caseworkers or other individuals.
- **Order additional services to address the parenting and behavior choices that the perpetrator is inflicting on the survivor and the children:** This may include mental

health support and substance use services as well as Batterer Intervention and Prevention Programs (BIPPs) discussed in more detail below.

- **Recognize the benefits of supervised visitation:** Limiting and/or supervising the access of the perpetrator is best provided by a supervised visitation and exchange program whose staff are trained in the dynamics of domestic violence. Trained staff can identify when a perpetrator is using the children to control the survivor parent or to gain access to information, including new contact information. If the visits cannot be supervised by trained staff, then it is recommended to consult with the survivor parent about who they can identify as a safe person and arrange for that person to provide for access and visitation with the children for the survivor parent.
- **Create a Service Plan based on the survivor's experiences and strengths:** Judges can encourage a culture where the survivors' experiences are heard, valued, and considered in safety planning, and where the survivor parent's supports, strengths, and protective factors are identified and bolstered. Service plans should be tailored to address safety concerns and should include input from the survivor parent.
- **Include the survivor parent in placement decisions:** When possible, keeping the children and survivor parent safe and together is preferred. If separation must occur due to safety concerns, judges can request input from the survivor parent about placement for the children with relatives or fictive kin who the survivor parent trusts. This should be a time-limited placement that allows for safe visitation by the survivor parent and should address any safety concerns that the survivor parent identifies.
- **Recognize the potential for ongoing domestic violence during the CPS case, even if the parents are separated:** A perpetrator can continue to intimidate, manipulate, and harm a survivor parent during a child welfare case. Some examples might include using the children to garner information about the survivor parent, making false reports to CPS or to law enforcement and/or filing for a protective order under false allegations to control the survivor parent, taking away access to transportation or funds, tracking phone calls and the location of the survivor parent, and violating stay-away orders. An option for safe communication can be through a phone app such as [Our Family Wizard](#). Also, judges should be aware that records kept by child welfare caseworkers can be requested and obtained by the perpetrator, and that these records can give the perpetrator access to the survivor parent's or child(ren)'s location and increase the danger posed to them. Such confidentiality concerns can be addressed through redaction.
- **Consider how to maintain safety in mediation:** In cases involving domestic violence, judges and attorneys should ensure that the mediator has completed the required minimum four hours of training on family violence per the [Tex. Civ. Prac. & Rem. Code § 153.052](#) and consider selecting a mediator who has specific expertise or experience mediating with parents for whom domestic violence is an issue. In addition, judges and attorneys should solicit feedback from the domestic violence victim/survivor parent about what precautions should be implemented and consider orders to ensure the safety of all parties participating in mediation. Finally, related information and suggestions on best practices about mediation when domestic violence is involved can be found in the Texas

D. Batterers Intervention and Prevention Programs

Opportunity exists to increase the expectations of the child welfare system around understanding and safely addressing the dynamics of domestic violence. This can include increased partnerships with domestic violence experts and making appropriate referrals for services when domestic violence is identified such as to a Batterers Intervention and Prevention Program (BIPP).

Many accredited BIPPs in Texas contract with DFPS and therefore are available free of charge to participants. TCFV can provide a list of these contracted providers upon email request to policy@tcfv.org. For accredited non-contracted BIPPs, please check the [TDCJ website](#). If a BIPP is not available, individual counseling with a practitioner who specializes in working with individuals who use violence, power, control, and coercion is recommended. Ordering Anger Management classes is not recommended since perpetrators can use information from those classes to become more effective at controlling their intimate partners while minimizing the visibility of their possessive behavior, parenting choices, and coercive control.

Ordering domestic violence perpetrators to participate in BIPP sends the message to the survivor parent and the family that the perpetrator is accountable for their choices that impact the safety of their children and family. BIPPs are designed to give clients the skills to treat their partners and children with respect and handle conflict without violence. However, these programs cannot guarantee safety for survivor parents, or "fix" someone who has chosen to utilize abusive and coercive behaviors that harm and disrupt the family functioning of the survivor parent and their children.

Asking follow-up questions of the perpetrator about the parenting choices that they are making, and confirming their attendance, participation, and progress with the BIPP is critical.

Below are some suggested questions for judges to ask of the **person enrolled in the BIPP**:

Understanding Prior History:

- Have you previously participated in services to address similar behaviors?
- What services? How often? For how long did you participate in those services?
- What behavior changes, if any, did you notice from participating in those services?
- What helped you to continue those behavior changes?
- How long did those behavior changes last?
- Did you reach out for additional support if you chose to use tactics such as manipulation, coercion, threats, weapons, physical violence, emotional violence, and psychological violence against the survivor parent?
- Did you think those services were beneficial?

Prior to Attendance of BIPP (or other court-ordered services):

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- What are two hopes that you have for your relationship with your children?
 - What are two behaviors about yourself that you would like to improve or change?
 - What are two things you are proud of yourself for?
 - What are two ways that you think your child's other parent supports your children to grow?
 - What are two ways you show your children that you care?
 - What do you think your children would say about how they know when you are upset, frustrated, or angry?

During Service Participation:

- What are you learning from the services?
- What is / was your role in creating an unsafe environment for your child?
- What is your role in creating a safe environment for your child?
- What is /was your role in disrupting the safe environment for your child?
- Can you give me three examples of ways that you are making different choices? What would you have normally done and what did you choose instead? What supported you in making the decision?
- Can you share with me two examples of your behaviors that you are worried causes safety concerns or fear for the survivor parent? How about for your children?
- How do those behaviors impact your child's health, well-being, and relationship with you, their other parent and other family members?

After Completed Attendance of a Batterer Intervention and Prevention Program:

- Did you think those services were beneficial?
- What did you learn that you did not know before or understood differently this time?
- How has the program impacted your behavior choices?
- Can you share one example of a choice that you made but did not take responsibility for this week?
- If you had another opportunity to make that choice, what would you do?
- Can you share about some of the decisions that you made and the impact they made on your family?

Judges can order service plans that are “designed to hold batterers accountable for the domestic violence, not the adult victims of domestic violence; goals/strategies in service plans should focus on

the batterers changing their violent behavior as opposed to the adult victims of domestic violence controlling the batterer's behavior."²²⁰

For more information about how to inquire about and support safe parenting choices by the perpetrator, judges might access resources available through the [Safe and Together Institute](#).

E. Supporting Survivor Parent Safety

Increasing the safety of a domestic violence survivor is inextricably linked to increasing the safety of their children. Courts can support survivor safety by encouraging DFPS to connect the survivor to informed safety and support services, legal services, housing support, and other economic resources. Encouraging this collaboration between the department and the survivor can enhance safety of the children by helping to establish long-term safety and stability.

Below are some suggested questions that judges might consider asking the **survivor parent**:

Questions that Support Safety and Security:²²¹

- What support do you need to continue to parent and feel safer?
- What support, services, or resources do you need to continue to run your home while continuing to keep your children safe?
- Do you have access to a car or another mode of transportation?
- Do you have the continued ability or inability to pay rent and buy food?
- What other needs do you have?
- Are you aware if you currently have any active protective orders against the perpetrator or if you have had an active protective order against them in the past?

If the Survivor Parent Has a Substance Abuse Concern:

- What are the factors in place that contribute to your continued substance use/abuse?
- Do you want to work towards getting clean/sober?
- Have you ever tried to get clean/sober before?
- If so, what factors were in place that supported you staying clean/sober?
- What factors were in place that led to your continued use?
- Has the perpetrator ever disrupted your attempts at sobriety?

If the Survivor Parent Has a Mental Health Concern:

- What are the factors in place that contribute to your mental health challenges?
- Do you want to work towards addressing potential mental health challenges?

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- Have you ever tried to address your mental health before?
 - If so, what factors were in place that supported you feeling well?
 - What factors were in place that led you to feeling unwell?
 - Has the perpetrator ever disrupted your attempts to care for your mental health and wellness?

Talking with the Survivor Parent Privately:

- What are you already doing that is helping to keep you and your children safe?
- How can we support you to continue those protective strategies and actions?
- What additional supports will help you keep yourself and your child safe and together?

F. Protecting Privacy

Addressing safety issues must be at the forefront of any survivor parent and their families' needs. A survivor parent fleeing a perpetrator often seeks services and shelter from a family violence center to escape a violent home, and those survivor parents who stay in the home need a safe avenue to discuss the violence and make a safety plan as well. Judges might recommend their local domestic violence agency as a resource for free and confidential services for survivor parents. Domestic violence agencies can support survivors in a variety of ways, including addressing trauma concerns, stability, and safety planning, along with housing, food, and other basic needs as well as providing confidential therapeutic support. It is important to note that family violence centers are bound by the Family Violence Prevention and Services Act (FVPSA) to have all services be voluntary; so while a referral can be made, the survivor parent chooses when and if to seek services.

Advocates at family violence centers know that trust is crucial to build with survivors as the trauma and violence they have experienced in an intimate relationship is difficult to share. Being able to do confidentially represents a critical component to feeling safe and provides the circumstances for a survivor to be able to share intimate details without having to worry about them later being revealed or used against them as they rebuild their lives. Victim-advocate privilege, outlined in [Tex. Fam. Code Chapter 93](#), supports survivors seeking help and engaging in services offered at a family violence center which offer a range of services from shelter to counseling and legal advocacy. This law is further supported by federal confidentiality protections found in the Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA).²²²

The confluence of these laws creates a safety net for survivors. When DFPS or courts compel information or circumvent the privacy protections afforded by law, this can create safety risks and send a message to survivors that seeking support and safety may be used against them. Texas law does not allow disclosure except in narrow instances. Absent a properly executed release of information signed by a survivor who has consented to the privilege disclosure with an advocate, Texas victim-advocate privilege law attaches to all confidential communications and the advocate or family violence center must not disclose them outside of a few exceptions. Exceptions to this privilege include:

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- Mandatory reporting of child abuse and neglect and adult abuse, neglect, and exploitation.
 - An in-camera review by a judge to assess if the family violence center holds a specific document that proves forfeiture by wrongdoing in the event of a proceeding under [Tex. Code Crim. Proc. Art. 38.49](#).
 - If an advocate serving as an expert witness reviews confidential communication and then derives an opinion based on the review of that information.

Judges play a critical role in upholding the carefully constructed privacy laws in Texas and can serve to uphold survivor safety when confidentiality and privilege laws are upheld and carefully navigated.

Privilege and Confidentiality Questions for Judges to Consider:

- Have relevant state and federal privacy statutes addressed whether disclosure of survivor information is permissible?
- Is there any other way to access needed information without breaching the critical privacy protections survivors of family violence receive from family violence centers?
- Will seeking this information put the survivor parent or their children at risk?
- Who would have access to these records after disclosure and how would it help the family or affect their safety?

G. Firearm Safety and Addressing Known Lethality Factors

Child welfare professionals and judges should identify whether firearms are present in the home and/or available to the perpetrator. Even if a person legally possesses a firearm, if they have used their access to a firearm or the actual firearm to threaten any person in the family or at the home, there is a real risk to safety of all persons, including children, that should be taken seriously by child welfare stakeholders.

Research has shown that the majority of female homicides were committed with firearms—more than all other means combined.²²³ In Texas, 67% of intimate partners were shot and killed by their partner in 2020²²⁴. Firearms amplify the inherent power and control dynamics characteristic of abusive intimate relationships. When perpetrators have access to a firearm, the risk of intimate partner murder increases dramatically.²²⁵ National Domestic Violence Hotline survivor callers whose abusers had access to firearms reported the following: 10% said their abuser had fired a gun during a domestic violence incident, 22% said their abuser had explicitly threatened to kill them, their children, families, pets, friends, and/or to commit suicide while 67% said they believed their abusers were capable of killing them.²²⁶

Child welfare professionals may not be aware of an existing dynamic of domestic violence between the parents by the time the case comes to court, unless a mandatory report was made by police who went out on a domestic violence call. In addition, it is unlikely that a child welfare investigator will be immediately aware of whether or not the domestic violence perpetrator owns a firearm.

Questions for Judges to Ask About Firearm Safety:

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- Does the perpetrator own or have access to a gun?
 - Does the perpetrator have any prior history of domestic violence or a history of using weapons (including plea deals and charges that were deferred)?
 - Has the perpetrator ever threatened to kill the survivor parent, the children, or themselves?
 - Has the perpetrator ever threatened the survivor parent with a gun or weapon prior to the hearing?
 - Ask the survivor parent and the perpetrator if there are any guns or weapons in the home. To minimize risks to the survivor parent and children, do not ask the survivor parent questions directly related to their own safety in open court. Instead, involve a domestic violence advocate from your local domestic violence program who could ensure that the survivor has access to information, safety planning and support if they choose.
 - If guns are present and there is concern about how to move forward to decrease the lethality risk for the survivor parent and children, judges are encouraged to reach out to their local Domestic Violence Program or to contact the [Texas Council on Family Violence](#).

Federal Laws Addressing Domestic Violence and Firearms

Federal law²²⁷ prohibits possession of a firearm or ammunition by persons convicted of a misdemeanor crime of domestic violence, which is defined as:

- A misdemeanor under Federal, State, Tribal, or local law;
- Has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, and
- Committed by one of the following
 - a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common,
 - a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian,
 - a person similarly situated to a spouse, parent, or guardian of the victim, or
 - a person who has a current or recent former dating relationship with the victim.

It is important to note that the prohibition is permanent for all of the above persons, except for current or former dating partners. In that instance, the prohibition is for five years. In addition, unlike Texas law, a conviction for a family violence class C offense of assault by offensive contact can qualify as a prohibiting conviction. See *United States v. Castleman*, [134 S. Ct. 1405](#) (2014).

Orders of Protection

Federal law prohibits possession of firearms or ammunition by a respondent in any order which restrains the person from harassing, stalking, or threatening an intimate partner of such person or

child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child. The federal definition of intimate partner is limited to the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person. Also, the order must be one issued after a hearing in which the person received actual notice and had an opportunity to participate.

Texas Laws Addressing Family Violence and Firearms

Texas law prohibits family violence and dating violence Class A misdemeanants from possessing firearms for five years after release from confinement or community supervision.

- [Tex. Penal Code § 46.04\(b\)](#) (Unlawful Possession of a Firearm)

Respondents to ex parte and permanent protective orders are prohibited from possessing firearms for the duration of the order.

- [Tex. Penal Code § 46.04\(c\)](#) (Unlawful Possession of a Firearm);
- [Tex. Penal Code § 25.07\(a\)\(4\)](#) (Violation of Certain Court Orders or Conditions of Bond In a Family Violence, Child Abuse or Neglect, Sexual Assault or Abuse, Indecent Assault, Stalking, or Trafficking Case);
- [Tex. Fam. Code § 85.026](#) (Warning on Protective Order); and
- If a magistrate includes a firearm prohibition in a magistrate's order of emergency protection issued after an arrest, possession of a firearm by the respondent during the duration of the order is a violation of state law. [Tex. Code of Crim. Procedure Art. 17.292 \(Magistrate's Order for Emergency Protection\)](#)
- [Tex. Penal Code § 46.04\(c\)](#) (Unlawful Possession of a Firearm)

H. Intersection of Child Welfare and Child Custody Cases

Concurrent and future family and criminal cases involving the same parents and children in a child welfare case can impact the long-term safety, stability, and well-being of the child and family. Therefore, information emanating from a child welfare case where domestic violence is involved can impact concurrent and subsequent divorce, custody, and protective order applications in a way that is aligned with prioritizing child safety if appropriate case documentation is maintained, and the court issues related findings. It is common for the perpetrator to use custody orders and other issues related to the children, including exchanges and visitation, to continue to threaten and harass the survivor parent. Fathers who are violent towards the mothers of their children are twice as likely to seek sole custody of their children as non-abusive fathers.²²⁸ It is important for final orders in a child welfare case to address conservatorship and access with information about known safety risks spelled out so that support for long-term safety for survivor parents and children is clear in the event of a future Suit Affecting the Parent Child Relationship (SAPCR).

Similarly, documentation during the child welfare case can impact the ongoing safety of the survivor parent and child even after the child welfare case has ended. Case documentation should include an

accurate identification of the perpetrator, clearly identified patterns of the dangerous behaviors that initiated the original and ongoing safety concerns, as well as documentation of the additional negative impacts that those behaviors had on family functioning. Case documentation should include any issues with exchanges and visitation. Documentation of the services ordered to support behavior change by the perpetrator and whether or not they complied and completed services is critical. Such documentation should include detailed attendance records of their participation in court-ordered services, including their participation in the BIPP and whether the perpetrator parent received a finding of contempt.

Relevant Law:

- [Tex. Fam. Code § 261.501](#) (filing application for a protective order in a CPS case)
- [Tex. Fam. Code § 262.102\(4\)\(c\)](#) (emergency order)
- [Tex. Fam. Code § 262.201\(k\)](#) (adversary hearing)
- [Tex. Fam. Code § 262.1161\(c\)](#) (removal: misdemeanor exception)
- [Tex. Fam. Code § 262.1095\(4\)\(c\)](#) (family violence exception to providing information)

I. Resources

Training and Materials:

- National Child Traumatic Stress Network - National Domestic Violence Awareness Month [Resources](#)
- Quality Improvement Center on Domestic Violence in Child Welfare (QIC-DVCW):
 - [Resource Library](#)
 - Protective Factors for Survivors of Domestic Violence [Issue Brief](#)
 - Relational and Systemic Accountability for Persons Who Use Violence [Issue Brief](#)
 - Child Welfare and Domestic Violence: The Impact on Children and Families [Fact Sheet](#)

Judicial Bench Cards and Guidebooks:

- Safe and Together Institute (Connecticut) - Domestic Violence [Guidebook](#): A Guide for Juvenile Court Professionals
- Supreme Court of Ohio - Assessing Allegations of Domestic Violence in Child Abuse Cases [Benchcard](#)
- National Council on Juvenile and Family Court Judges Bench Cards:
 - [Checklist to Promote Perpetrator Accountability](#) in Dependency Cases Involving Domestic Violence

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- [Navigating Custody & Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide](#)
 - [Reasonable Efforts Checklist](#) for Dependency Cases Involving Domestic Violence
 - [A Judicial Checklist for Children and Youth Exposed to Violence](#)
 - Minnesota - Domestic Violence Risk Assessment [Bench Guide](#) authored by the Minnesota Gender Fairness in the Courts Implementation Committee of the Battered Women's Justice Project
 - National Child Trauma Stress Network [Bench Card](#) for the Trauma-Informed Judge



COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN

Please see the Checklist Section for the Commercial Sexual Exploitation of Children Judicial Checklist.

A. Definition of Human Trafficking

Commercial sexual exploitation of children, also known as human trafficking, is a term that refers to labor and sex trafficking of minors and adults. While all forms of trafficking are dangerous and exploitative, children and youth in foster care are especially vulnerable to child sex trafficking.

1. Federal Law

Under the federal Trafficking Victims Protection Act,²²⁹ severe forms of trafficking in persons are defined as:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. [22 U.S.C. § 7102\(11\)](#).

The term “sex trafficking” means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act. [22 U.S.C. § 7102\(12\)](#). A “commercial sex act” is defined as any sex act on account of which anything of value is given to or received by any person. [22 U.S.C. § 7102\(4\)](#).

Special Issue: Force, fraud, or coercion are not required elements of sex trafficking when the victim is a child. In addition, geographic movement of the child is not required, and money need not be exchanged to prove a child was trafficked. Traffickers often manipulate children with promises of food, clothing, shelter, protection, and love.

2. Trafficking of Children Defined

In Texas, “trafficking” is defined as transporting, enticing, recruiting, harboring, providing, or otherwise obtaining a person by any means. [Tex. Penal Code § 20A.01\(4\)](#).

For sex and labor trafficking offenses, a “child” is defined as a person younger than 18 years of age. [Tex. Penal Code § 20A.01\(1\)](#). Both child sex and labor trafficking are offenses in Texas regardless of whether the actor knew the age of the child at the time of the offense. [Tex. Penal Code § 20A.02\(b\)\(1\)](#).

3. Child Sex Trafficking

Texas law defines child sex trafficking as knowingly trafficking a child and by any means causing the trafficked child to engage in, or become the victim of, conduct prohibited by:

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- Continuous Sexual Abuse of Young Child or Disabled Individual, [Tex. Penal Code § 21.02](#);
 - Indecency with a Child, [Tex. Penal Code § 21.11](#);
 - Sexual Assault, [Tex. Penal Code § 22.011](#);
 - Aggravated Sexual Assault, [Tex. Penal Code § 22.021](#);
 - Prostitution, [Tex. Penal Code § 43.02](#);
 - Promotion of Prostitution, [Tex. Penal Code § 43.03](#);
 - Online Promotion of Prostitution, [Tex. Penal Code § 43.031](#);
 - Aggravated Promotion of Prostitution, [Tex. Penal Code § 43.04](#);
 - Aggravated Online Promotion of Prostitution, [Tex. Penal Code § 43.041](#);
 - Compelling Prostitution, [Tex. Penal Code § 43.05](#);
 - Sexual Performance by a Child, [Tex. Penal Code § 43.25](#);
 - Employment Harmful to Children, [Tex. Penal Code § 43.251](#); or
 - Possession or Promotion of Child Pornography, [Tex. Penal Code § 43.26](#). [Tex. Penal Code § 20A.02\(a\)\(7\)](#).

Alternatively, a person commits the crime of child sex trafficking if that person knowingly receives a benefit from participating in a venture that involves an activity described by [Tex. Penal Code § 20A.02\(a\)\(7\)](#) or engages in sexual conduct with a child trafficked in the manner described in [Tex. Penal Code § 20A.02\(a\)\(7\)](#). [Tex. Penal Code § 20A.02\(a\)\(8\)](#).

The landmark case of *In re B.W.* addressed the issue of whether a thirteen-year-old child can be adjudicated a juvenile delinquent for committing the offense of prostitution. The Supreme Court of Texas held that a child under the age of 14 lacks capacity to consent to sex and thus cannot be charged with the offense of prostitution. The court found that, “[c]hildren are the victims, not the perpetrators, of child prostitution. Children do not freely choose a life of prostitution, and experts have described in detail the extent to which they are manipulated and controlled by their exploiters.” *In re B.W.*, [313 S.W.3d 818, 826](#) (Tex. 2010).

Another defense to the offense of prostitution that the actor engaged in the conduct that constitutes the offense because the actor was the victim of conduct that constitutes an offense under [Tex. Penal Code § 20A.02](#) or [Tex. Penal Code § 43.05](#). [Tex. Penal Code § 43.02\(d\)](#).

Special Issue: Other terms referring to child sex trafficking include *Commercial Sexual Exploitation of Children (CSEC)*, *Domestic Child Sex Trafficking (DCST)*, and *Domestic Minor Sex Trafficking (DMST)*.

4. Child Labor Trafficking

In Texas, a person commits child labor trafficking by knowingly trafficking a child with the intent that the trafficked child engage in forced labor or services. [Tex. Penal Code § 20A.02\(a\)\(5\)](#). In addition, knowingly receiving a benefit from participating in a venture that involves an activity described by [Tex. Penal Code § 20A.02\(a\)\(5\)](#), including by receiving labor or services the person knows are forced labor or services, constitutes labor trafficking. [Tex. Penal Code § 20A.02\(a\)\(6\)](#).

“Forced labor or services” is defined as labor or services, other than labor or services that constitute sexual conduct, that are performed or provided by another person and obtained through an actor's use of force, fraud, or coercion. [Tex. Penal Code § 20A.01\(2\)](#).

Special Issue: *Force, fraud, or coercion are required elements of child labor trafficking or adult labor or sex trafficking. Under Texas law, child sex trafficking can be accomplished by any means and force, fraud, or coercion are not required.*

5. Continuous Trafficking of Persons

A person commits the offense of continuous trafficking of persons if, during a period that is 30 or more days in duration, the person engages two or more times in conduct that constitutes an offense under [Tex. Penal Code § 20A.02](#) against one or more victims. [Tex. Penal Code § 20A.03\(a\)](#).

B. Trafficking and Child Welfare

1. CPS Investigations Involving Trafficking

The definition of child abuse includes compelling or encouraging a child to engage in sexual conduct as defined by [Tex. Penal Code § 43.01](#) including compelling or encouraging a child in a manner that constitutes an offense of trafficking of persons under [Tex. Penal Code § 20A.02\(a\)\(7\)](#) or [\(8\)](#), prostitution under [Tex. Penal Code § 43.02\(b\)](#), or compelling prostitution under [Tex. Penal Code § 43.05\(a\)\(2\)](#). [Tex. Fam. Code § 261.001\(1\)\(G\)](#).

Knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under [Tex. Penal Code § 20A.02\(a\)\(5\)](#), [\(a\)\(6\)](#), [\(a\)\(7\)](#), or [\(a\)\(8\)](#), or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections also constitutes child abuse. [Tex. Fam. Code § 261.001\(1\)\(L\)](#).

Special Issue: *CPS policy outlines the circumstances when a person traditionally responsible for a child's care, custody, or welfare can be investigated by CPS as an alleged perpetrator of sex or labor trafficking. For more detailed information, see [CPS Policy Handbook § 2380 Child Trafficking \(Sex and Labor Trafficking\)](#).*

2. Trafficking May be Considered as Basis for Removal of Child

If there is no time to obtain a temporary order, temporary restraining order, or attachment under [Tex. Fam. Code § 262.102\(a\)](#) before taking possession of a child consistent with the health and safety of that child, an authorized DFPS representative, a law enforcement officer, or a juvenile probation

officer may take possession of a child without a court order under the following conditions related to trafficking:

- On personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse or of trafficking under [Tex. Penal Code § 20A.02](#) or [Tex. Penal Code § 20A.03](#); or
- On information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse or of trafficking under [Tex. Penal Code § 20A.02](#) or [Tex. Penal Code § 20A.03](#). [Tex. Fam. Code § 262.104\(a\)\(3\)-\(4\)](#).

3. Standard for Decision at Initial Hearing After Taking Possession Includes Consideration of Trafficking

The court shall order the return of the child at the initial hearing regarding a child taken in possession without a court order by a governmental entity, unless the court is satisfied that:

- The evidence, in relevant part, shows that the child has been the victim of sexual abuse or of trafficking under [Tex. Penal Code § 20A.02](#) or [Tex. Penal Code § 20A.03](#) on one or more occasions and that there is a substantial risk that the child will be the victim of sexual abuse or of trafficking in the future;
- Continuation of the child in the home would be contrary to the child's welfare; and
- Reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal of the child. [Tex. Fam. Code § 262.107\(a\)](#).

In determining whether there is a continuing danger to the physical health or safety of a child, the court may consider whether the household to which the child would be returned includes a person who has:

- Abused or neglected another child in a manner that caused serious injury to or the death of the other child; or
- Sexually abused another child. [Tex. Fam. Code § 262.107\(b\)](#).

4. Required Findings at Adversary Hearing if Child Victim of Trafficking to Remain in Care

In a suit filed under [Tex. Fam. Code § 262.101](#) or [Tex. Fam. Code § 262.105](#), at the conclusion of the full adversary hearing, the court shall order the return of the child to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

- There was a danger to the physical health or safety of the child, including a danger that the child would be a victim of trafficking under [Tex. Penal Code § 20A.02](#) or [Tex. Penal](#)

[Code § 20A.03](#), which was caused by an act or failure to act of the person entitled to possession and for the child to remain in the home is contrary to the welfare of the child;

- The urgent need for protection required the immediate removal of the child and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child's removal; and
- Reasonable efforts have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home. [Tex. Fam. Code § 262.201\(g\)](#).

5. Aggravated Circumstances

The court may find under [Tex. Fam. Code § 262.2015\(a\)](#) that a parent has subjected the child to aggravated circumstances if the parent has engaged in conduct against the child or another child of the parent that would constitute an offense of trafficking of persons under [Tex. Penal Code § 20A.02\(a\)\(7\)](#) or [\(a\)\(8\)](#). [Tex. Fam. Code § 262.2015\(b\)\(3\)\(O\)](#).

C. Risk Factors and Indicators

Children and youth who run away or experience foster care are at a higher risk of commercial sexual exploitation.²³⁰ According to the Office of the Texas Attorney General, potential indicators (or “red flags”) that a child may be a trafficking victim include:

- Changes in school attendance, habits, friend groups, vocabulary, demeanor, and attitude;
- Sudden appearance of luxury items — e.g., manicures, designer clothes, purses;
- Truancy (absence) from school;
- Sexually provocative clothing;
- Tattoos or branding;
- Refillable gift cards;
- Multiple phones or social media accounts;
- Lying about the existence of social media accounts;
- Provocative pictures posted online or stored on the phone;
- Unexplained injuries;
- Social interaction and schedule being strictly controlled by someone else; and/or
- Isolation from family, friends, and community.²³¹

Special Issue: *The availability of the internet means trafficking can happen anywhere. Traffickers often use the web to recruit and exploit child victims. Teaching youth in foster care about internet safety is a critical part of any effort to prevent and address human trafficking.*

D. CPS Reporting Requirements Regarding Child Sex Trafficking

1. Preventing Sex Trafficking and Strengthening Families Act

Under the Preventing Sex Trafficking and Strengthening Families Act (SFA), DFPS must report immediately, and in no case later than 24 hours after receiving information on children or youth who have been identified as being a sex trafficking victim, to the law enforcement authorities.²³² [42 U.S.C. § 671\(a\)\(34\)\(A\)](#).

Under SFA, DFPS is also required to develop and implement specific protocols for:

- Expediently locating any child missing from foster care;
- Determining the primary factors that contributed to the child's running away or otherwise being absent from care, and to the extent possible and appropriate, responding to those factors in current and subsequent placements;
- Determining the child's experiences while absent from care, including screening the child to determine if the child is a possible sex trafficking victim (as defined in [42 U.S.C. § 675\(9\)\(A\)](#));
- Reporting such related information as required by the Secretary of the Department of Health and Human Services; and
- DFPS must report immediately, and in no case later than 24 hours after receiving, information on missing or abducted children or youth to the law enforcement authorities for entry into the National Crime Information Center (NCIC) database of the Federal Bureau of Investigation and to the National Center for Missing and Exploited Children. [42 U.S.C. § 671\(a\)\(35\)](#).

Special Issue: *The National Human Trafficking Hotline receives tips about human trafficking and makes referrals for services. For more information, please visit the [National Human Trafficking Hotline website](#) or call 1-888-373-7888.*

E. Children Who are Missing or Who are Victims of Sex Trafficking

If a child in DFPS managing conservatorship is missing from the child's substitute care provider, including a child who is abducted or is a runaway, according to [CPS Policy Handbook § 6460](#) DFPS shall notify the following persons that the child is missing:

- The appropriate law enforcement agencies;
- The court with jurisdiction over the department's managing conservatorship of the child;

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- The child's attorney ad litem;
 - The child's guardian ad litem; and
 - The child's parent unless the parent:
 - cannot be located or contacted;
 - has had the parent's parental rights terminated; or
 - has executed an affidavit of relinquishment of parental rights. [Tex. Fam. Code § 264.123\(a\)](#).

DFPS must provide the notice required by [Tex. Fam. Code § 264.123\(a\)](#) not later than 24 hours after the time DFPS learns that the child is missing or as soon as possible if a person entitled to notice under [Tex. Fam. Code § 264.123\(a\)](#) cannot be notified within 24 hours. [Tex. Fam. Code § 264.123\(b\)](#).

If a child has been reported as a missing child under [Tex. Fam. Code § 264.123\(a\)](#), DFPS must notify the persons described by [Tex. Fam. Code § 264.123\(a\)](#) when the child returns to the child's substitute care provider not later than 24 hours after the time the department learns that the child has returned or as soon as possible if a person entitled to notice cannot be notified within 24 hours. [Tex. Fam. Code § 264.123\(c\)](#).

DFPS must make continuing efforts to determine the location of a missing child until the child returns to substitute care, including:

- Contacting the appropriate law enforcement agencies, the child's relatives, the child's former caregivers; and any state or local social service agency that may be providing services to the child on a monthly basis; and
- Conducting a supervisory-level review of the case on a quarterly basis if the child is 15 years of age or younger to determine whether sufficient efforts have been made to locate the child and whether other action is needed. [Tex. Fam. Code § 264.123\(d\)](#).

DFPS must document in the missing child's case record:

- The actions taken by the department to determine the location of the child; and persuade the child to return to substitute care;
- Any discussion during, and determination resulting from, the supervisory-level review under [Tex. Fam. Code § 264.123\(d\)\(2\)](#);
- Any discussion with law enforcement officials following the return of the child regarding the child's absence; and
- Any discussion with the child described by [Tex. Fam. Code § 264.123\(f\)](#). [Tex. Fam. Code § 264.123\(e\)](#).

After a missing child returns to the child's substitute care provider, DFPS must interview the child to determine the reasons why the child was missing, where the child stayed during the time the child was missing, and whether, while missing, the child was a victim of conduct that constitutes an offense

under [Tex. Penal Code § 20A.02\(a\)\(7\)](#). DFPS must report to an appropriate law enforcement agency any disclosure made by a child that indicates that the child was the victim of a crime during the time the child was missing. DFPS shall make a report not later than 24 hours after the time the disclosure is made. DFPS is not required to interview a missing child if, at the time the child returns, DFPS knows that the child was abducted and another agency is investigating the abduction. [Tex. Fam. Code § 264.123\(f\)](#).

F. Secure Agency Foster Home

A court in an emergency, initial, or full adversary hearing conducted under [Tex. Fam. Code Chapter 262](#) may order that the child who is the subject of the hearing be placed in a secure agency foster home verified in accordance with [Tex. Hum. Res. Code § 42.0531](#), if the court finds that:

- The placement is in the best interest of the child; and
- The child's physical health or safety is in danger because the child has been recruited, harbored, transported, provided, or obtained for forced labor or commercial sexual activity, including any child subjected to an act specified in [Tex. Penal Code § 20A.02](#) or [Tex. Penal Code § 20A.03](#). [Tex. Fam. Code § 262.011](#).

A secure agency foster home which is verified under [Tex. Hum. Res. Code § 42.0531](#) is one that provides:

- Mental health and other services specifically designed to assist children who are victims of trafficking under [Tex. Penal Code § 20A.02](#) or [Tex. Penal Code § 20A.03](#), including:
 - victim and family counseling;
 - behavioral health care;
 - treatment and intervention for sexual assault;
 - education tailored to the child's needs;
 - life skills training;
 - mentoring; and
 - substance abuse screening and treatment as needed;
- Individualized services based on the trauma endured by a child, as determined through comprehensive assessments of the service needs of the child;
- 24-hour services; and
- Appropriate security through facility design, hardware, technology, and staffing. [Tex. Hum. Res. Code § 42.0531\(c\)](#).

Special Issue: *Very few placements exist to address the physical, mental, and emotional needs of child sex trafficking victims. Judges can play a critical role in working with community stakeholders to develop local strategies to prevent trafficking and support survivors.*

G. Resources

Department of Family and Protective Services

- [Human Trafficking](#)²³³

National Center for Juvenile and Family Court Judges

- [Domestic Child Sex Trafficking Series](#)²³⁴
- [National Judicial Institute on Domestic Child Sex Trafficking Online Resources](#)²³⁵
- [Voices from the Bench: Judicial Perspectives on Handling Child Sex Trafficking Cases](#)²³⁶

National Center for Missing and Exploited Children - [Child Sex Trafficking](#)²³⁷

[National Human Trafficking Hotline](#) (888) 373-7888²³⁸

Office of the Texas Attorney General [Human Trafficking webpage](#), including “Be the One” online training video²³⁹

Office of the Texas Governor [Child Sex Trafficking Team](#)²⁴⁰

Polaris Project - [Human Trafficking](#)²⁴¹

Relevant DFPS Policy:

- Investigations: [CPS Policy Handbook § 2380](#) Child Trafficking (Sex and Labor Trafficking)
- Conservatorship: [CPS Policy Handbook § 6460](#) When a Child or Youth is Missing from CPS
- Family-Based Safety Services: [CPS Policy Handbook § 12911](#) Child Trafficking (Sex and Labor Trafficking)
- Older Youth:
 - [CPS Policy Handbook § 10150](#) Victims of Trafficking Services to Older Youth
 - [CPS Policy Handbook § 10224.1](#) Trafficking Awareness PAL Case Management Services
 - [CPS Policy Handbook § 10441](#) Casework Activity Young Adults in Extended Foster Care

